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DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
LOFTON
A CONDOMINIUM COMMON INTEREST DEVELOPMENT

ARTICLE XIV, SECTION 14.3 OF THIS DECLARATION REFERENCES ALTERNATIVE DISPUTE RESOLUTION PROCEDURES AND DOCUMENTS THAT INCLUDES A WAIVER OF THE RIGHT TO A JURY TRIAL. YOU SHOULD CONSULT LEGAL COUNSEL WITH ANY QUESTIONS ON THESE OR OTHER PROVISIONS OF THIS DECLARATION

IF THIS DOCUMENT CONTAINS ANY RESTRICTION BASED ON RACE, COLOR, RELIGION, SEX, GENDER, GENDER IDENTITY, GENDER EXPRESSION, SEXUAL ORIENTATION, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, NATIONAL ORIGIN, SOURCE OF INCOME AS DEFINED IN SUBDIVISION (P) OF SECTION 12955, OR ANCESTRY, THAT RESTRICTION VIOLATES STATE AND FEDERAL FAIR HOUSING LAWS AND IS VOID, AND MAY BE REMOVED PURSUANT TO SECTION 12956.2 OF THE GOVERNMENT CODE. LAWFUL RESTRICTIONS UNDER STATE AND FEDERAL LAW ON THE AGE OF OCCUPANTS IN SENIOR HOUSING OR HOUSING FOR OLDER PERSONS SHALL NOT BE CONSTRUED AS RESTRICTIONS BASED ON FAMILIAL STATUS

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**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
LOFTON**

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR LOFTON is made on the date hereinafter set forth by TRI POINTE HOMES, INC., a Delaware corporation (“*Declarant*”).

Lofton is a residential community that will be comprised of condominium homes in the City and County of San Francisco, State of California, being developed by Declarant. Declarant’s current development plan for the community is that there will be 54 condominium units (each with one-car garages), private streets and utility systems, recreational space, and landscaped areas. However, there is no guarantee that the community will be developed or completed as presently proposed, and nothing in this Declaration shall be construed to require Declarant to develop the maximum number of homes approved, and that there may be increases or decreases if there are any changes, amendments to the governmental approvals for the community.

ARTICLE I

RECITALS

1.1 Description of Real Property. Declarant is the record owner of all that certain real property in the City and County of San Francisco, State of California, and described as follows (the “*Project*”):

Lot 001 of Final Map No. 9699, as shown on a map filed for record on _____, 20__, in Book _____ of Maps, at Pages ____ to ____, inclusive, in the Office of the County Recorder of San Francisco County, State of California.

1.2 Phases of the Project. Declarant has improved or intends to improve the real property described in Section 1.1, above, by subdividing it into Association Property, Condominiums, Building Common Area, Exclusive Use Area and other Improvements, as defined hereinbelow (collectively, the “*Project*”). Declarant intends to sell each Condominium to a separate party (each, an “*Owner*”). Declarant currently plans to develop the Project in two (2) or more Phases. The first Phase will consist of the Initial Property, as defined below. Prior to annexation, the Additional Property shall not be subject to any provision of this Declaration. Declarant may, but shall have no obligation to, annex all or any portion of the Additional Property to the Project by recording a Declaration of Annexation in compliance with the provisions of this Declaration.

1.3 Ownership Interests. Each Owner of a Condominium shall receive fee title to his/her Condominium Unit, a fractional interest in the Building Common Area, exclusive easements for use and Maintenance of Exclusive Use Area assigned to said Condominium, mandatory membership in the Lofton Community Association, a California nonprofit mutual

benefit corporation, a non-exclusive easement for use, enjoyment, ingress and egress over Association Property, and such other interests as are provided herein.

1.4 Common Plan for Project. By this Declaration, Declarant intends to establish a common scheme and plan for the possession, use, enjoyment, repair, Maintenance, restoration and improvement of the Project and interests therein conveyed and to establish thereon a condominium development.

1.5 Alternative Dispute Resolution Procedures. A separate Master Dispute Resolution Declaration will be or has been recorded against the Project and will set forth, among other matters, Declarant's binding alternative dispute resolution procedures for the resolution of all Claims by an Owner or the Association involving Declarant or a Declarant Party, including without limitation, Construction Defect Claims. Each Owner and the Association are bound by the dispute resolution procedures set forth in the Master Dispute Resolution Declaration. An Individual Dispute Resolution Agreement may also be recorded which is executed by Declarant and the First Purchaser of a Condominium; each Owner is also bound by the procedures set forth in the Individual Dispute Resolution Agreement.

1.6 Boundary Modifications. If the boundaries of real property change as a result of one or more subsequently recorded final maps, amended final maps, parcel maps, amended parcel maps, certificates of correction, lot line adjustments and/or records of survey, then, for all purposes of this Declaration:

1.6.1 Added to Lot. Real property which is removed from a Lot and added to another Lot shall thereafter be part of that other Lot;

1.6.2 Removed from Declaration. Real property which is removed from Association Property and added to real property which is not subject to this Declaration shall no longer constitute a part of such Association Property and shall no longer be subject to this Declaration; and

1.6.3 Added to Declaration. Real property not subject to this Declaration which is added to Association Property shall be part of the Association Property to which it is added and shall automatically be subject to all provisions of this Declaration.

NOW, THEREFORE, Declarant hereby declares that the first Phase (the "***Initial Property***") shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold and improved, subject to the following declarations, limitations, liens, charges, covenants, conditions, restrictions and easements, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Project, in accordance with the plan for improvement of the Project and the division thereof into Condominiums. Pursuant to California Civil Code Sections 1468 and 5975, all of the limitations, covenants, conditions, restrictions and easements shall constitute covenants which shall run with the land, be enforceable as equitable servitudes, and shall be binding upon Declarant and its successors and assigns, and all parties having or acquiring any right, title or interest in or to any part of the Project.

ARTICLE II

DEFINITIONS

In addition to the defined terms set forth herein, certain defined terms relating to Disputes with Declarant and the Association and/or an Owner are set forth in Section 14.3.1 below (Claims and Legal Actions).

2.1 “Additional Charges” shall mean costs, fees, charges and expenditures, including, without limitation, attorney’s fees, late charges, interest and recording and filing fees actually incurred by the Association in collecting and/or enforcing payment of Assessments, fines and/or penalties.

2.2 “Additional Property” shall mean all of the real property and Improvements identified in Section 1.1, above, with the exception of the Initial Property, defined below. “Additional Property” shall also refer to any real property and Improvements annexed by Declarant into the Project and identified in a Declaration of Annexation. However, there is no guarantee that any of the Additional Property will be annexed into the Project as intended by Declarant.

2.3 “Affiliate” means, with respect to a specified person, any other person that is directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with the specified person. “Control” as used herein is defined as possession, direct or indirect of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise.

2.4 “Alteration” shall mean constructing, performing, installing, remodeling, repairing, replacing, demolishing, and/or changing the color or shade of any Improvement. The term “Alteration” does not include repainting or refinishing any Improvement in the same color, hue, intensity, tone, and shade or repairing any Improvement with the same materials.

2.5 “Antenna Equipment” shall individually and collectively refer to any and all television, video or radio poles, antennae, satellite dishes, cables, other transmission and/or reception fixtures, or other over-the-air receiving device or related or similar personal property.

2.6 “Antenna Laws” shall refer to Title 47 U.S.C. §§ 1 et seq., 47 CFR § 1.4000 and any other applicable state, federal and local laws, rules and decisions promulgated with respect thereto, pertaining to the use, installation and Maintenance of Antenna Equipment.

2.7 “Architectural Control Committee” or “ACC” shall mean the committee referenced in ARTICLE VI of this Declaration.

2.8 “Articles” shall mean the Articles of Incorporation of Lofton Community Association and any amendments thereto.

2.9 “Assessment” shall mean that portion of the cost of Maintaining, improving, repairing, operating and managing the Project which is to be paid by each Owner as determined by the Association and shall include, but not be limited to, Regular Assessments, Special

Assessments and Reimbursement Assessments, as more particularly set forth in ARTICLE IX of this Declaration,.

2.10 “Association” shall mean Lofton Community Association, a California nonprofit mutual benefit corporation, the Members of which shall be the Owners of Condominiums in the Project, their successors and assigns.

2.11 “Association Maintenance Areas” or “AMA” shall mean those portions of the Project or surrounding areas (including public rights-of-way) that are not owned in fee by the Association but for which the Association shall have the obligation to Maintain as set forth in this Declaration. “Association Maintenance Areas” shall including, but not be limited to, (a) Building Common Area, and (b) the parkstrip landscaping and irrigation in the public right-of-way along Cambridge Street that fronts that portion of the Project. “Association Maintenance Areas” shall also mean any real property and Improvements described as “Association Maintenance Areas” in a Declaration of Annexation.

2.12 “Association Property” or “AP” shall mean (a) “Association Maintenance Areas,” unless otherwise designated, and (b) all the real property and Improvements thereon and airspace within real property shown on a Condominium Plan, and which is not part of any “Condominium Unit” or “Building Common Area,” as defined in this Declaration. The term “Association Property” shall also mean any real property and Improvements described as “Association Property” in a Declaration of Annexation. All Association Property shall be owned in fee title by the Association and is “common area” as that term is defined in California Civil Code Section 4095.

2.13 “Association Rules” shall mean rules and regulations regulating the use and enjoyment of the Project which may be adopted and/or amended by the Board from time to time.

2.14 “Authorized Vehicles” shall include, but not be limited to, standard passenger vehicles, motorcycles and trucks (unless otherwise defined as a Commercial Vehicle below) used for personal transportation. The Board shall have the discretion to modify, amend or change the definition of “Authorized Vehicles” through Association Rules so long as the minimum standards set forth in Section 4.14 of this Declaration are satisfied.

2.15 “BMPs” shall refer to Best Management Practices as it pertains to stormwater Maintenance pursuant to Stormwater Treatment Measures Maintenance Agreements approved by the City and recorded against the Project, as may be referenced in this Declaration.

2.16 “Board” or “Board of Directors” shall mean the Board of Directors of the Association, appointed or elected as provided in the Bylaws.

2.17 “Bond” shall mean a bond, security or other arrangement to secure performance of the commitment of Declarant to complete Association Property Improvements.

2.18 “Building” shall mean each of the residential dwelling structures in a Phase which contain Condominium Units, all as shown on the Condominium Plan. Buildings may contain 1-2 Condominium Units. Each Building is structurally independent and there is an airspace gap of approximately one (1) to two (2) inches between Buildings. However, there will be a strip of

material on the exterior of the Buildings and the roof surfaces that will span the airspace gap and display an exterior appearance of attached residential dwellings. While Buildings enclose the residential and garage elements of the Condominium Units, **the Buildings are not part of the Condominium Units and are considered “Building Common Area” as defined herein.** For purposes of interpreting the Condominium Plan, the term “Building” is intended to include all of the following components:

(a) The shell, including the roof, foundation and exterior surfaces and the finishes thereon;

(b) Entry doors, windows and the garage door (except for glass portions of windows and sliding doors at Condominium Unit boundaries, all of which are part of the Condominium Unit);

(c) All structural support elements existing in, on, under and throughout the Building shell and core that carry ceiling, roof, and floor loads to the foundation, including all separate or common footings, girders, columns and braces, the foundations and other standard support elements, and every wall, column, floor, ceiling, footing, or other vertical or horizontal Improvement in the Building, but the Building does not include between-room walls or partitions within a Condominium Unit that are not necessary for the structural support of the Building (for purposes hereof, any wall or other structure that carries roof, ceiling or upper floor loads is “necessary for structural support”);

(d) All exterior walls and surfaces of the Building and their surface treatments (including siding, stone, stucco, plaster, paint and stain);

(e) Fixtures that are outside the boundaries of the Condominium Units, including exterior lighting fixtures, utility cabinets on Building exteriors, utility cabinets and other facilities for the delivery of utilities to the Project (except for outlets that are located in the Condominium Unit);

(f) Utility meters outside the Condominium Unit boundaries, and the cables, pipes, conduits and other Improvements for the delivery of utilities to the Condominium Unit;

(g) Fire sprinkler systems serving each Building, including alarms, fire sprinkler pipes and fire sprinkler heads that protrude into the boundaries of the Condominium Unit;

(h) Cables and related equipment for the delivery of telecommunications services to the Project (except for any outlets in the Condominium Unit boundaries and except for connectors, fibers or cables that protrude into the boundaries of the Condominium Unit); and

(i) Pipes, wires, conduits, cables, regulators, batteries and related equipment for the delivery of solar-powered electrical services to the Condominium Units (except for any outlets in the Condominium Unit boundaries and except for inverters, connectors,

wires, conduits or cables that protrude into the boundaries of the Condominium Unit); and

(j) All or any portion of mechanical shaft, duct, pipe, line, main, conduit, lighting, flue, methane mitigation Improvement and any other equipment, fixtures, machinery, system or apparatus which benefits the entire Building.

2.19 “Building Common Area” or “BCA” shall mean real property and Improvements located within a Building Envelope and depicted on a Condominium Plan, and includes the Building and all other Improvements located thereon which are not part of any “Condominium Unit” or “Association Property,” as defined herein. Any references in this Declaration to “Building Common Area” are references to the Building Common Area as a whole and to portions thereof. “Building Common Area” or “BCA” in each Phase of the Project constitutes the undivided interest-in-common in a portion of real property held by the Owners in the same Phase, all in accordance with California Civil Code Section 4125. The term “Building Common Area” or “BCA” shall also mean any property described as Building Common Area or BCA in a Declaration of Annexation.

2.20 “Building Envelope” shall mean the area shown on a Condominium Plan that encloses Buildings and other appurtenant Improvements, and is shown on the Condominium Plan to define the boundaries of Building Common Area, as defined herein.

2.21 “Bylaws” shall mean the Bylaws of the Association, as amended from time to time.

2.22 “City” shall mean the City of San Francisco, the City in which the Project is located.

2.23 “Commercial Vehicles” shall mean any truck or vehicle that bears any signage or writing that gives information about or advertises any business, entity, company or service, is used solely for work or employment, and/or qualifies as such a vehicle or truck under the definition in California Vehicle Code Section 15210(b)(1), as amended from time to time. A “Commercial Vehicle” is also any truck or vehicle that (a) has more than two (2) axles, (b) is longer than twenty-one (21) feet in length from bumper to bumper, (c) exceeds 10,000 pounds gross vehicle weight rating, and/or (d) is not used for personal transportation.

2.24 “Common Expenses” shall mean and include the actual and estimated expenses of operating the Project and any reasonable reserve for such purposes as found and determined by the Board and all sums designated as Common Expenses by or pursuant to the Project Documents.

2.25 “Conditions of Approval” shall mean City-imposed provisions and conditions applicable to the Project, and any other regulations, resolutions or ordinances applicable to the Project, as the same may be amended from time to time.

2.26 “Condominium” refers to an estate in real property consisting of: (a) fee title to a separate interest in a Condominium Unit; (b) an undivided fractional fee interest in the Building Common Area as a tenant-in-common with Owners of Condominiums in the same Phase; (c)

rights and easements to EUA designated to a Condominium Unit (if any); and (d) all easements exclusive and non-exclusive appurtenant thereto, as provided in this Declaration, as may be shown on a Condominium Plan, and/or on the Map.

2.27 “Condominium Plan” shall mean the recorded plan consisting of (a) a description or survey map of the Phase or portion thereof, which shall refer to or show monumentation on the ground, (b) a three dimensional description of a Condominium Unit or portion thereof, one or more dimensions of which may extend for an indefinite distance upwards or downwards in sufficient detail to identify Association Property, Building Envelope, Building Common Area, Exclusive Use Areas (if applicable), and each Condominium Unit, and (c) a certificate consenting to the recordation thereof signed and acknowledged by the record owner of fee title to the real property or portion thereof, by either the trustee or the Mortgagee of each recorded Mortgage encumbering the Phase or portion thereof, if any. The Condominium Plan for the Initial Property was concurrently recorded with this Declaration. This Condominium Plan may be corrected by Declarant without approval of the Association or any Owner to correct any technical, mathematical, information and/or typographical errors. Otherwise, amendments to the Condominium Plan must comply with the law including, but not limited to, California Civil Code Section 4295. “Condominium Plan” shall also mean any recorded condominium plan described in a Declaration of Annexation, including any subsequently recorded amendments thereto.

2.28 “Condominium Unit” refers to the elements of a Condominium which are not owned in common with the Owners of other Condominiums. The “Condominium Unit” includes all Improvements located therein and thereon. The approximate dimensions of each Condominium Unit are shown on a Condominium Plan; however, the existing physical boundaries of a Condominium Unit as originally constructed or as reconstructed shall be conclusively presumed to be its boundaries. Each Condominium Unit shall be a “separate interest” (as defined in California Civil Code Section 4185), consisting of the following element in accordance with the plans and specifications for each Condominium Unit, as more particularly shown and described on a Condominium Plan: The vertical and horizontal boundaries of each Condominium Unit shall be to the interior unfinished surfaces of the perimeter walls, floors, ceilings, doors and windows, as described on this Condominium Plan. Each Condominium Unit includes the airspace encompassed by its boundaries but does not include load bearing walls and walls containing utility conduits. Utility systems and components, fixtures and appliances located within the boundaries of a Condominium Unit, and which service only that Condominium Unit, are also part of a Condominium Unit. Garage doors and garages that are attached to and serve a Condominium Unit are included in the definition of a “Condominium Unit.” The space so encompassed may include air, earth and/or water. Each Condominium Unit is identified on a Condominium Plan by its respective assigned Condominium Unit number.

2.29 “County” shall mean the County of San Francisco, California, the County in which the Project is located.

2.30 “Declarant” shall mean TRI Pointe Homes, Inc., a Delaware corporation, its successors and assigns, if such successors and assigns are assigned the rights of Declarant pursuant to Section 16.10 hereof or if such successor or assign is a mortgagee acquiring Declarant’s interest in the Project by foreclosure or by deed in lieu of foreclosure. Unless

otherwise expressly provided in this Declaration, all actions that may be taken by Declarant may be chosen by Declarant in its sole discretion. Declarant is a “builder” as defined in California Civil Code Section 6000, a “Declarant” as defined in California Civil Code Section 4130, and a “subdivider” as used in the regulations of the DRE.

2.31 “Declarant Party” means the current and future Affiliates of Declarant.

2.32 “Declaration” shall mean this Declaration of Covenants, Conditions and Restrictions for Lofton, and any amendments, modifications or supplements thereto.

2.33 “Declaration of Annexation” shall mean a Declaration of Annexation and Supplemental Restrictions which designates a Phase as provided in Section 3.6 of this Declaration. The Declaration of Annexation shall (a) describe the portion of property to be annexed; (b) describe any Association Property with the property to be annexed; (c) set forth the ownership of any such Association Property; (d) specify that all of the covenants, conditions and restrictions of this Declaration shall apply to the annexed property in the same manner as if it were originally covered by this Declaration; and (e) include any additional terms, provisions, easements or conditions that may be applicable to the real property and Improvements described in the Declaration of Annexation. A Declaration of Annexation may supplement or include additional terms, provisions, easements, restrictions or conditions that cover all or a portion of the Project described in the Declaration of Annexation in order to supplement, modify, or clarify conditions, covenants, restrictions or easements established under this Declaration. The provisions of any Declaration of Annexation may impose such additional, different or more restrictive conditions, covenants, restrictions, land uses and limitations as Declarant may deem advisable, taking into account the particular requirements of the real property encumbered thereby. A Declaration of Annexation may affect one or more Condominium Units. Notwithstanding anything to the contrary in this section, a Declaration of Annexation may not modify, change or alter those provisions of the Declaration that implement the Conditions of Approval unless prior written approval of the City is obtained. Declarant may record a Declaration of Annexation so long as Declarant owns all of the real property to be encumbered by the Declaration of Annexation. A Declaration of Annexation may modify this Declaration as it applies to the real property encumbered by such Declaration of Annexation. If there is a conflict between a Declaration of Annexation and the Declaration, the Declaration of Annexation shall control with respect to the real property encumbered by the Declaration of Annexation.

2.34 “Design Guidelines” shall mean architectural rules, regulations and guidelines that may be adopted by the ACC from time to time in its sole discretion provided. The Design Guidelines may impose specific requirements on individual Condominium Units if those requirements are reasonable in light of specific topography, visibility or other factors. The Design Guidelines shall interpret and implement the provisions of this Declaration by setting forth the standards and procedures for architectural materials, landscaping, fences, and similar features which may be used in the Project; provided, however, that the Design Guidelines shall not be in derogation of the minimum standards established by this Declaration or the Conditions of Approval. Adoption, repeal or modification of Design Guidelines shall comply with the provisions of California Civil Code Section 4340, *et seq.*, and shall constitute “Association Rules.”

2.35 “DRE” shall mean the California Department of Real Estate, and any successor entity, agency, department, commission and/or council.

2.36 “Exclusive Use Area” or “EUA” shall mean those portions of the Building Common Area or Association Property which are shown on a Condominium Plan or as set forth in this Declaration, and set aside for the exclusive use of a Condominium Unit Owner, if any, as defined in this Section.

2.36.1 “Balcony” shall mean each portion of BCA which is shown on the Condominium Plan as an individually numbered space with the letter “B.” The perimeter boundaries of each Balcony are to the interior unfinished surfaces of the fences and/or railings to the exterior finished surfaces of any walls enclosing the Balcony. The vertical boundaries of each Balcony are to the interior unfinished surface of the floor and to a horizontal plane extended from the ceiling of the Condominium Unit which adjoins the Balcony. The approximate dimensions of each Balcony are shown on the Condominium Plan. Each Balcony includes the airspace encompassed within its boundaries.

2.36.2 “Entry” shall mean each portion of BCA or AP which is shown on the Condominium Plan as an individually numbered space with the letter “E,” is an exterior area on the ground floor of the Condominium Unit that serves as the entrance to the Condominium Unit. The perimeter boundaries of each Entry are to the interior unfinished surfaces of the fences and/or railings and to the exterior finished surface of the Condominium Unit enclosing the Entry, or as shown on the Condominium Plan. The vertical boundaries of each Entry are to the interior unfinished surface of the floor and to a horizontal plane extended from the ceiling of the first floor of the Condominium Unit which adjoins the Entry. The approximate dimensions of each Entry are shown on the Condominium Plan. Each Entry includes the airspace encompassed within its boundaries.

2.36.3 “HVAC” shall mean the heating, ventilation and air conditioning equipment which exclusively serves a Condominium Unit, wherever it may be located or installed within BCA or AP shall be deemed Exclusive Use Area. The HVAC shall include, but shall not be limited to, the condenser unit, the platform upon which the condenser is located, all mechanical equipment, and all wires, conduits, pipes and ducting leading up to and through the exterior surface of the Building.

2.36.4 “Patio” shall mean each portion of BCA or AP which is shown on the Condominium Plan as an individually numbered space with the letter “P,” is an exterior enclosed area on the first floor of the Condominium Unit that is for the exclusive use of the residents of the Condominium Unit. The perimeter boundaries of each Patio are to the interior unfinished surfaces of the fences and/or railings and to the exterior finished surface of the Condominium Unit enclosing the Patio, or as shown on the Condominium Plan. The vertical boundaries of each Patio are to the interior unfinished surface of the floor and to a horizontal plane extended from the ceiling of the first floor of the Condominium Unit which adjoins the Patio. The approximate dimensions of each Patio are shown on the Condominium Plan. Each Patio includes the airspace encompassed within its boundaries.

2.36.5 “PV System” shall collectively mean the roof-mounted solar photovoltaic system and other equipment (including, without limitation, solar arrays, panels, poles, platforms, all mechanical equipment, inverters, ducting, electrical connections, piping, wiring, conduits, framing, anchors, and all other components necessary for the operation and function of the solar energy system) that exclusively serves a Condominium Unit, wherever it may be located or installed within BCA or AP. The PV System shall include, but shall not be limited to, all wires, conduits, pipes and ducting leading up to and through the exterior surface of the Building.

2.37 “Final Public Report” shall mean the Final Subdivision Public Report issued by the DRE or any successor state agency pursuant to the Subdivided Lands Act (California Business & Professions Code Section 11000, *et seq.*) as it may be amended from time to time.

2.38 “First Purchaser” means the Owner of a Condominium who acquired the Condominium from Declarant under authority of a Final Public Report.

2.39 “Improvements” shall mean all structures and improvements on the Project, including, but not limited to, buildings, outbuildings, underground installations, slope, grading, roads, curbs, gutters, storm drains, utilities, driveways, parking areas, fences, walls, screening walls and barriers, retaining walls, stairs, decks, patios, patio covers, painting, light standards, sound equipment, windbreaks, plantings, shrubbery, landscaping, irrigation system, drainage ditches, streets, street lighting, monuments, and other works of Improvement as defined in California Civil Code Section 8050, excluding only those Improvements, or portions thereof, that are dedicated to the public or a public or quasi-public entity or utility company, and accepted for Maintenance by the public, such entity or utility company.

2.40 “Individual Dispute Resolution Agreement” means an instrument signed by Declarant and the First Purchaser of a Condominium which is recorded in the County and which specifies that it is an “Individual Dispute Resolution Agreement” as defined in the Master Dispute Declaration, including any subsequently recorded amendments.

2.41 “Initial Property” shall mean Condominium Units 1 to 9, inclusive, Building Common Area, Exclusive Use Area and Association Property, all located on a portion of Lot 001 of the Map, as shown and depicted on the Condominium Plan for Phase 1.

2.42 “Institutional Mortgagee” shall mean a First Mortgagee that is (a) a federally or state chartered or licensed bank or savings and loan association; (b) a mortgage company or other entity chartered or licensed under federal or state laws whose principal business is lending money on the security of real property or investing in such loans; (c) an insurance company; (d) a federal or state agency or instrumentality including, without limitation, FNMA and FHLMC; or (e) an insurer or governmental guarantor of a First Mortgage including the FHA and the VA..

2.43 “Limited Warranty” means, in the case of the Association, any written warranty provided to the Association and, with respect to each Condominium Unit, the Home Builder’s Limited Warranty provided by Declarant to the First Purchaser of the Condominium Unit.

2.44 “Lot” shall mean any Lot, as shown on the Map, and any other parcel of land designated as a “Lot” in any recorded supplement to the Declaration or in any Declaration of Annexation.

2.45 “Maintain,” “Maintained,” “Maintaining” or “Maintenance” shall mean taking all actions reasonably necessary and the exercise of reasonable care to keep the buildings, roads, landscaping, lighting and other related Improvements and fixtures in first class condition and repair in a state similar to their original condition, normal wear and tear excepted. The actions to be taken include, but are not limited to, regular inspections, painting, Maintenance, refinishing, repairing, replacing and reconstructing the Improvement, and in the case of landscaping, irrigating, fertilizing, and other garden practices necessary to promote a healthy, weed free environment for optimum plant growth. The terms “Maintain,” “Maintained,” “Maintaining” and “Maintenance” shall include repair, replace, restore and other similar terms. Owners shall have no responsibility to Maintain any Improvement Maintained by a third party or the public or quasi-public entity or utility company even if the third party or the public or a quasi-public entity or utility company fails to perform all actions required by this Declaration.

2.46 “Maintenance Obligations” shall mean the Owner’s or Association’s obligation to perform: (a) all reasonable Maintenance consistent with the terms of the any Maintenance manual provided by Declarant, any Maintenance obligations and schedules in any warranty offered by Declarant or any manufacturer, and any Maintenance obligations and schedules otherwise provided to the Owner or Association by Declarant or any manufacturer, as applicable; (b) any commonly accepted Maintenance practices to prolong the life of the materials and construction of all Improvements; and (c) any Maintenance Obligations and requirements set forth in this Declaration, as amended and updated from time to time.

2.47 “Map” shall mean Final Map No. 9699 filed for record on _____, 20__, in Book ____ of Maps, at Pages ____ to ____, inclusive, in the Office of the County Recorder of San Francisco County, State of California, as may be amended or adjusted.

2.48 “Master Dispute Resolution Declaration” means any Master Dispute Resolution Declaration executed by Declarant which is recorded in the Official Records against any portion of the Project substantially in the form attached hereto as **Exhibit B**. In the event of a discrepancy between the Master Dispute Resolution Declaration which is recorded against the Project and the Master Dispute Resolution Declaration attached to this Declaration, the Master Dispute Resolution Declaration recorded in the Official Records shall control. References to the Master Dispute Resolution Declaration include any subsequently recorded amendments or supplements thereto. There may be more than one Master Dispute Resolution Declaration at any given time, each may apply to different Condominium Units or portions of the Project. The Master Dispute Resolution Declaration recorded in the Official Records constitutes a part of this Declaration and is incorporated herein by this reference as though set forth in full herein.

2.49 “Member” shall mean a person or entity holding a membership in the Association as provided herein. Each Owner shall constitute a Member. If there is more than one Owner per Condominium, the co-owners collectively shall constitute a single Member. For purposes of this Declaration, Member shall also mean the Declarant (a) while it owns any portion of the Project or a Condominium Unit therein, or (b) during the period of time in which Declarant reserves

easements over the Project or any portion thereof as set forth in the Project Documents regardless of whether Declarant owns any part of the Project or a Condominium Unit.

2.50 “Member in Good Standing” shall mean an Owner (other than Declarant) who is not delinquent in payment of Assessments, is not in violation of any provision of the Project Documents, and/or does not otherwise have any disciplinary action pending between said Owner and the Association, as further described in the Bylaws.

2.51 “Model Home Units” shall mean those Condominium Units within the Project which are initially used by Declarant for the sole purpose of marketing other Condominium Units constructed by Declarant and such Condominium Units are not initially occupied or used for residential purposes. It is intended and anticipated that the Model Home Units shall be open to the viewing public for business hours during the active sales period.

2.52 “Mortgage” shall mean a mortgage or deed of trust encumbering a Condominium or other portion of the Project. A “Mortgagee” shall include the beneficiary under a deed of trust and any guarantor or insurer of a Mortgage. “First Mortgagee” is one having priority over all other Mortgages or holders of Mortgages encumbering the same Condominium or other portion of the Project. “FHA” shall mean the United States Department of Housing and Urban Development, Federal Housing Administration. “VA” shall mean the United States Department of Veterans Affairs. “FHLMC” shall mean the Federal Home Loan Mortgage Corporation. “FNMA” shall mean the Federal National Mortgage Association. Where any provision of the Project Documents requires the approval of a First Mortgagee, the approval of the holder, insurer or guarantor of that First Mortgage shall be deemed to be the required approval.

2.53 “Notice of Lien” shall mean a notice of delinquent Assessment recorded as a lien against an Owner’s Condominium for the failure to pay Assessments as set forth in this Declaration.

2.54 “Owner(s)” shall mean the record holder or holders of title, if more than one, to any Condominium in the Project. “Owner” includes Declarant, except where specified as mutually exclusive. This shall not include contract sellers or persons or entities having any interest merely as security for the performance of an obligation. If a Condominium is sold under a recorded contract of sale (or a recorded memorandum of such contract), the purchaser, rather than the fee Owner, shall be considered the “Owner.”

2.55 “Permitted Parking Areas” shall collectively refer to garages and/or other areas that may be designed and established for the parking of Authorized Vehicles. There is very limited guest parking spaces within the Project (“guest parking spaces” are defined as the uncovered parking spaces within the Project designated for use by guests/invitees of residents). The use of Permitted Parking Areas is described in Section 4.14 of this Declaration.

2.56 “Phase” shall mean any Condominiums, Building Common Area, AMA and/or AP which are made subject to the provisions of this Declaration either by recording this Declaration or by recording a Declaration of Annexation; provided, a single Declaration of Annexation may establish more than one Phase in accordance with the terms of that Declaration of Annexation.

2.57 “Project” shall mean (a) the Initial Property, and (b) the real property in each Phase described in a Declaration of Annexation, including all structures and Improvements erected or to be erected thereon.

2.58 “Project Documents” shall mean and include this Declaration, as amended from time to time, the exhibits, if any, attached hereto, together with the other basic documents used to create and govern the Project, including any Declarations of Annexation, Condominium Plans, Map, Articles, Bylaws, Design Guidelines, Association Rules and maintenance manuals provided by Declarant and/or any manufacturer.

2.59 “Quorum” shall mean a majority of those entitled to act, except in the case of a quorum necessary for the imposition of Regular and Special Assessments set forth in ARTICLE IX.

2.60 “Remainder” shall mean and refer to the three-dimensional volume of land and airspace depicted and described as “Remainder” on the Condominium Plan and consisting of all of Lot 001 of the Map, excepting therefrom, the Initial Property. Remainder is not part of the Initial Property. “Remainder” shall also mean those portions of Lot 001 of the Map, depicted and described on separate and distinct Condominium Plans for future Phases. Condominium Plans may be recorded for future phases over Remainder at the discretion of Declarant and shall not constitute an amendment to the Condominium Plan. The lateral limits of Remainder are as depicted on the Condominium Plan. The vertical limits of Remainder are the vertical prolongations of the described lateral limits from the center of the Earth to infinity. Remainder shall be consistent with the meaning of “Three-Dimensional Portion” as used in California Government Code Section 66427, as the same may be amended from time to time.

2.61 “Right to Repair Act” shall refer to California Civil Code Sections 895-945.5, as may be amended from time to time.

2.62 “Stacked Unit Building” shall mean a Building containing two (2) Condominium Units where one Condominium Unit is located above another Condominium Unit. Unless otherwise identified, a Stacked Unit Building is included in the definition of a Building, as set forth above in Section 2.18 above.

ARTICLE III

PROPERTY RIGHTS

3.1 Association Property. Title to or a legal ownership interest in Association Property shall be conveyed to the Association prior to or concurrently with the conveyance of the first Condominium within a particular Phase to an Owner. The Association shall be deemed to have accepted the AP conveyed to it when (a) a grant deed conveying title to the AP has been recorded in the Official Records of the County, and (b) Assessments have commenced pursuant to ARTICLE IX of this Declaration. AP shall be Maintained by the Association as provided in Section 5.1 of this Declaration. When AP is conveyed by Declarant, an easement shall be deemed automatically reserved over the AP in favor of Declarant for drainage and encroachment purposes and for ingress and egress from the AP for the purpose of completing Improvements

thereon or for the performance of necessary repair work. Said easement in favor of Declarant shall automatically terminate ten (10) years after the recordation of this Declaration.

3.2 Building Common Area. Each Owner of a Condominium shall be conveyed an equal undivided interest in the Building Common Area as a tenant-in-common with the other Owners of Condominiums in the same Phase, excluding the Condominium Units. The tenancy-in-common interest to be conveyed with each Condominium shall be determined by a fraction, the numerator of which is one (1) and the denominator of which is the total number of Condominiums within that particular Phase. Each Owner of a Condominium in the Initial Property will receive a One-Ninth (1/9th) fractional interest in the Building Common Area. The specific interests in the Building Common Area for Condominiums in subsequent Phases to be conveyed to the Owners within that Phase shall be specified in the Declaration of Annexation for that particular Phase.

3.3 Exclusive Use Area. Except as limited by other provisions in this Declaration, the Map and/or the Condominium Plan, each Owner of a Condominium with a Balcony, Entry, HVAC, Patio and/or PV System shall have an exclusive right and easement for the use, possession and enjoyment of the EUA applicable to his/her Condominium Unit, designated on the Condominium Plan which bears the number that corresponds to that of his/her Condominium Unit, and any other areas defined as EUA, all of which shall be appurtenant to and pass with title to the Owners' Condominium. All easements to EUA are subject to the right of the Association to enter in and upon the EUA as provided by and in accordance with the limitations upon such right as set forth in this Declaration.

3.4 Non-severability. The interests in the Building Common Area in any Phase cannot be changed after conveyance of the first Condominium in that particular Phase. The undivided interests in the Building Common Area, the fee title to the respective Condominiums conveyed therewith and the easements appurtenant thereto are not separable and may not be separately conveyed unless the Condominium Plan is amended in accordance with California Civil Code Section 4295. If the Condominium Plan is amended, any conveyances necessary to cause ownership interests to conform to the amended Condominium Plan shall not violate this section. Each undivided interest in the Common Area and each easement appurtenant to the Condominium Unit shall be deemed to be conveyed or encumbered with the respective Condominium even though the description in the grant deed or other instrument of conveyance or encumbrance may refer only to the Condominium. The ownership interests in the Building Common Area and Condominium Units described in this ARTICLE III are subject to the easements described, granted and reserved in this Declaration. Each of the easements described, granted and reserved herein shall be enforceable as equitable servitudes and covenants running with the land for the use and benefit of the Owners and their Condominiums superior to all other encumbrances applied against or in favor of any portion of the Project with respect to the operation and management of the Project.

3.5 Partition Prohibited. Except as provided in California Civil Code Section 4610, there shall be no judicial partition of Building Common Area or of any part thereof. Each Owner specifically waives and abandons all rights, interests, and causes of action for judicial partition of Building Common Area. Each Owner agrees that no action for judicial partition of Building Common Area shall be instituted, prosecuted or reduced to judgment, except in compliance with

California Civil Code Section 4610. If a Condominium Unit is owned by two or more Owners as partners, tenants-in-common, or joint tenants, or as community property, nothing contained in this Section shall be deemed to prevent a judicial partition of their co-ownership.

3.6 Annexation and Deannexation Rights. Real property and Improvements may be annexed or deannexed pursuant to this Section.

3.6.1 Annexation Pursuant to Approval. Additional Property may be added to the Project by Declarant as one or more subsequent Phases without the approval of the Association or any Owner if the annexation is in substantial conformance with the detailed plan of phased development submitted to the DRE with the Phase 1 Final Public Report application. Otherwise, any other Additional Property may be annexed to the Project only with the approval of two-thirds ($\frac{2}{3}$) of each class of Members; provided, however, any annexation made while there are two (2) classes of membership requires the prior approval of the FHA and/or the VA, if either are First Mortgagees.

3.6.2 Procedure for Annexation. In addition to any required approval by Members, a final subdivision map(s) or final parcel map(s) and a Declaration of Annexation for the property to be annexed must be recorded. The Declaration of Annexation shall also provide that if and only if at the time of the first conveyance of a Condominium in a Phase the Declarant has rented or leased Condominium Units in that Phase for a period of at least one (1) year after the most recent review of a budget for that Phase by the DRE, Declarant shall either issue a written commitment to pay or pay to the Association the following amount: an amount equal to that portion of the Regular Assessment which would have been attributable to each Condominium in that Phase and which would have been allocable to reserves for replacement and deferred Maintenance of Association Property and other Improvements had Regular Assessments in that Phase commenced at the time of the most recent review of a budget for that Phase. Such amount, if any, shall be paid to the Association prior to or concurrently with the first conveyance of a Condominium in that Phase.

3.6.3 Proof Satisfactory to the DRE. In addition to the requirements set forth in Section 3.6.2 above, Declarant shall provide satisfactory proof the DRE that the proposed annexation will result in an overburdening of Association Property and/or Association Maintenance Areas, and that the proposed annexation will not cause a substantial increase in Assessments against existing Owners which was not disclosed in Final Public Reports under which prior Owners purchased their Condominiums.

3.6.4 Effect of Annexation. After complying with the procedures for annexation and upon the commencement of Assessments for Condominiums in the annexed Phase, Owners of Condominiums in the annexed Phase shall be Members, shall be subject to this Declaration, and shall be entitled to use Association Property in the Project. The Association shall reallocate the Regular Assessments so as to assess each Owner in the Project for a proportionate share of the Common Expenses of the Project, as set forth in ARTICLE IX of the Declaration, and as reviewed by the DRE. All Owners shall have ingress and egress to all portions of the Association Property throughout the

Project, subject to the provision of this Declaration, the Bylaws of the Association and the Association Rules in effect from time to time.

3.6.5 Deannexation. Subject to the restrictions, limitations and provisions of this Declaration, Declarant or the Association may remove any property in the Project by executing and recording a Declaration of Deannexation. Declarant may deannex property only if (a) no escrows have closed on the annexed Phase, (b) no Assessments have commenced on any portion of the annexed Phase, (c) Declarant has not exercised any votes attributable to the annexed Phase, and (d) a Declaration of Deannexation is recorded in the same manner as the Declaration of Annexation was recorded. If the Association desires to deannex property within the Project, the approval of Members constituting at least two-thirds ($\frac{2}{3}$) of each class of Members is required; provided, however, any deannexation made while there are two (2) classes of membership requires the approval of the FHA and/or the VA, if either are First Mortgagees.

3.7 Easements. In addition to any and all other easements contained in this Declaration, the Project shall be subject to the following easements:

3.7.1 Architectural Control Committee Easements. The ACC and its duly authorized agents and representatives shall have a non-exclusive right and easement as is necessary to perform its duties and obligations set forth in this Declaration, including the right to enter any Building or Condominium Unit, subject to the limitations contained in this Declaration.

3.7.2 Association Maintenance Easements. There shall be reserved in favor of the Association, an easement across, over, in and on any Lot, Condominium Unit, Building, Building Common Area and/or EUA to Maintain those areas, or any portion thereof, as set forth in this Declaration.

3.7.3 Clustered Mailbox Easements. Declarant reserves non-exclusive easements over, across and upon the Project for (a) placement of mailbox clusters in locations required by the United States Postal Service and local governmental agencies with jurisdiction over the Project; (b) delivery, deposit and pickup of United States mail; and (c) access to and Maintenance of the mailbox clusters by the Association. The actual locations of the easements referred to herein shall be determined by the as-built location of each mailbox cluster. The easements reserved hereby are appurtenant to each Condominium in the Project, as necessary to ensure the Owner's reasonable access to their respective mailboxes.

3.7.4 Easements for Utilities and Maintenance. Easements over and under the Project for the installation and Maintenance of electric, solar, telephone, water, gas and sanitary sewer lines and facilities, heating facilities, cable or master television antenna lines, drainage facilities, walkways, and landscaping as shown on the Map, and as may be hereafter required or needed to service the Project, are hereby reserved by Declarant and its successors and assigns, including the Association and appurtenant utility companies, together with the right to grant and transfer the same. No Owner or occupant shall

commit any act that would interfere with the operation of any drainage system that may be installed in the Project.

3.7.5 Easements on the Map. The Project is subject to the easements and rights of way shown on the Map including, but not limited to, Emergency Vehicle Access Easements (“EVAE”), Ingress, Egress and Utility Easements (“IEUE”), and Sewer and Drainage Easements (“SADE”). Limitations on the construction and installation of Improvements within the easements and rights of way set forth on the Map is as outlined on said Map and incorporated herein by reference as if set forth in full.

3.7.6 Encroachment Easements. Each Condominium Unit within a Building, and each Building is hereby declared to have an easement over any adjoining Building or Association Property for the purpose of accommodating any encroachment due to minor engineering errors, minor errors in original construction, settlement or shifting of the Building, or any other cause. There shall be valid easements for the Maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owners agree that minor encroachments over adjacent Buildings and Association Property adjoining the Building due to minor engineering errors, minor errors in construction, or settlement or shifting of the Building, shall be permitted and that there shall be valid easements for the Maintenance of said encroachments so long as they shall exist.

3.7.7 Fire System Easements. Each Owner and the Association is granted an easement over and across those portions of Condominium Units for a Fire System Easement. The Fire System Easement shall be generally located within the interior perimeter walls of each Condominium Unit, and shall be used solely for the purpose of accommodating, Maintaining and using the lines and conduits for the fire sprinkler and fire alarm system serving individual Condominium Units, as applicable or necessary. The Association is hereby granted an easement over, across and upon those portions of Condominium Units as are necessary to Maintain the lines and conduits for the fire sprinkler and fire alarm system, excluding fire sprinkler heads within the Condominium Units which shall be Maintained by each respective Owner.

3.7.8 Declarant’s Reservation of Easements. Declarant hereby reserves easements over Association Property for common driveway purposes, for drainage and encroachment purposes, for ingress and egress from Buildings for the purpose of completing Improvements thereon, for the performance of necessary repair work and for compliance with requirements of any governmental agency, for the purposes of reasonable ingress and egress from, over and across the Project, including private roads and pathways; and for inspection of Association Property, Buildings, BCA, EUA and each Condominium Unit to ensure that the Project and all Improvements thereon are being Maintained in accordance with the provisions of this Declaration. Said easements

in favor of Declarant shall automatically terminate ten (10) years after the conveyance of the last Condominium.

3.7.9 Owners' Easements. Every Owner shall have a right and nonexclusive easement of enjoyment in and to AP, BCA and Improvements located thereon, including ingress and egress to and from his/her Condominium Unit. Each such nonexclusive easements shall be appurtenant to and shall pass with the title to the Condominium, subject to the following provisions:

(a) Section 10.2 of this Declaration authorizes the Board to impose monetary penalties, Reimbursement Assessments, temporarily suspend an Owner's rights as a Member of the Association or impose other appropriate discipline for failure to comply with the Project Documents provided that the established procedures are followed for Notice and Hearing which satisfy the minimum requirements of California Corporations Code Section 7341 with respect to the accused Member before a decision to impose discipline is reached. These procedures are set out in Article XIII of the Bylaws.

(b) The right of the Association to dedicate or transfer all or any part of Association Property to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by two thirds ($\frac{2}{3}$) of the Members agreeing to such dedication or transfer has been recorded, provided, however, that no such dedication shall impair the ingress and egress to any individual Condominium Unit.

3.7.10 Right of Entry. The Board may authorize its agents and employees to enter in or on any Building, BCA, EUA or any Condominium Unit when necessary in connection with any Maintenance or construction for which the Association is responsible, to effect emergency repairs, to effect necessary repairs which the Owner has failed to perform as required by this Declaration, or to inspect and/or make a determination whether an Owner is complying with the provisions of this Declaration. Such entry shall be made with as little inconvenience to the Owner as practicable and any damage caused thereby shall be repaired by the Board at the expense of the Association. Except in case of emergencies, twenty-four (24) hour advance notice shall be given to the Owner or occupant.

3.7.11 Solar Easement. There shall be non-exclusive easements in favor of the provider/installer of the PV System, or its successors and assigns, across, over and upon certain portions of the Project including, but not limited to, portions of Building Common Area and Association Property, that are necessary to service the PV Systems (defined in Section 2.36.5 above and as may be required under ARTICLE V of this Declaration) installed on Buildings to serve individual Condominium Units, all pursuant to that certain Easement Agreement and Grant of Easement recorded against the Project and incorporated herein by reference.

3.7.12 Utility Chase Easements or UCEs. There shall be an easement across, under and through each Condominium Unit in each Building in which the Condominium Unit is located for the purpose of accommodating utility lines, pipes, wires and other conduits for the delivery of utility services to one or more or all of the Condominium Units within a Building. Owners and occupants of Condominium Units are strictly prohibited from altering, modifying or tampering with any lines, pipes, wires or other conduits located within these UCEs.

3.8 Provisions Restricting Delegation of Use. Any Owner may delegate their rights of use and enjoyment of the Project, including any recreational facilities, to the members of their family, their guests, tenants, employees, and invitees, and to such other persons as may be permitted by the Bylaws and the Association Rules, subject however, to this Declaration. However, if an Owner has sold his/her Condominium to a contract purchaser or has leased or rented it, the Owner, members of the Owner's family, guests, tenants, employees, and invitees shall not be entitled to use and enjoy any of such rights in the Project while the Owner's Condominium is sold to a contract purchaser or rented to tenants. Instead, the contract purchaser, or tenants, while occupying such Condominium Unit, shall be entitled to use and enjoy such rights and can delegate the rights of use and enjoyment in the same manner as if such contract purchaser or tenants were an Owner during the period of their occupancy. Each Owner shall notify the Secretary of the Association of the names of any contract purchasers of such Owner's Condominium or tenants of such Owner's Condominium Unit. Each Owner, contract purchaser, or tenant also shall notify the Secretary of the Association of the names of all persons to whom such Owner, contract purchaser, or tenant has delegated any rights of use and enjoyment and the relationship that each such person bears to the Owner, contract purchaser, or tenant. Any delegated rights of use and enjoyment are subject to suspension to the same extent as are the rights of Owners. No such delegation shall relieve an Owner from liability to the Association or to other Owner for payment of Assessments or performance of the covenants, conditions and restrictions contained in this Declaration. Any lease, rental agreement or contract of sale entered into between an Owner and a tenant or contract purchaser of a Condominium shall require compliance by the tenant or contract purchaser with all of the covenants, conditions and restrictions contained in this Declaration, which provision shall be for the express benefit of the Association and each Owner. The Association and each Owner shall have a right to action directly against any tenant or contract purchaser of an Owner, as well as against the Owner, for nonperformance of any of the provisions of this Declaration to the same extent that such right of action exists against such Owner.

3.9 No Restriction on Owner's Right to Ingress and Egress. Except as allowed in Section 16.9 of this Declaration, there shall be no restriction upon any Owner's right to ingress and egress to his/her Condominium Unit, which right shall be perpetual and appurtenant to his/her Condominium ownership.

ARTICLE IV

USE RESTRICTIONS

4.1 Alterations. Except as otherwise specifically provided in this Declaration, no Alteration may be made to any Condominium Unit, Building, Association Property or EUA by an Owner until plans have been submitted and approved by the ACC, as set forth in ARTICLE VI of this Declaration. However, no exterior additions to any Building or Condominium Unit, including accessory buildings or structures, pre-manufactured sunrooms and/or patio covers, shall be permitted under any circumstances. The Association and Declarant shall be exempt from obtaining approval from the ACC. Owners are strictly prohibited from using attic spaces for storage of personal property or any materials, and access to attic spaces from within the Condominium Unit shall be kept clear.

4.2 Animals. An Owner may keep a reasonable number of customarily uncaged household pets within the Owner's Condominium Unit. Each Owner may also maintain a reasonable number of small caged animals, birds or fish. The Board shall determine what is a "reasonable number." No other animals are permitted in the Project. No animals may be kept for commercial purposes. No animals, livestock or poultry of any kind shall be raised, bred or kept in any Condominium Unit, except that dogs, cats, and other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. Notwithstanding the foregoing, no pets may be kept on or in any Condominium Unit or anywhere in the Project that results in an annoyance or nuisance to other Owners. The Association may prohibit the keeping of any animal that in the sole and exclusive opinion of the Board constitutes a nuisance to any other Owner. No pets shall be allowed in Association Property except as may be permitted by Association Rules. No dog shall enter Association Property except while on a leash that is held by a person capable of controlling it. Owners shall prevent their pets from soiling any portion of the Project and shall clean up after their pets in the Project.

4.3 Antenna and Satellite Dish Equipment. No Antenna Equipment shall be installed or Maintained on Condominium Units, the exterior of any Building or Condominium Unit or on decks or patios. Declarant shall provide the design and wiring for satellite reception from a centralized system within or on top of the Buildings. Antenna Equipment installed from the centralized system shall be one (1) meter or less in length or diameter or diagonal measurement, comply with any guidelines imposed by the ACC referenced in ARTICLE VI of this Declaration, and shall comply with any and all Antenna Laws. No other Antenna Equipment may be installed unless approved in advance by the ACC and in compliance with Antenna Laws. Nothing herein shall be construed to restrict in any manner the Board's right to authorize a cable television franchisee or other provider of similar services to provide cable television, radio or other similar services to the Project.

4.4 Burning. Only barbecue fires and fires contained within receptacles designed for such purposes may be allowed in the exteriors of Condominium Units; provided, however, that no charcoal, wood burning or other smoke generating equipment shall be used on Balconies or Patios. Propane or electric powered barbecues or other similar equipment may be used on Balconies or Patios so long as such use does not create a nuisance to neighboring Condominium

Units, and otherwise complies with this Declaration. No Owner or resident shall permit any condition to exist in his/her Condominium Unit including, without limitation, trash piles or garbage, which create a fire hazard or is in violation of local fire regulations.

4.5 Compliance with Project Documents. Each Owner shall sign an acknowledgement that he/she has read the Project Documents, and each Owner, contract purchaser, lessee, tenant, guest, invitee or other occupant of a Condominium Unit or user of Association Property shall comply with the provisions of the Project Documents.

4.6 Disclosure – Ground Shaking. Each Owner is advised that the Project is located within an area that has been designated by the County as being assigned a “Strong” Shaking Severity Level in the event of a magnitude 6.5 or greater earthquake on the Northern Hayward Fault, and “Very Strong” Shaking Severity Level in the event of a magnitude 7.2 earthquake on the Peninsula-Golden Gate San Andreas Fault. Ground shaking occurs in all earthquakes and is the cause of most of the damage suffered during such events. The Buildings have been designed to current code requirements. However, any Building, Condominium Unit, utilities or other Improvements within the Project are subject to damage and destruction during an earthquake and the Condominium Units may be uninhabitable following an earthquake. Declarant advises each Owner to consult with the City, County, other public agencies and appropriate experts to evaluate the potential risk of living in a Project that is located within a “Strong” or “Very Strong” shaking severity level.

4.7 Drainage. There shall be no alteration of the drainage patterns initially installed and constructed by Declarant including, without limitation, drainage swales, drain pipes, area drains, catch basins or connections thereto, and as established by the grading and natural course of surface and subsurface water run-off without the prior approval of the ACC, and any all necessary governmental approvals and permits. Drainage patterns and stormwater treatment measures shall not be altered or modified without prior approval from the City and the Association if such modifications or alterations in any way impact Association Property.

This Declaration provides notice to the Association and each Owner to devote great care and attention to grading and to establish or Maintain positive drainage away from the entire foundation line of the Buildings. Positive drainage is achieved by shaping grades, establishing drainage “swales” or installing underground area drains. The swales and drains provide a receptacle and conduit to drain water away from the foundation, and the rear, side and front of the Buildings to offsite drainage disposal. Swales also prevent drainage water from moving across Parcels or other property. This Declaration also provides notice to each Owner that if existing drainage swales established on or around Buildings are interrupted, blocked, filled, or otherwise altered serious damage can result. Drainage must not be allowed to pond in a yard or run against or under a Building, foundation, garage floor, driveway or other Improvements. Serious damage may result even during a short period of time.

If a Building constructed by Declarant has a roof gutter system and downspouts which are directly connected to the Project’s storm drainage system, the Building shall remain connected to the Project storm drainage system at all times; the Association nor the Owners may not perform any Alteration which results in additional roof waters draining anywhere other than directly into the Project’s storm drainage system.

4.8 Exterior Apparatus. No bicycles, exterior clotheslines or other outside clothes drying or airing facility shall be erected, Maintained or stored on any Balcony, Patio or exterior portion of a Condominium Unit or Building (excluding bicycle racks that may be installed by Declarant). Balconies, Entries and Patios may be furnished with typical outdoor furniture such as chairs, tables and flower pots, subject to, however, any Association Rules governing such uses. Further, no clothes washers, clothes dryers, refrigerators or freezers may be kept, stored, or operated from any exterior area of any Building, Balcony, Entry or Patio. Air conditioners and utility connections for air conditioners are strictly prohibited from being placed or stored on Balconies, Entries, Patios and/or on the exterior of any Condominium Unit or Building, except as installed by Declarant, and shall be located behind solid board fences or stuccoed walls not to exceed the height of the air conditioner unless approved by the City.

4.9 Invitees. Each Owner shall be responsible for compliance with the provisions of this Declaration by the Owner's Invitees.

4.10 Liability of Owners for Damages. Each Owner shall be liable to the Association for all damages to Association Property, Building Common Area, EUA and/or Improvements thereon caused by such Owner, or any occupant or guest, regardless if that portion of said damage, if any, is fully covered by insurance of the Association. A Reimbursement Assessment (as set forth in ARTICLE IX of this Declaration) may be imposed on an Owner and his/her Condominium for all damages to Association Property, Building Common Area and EUA. Liability of an Owner shall be established only after notice to the Owner and hearing before the Board, as set forth in Article XIII of the Bylaws.

4.11 Mailboxes. There shall be no exterior newspaper tubes or freestanding mailboxes placed on any Building, BCA, Condominium Unit or entry to a Condominium Unit.

4.12 Mineral and Water Exploration. Owners are prohibited from exploring the Project for or to remove any water, oil, hydrocarbons or minerals of any kind.

4.13 Nuisances. No noxious, illegal or offensive activity shall be carried on upon or in any Condominium Unit, Building Common Area, EUA, or in any part of the Project, nor shall anything be done thereon which may be or may become an annoyance or nuisance to or in any way interferes with the quiet enjoyment of each Owner's Condominium Unit, Building, EUA or Association Property, or which may increase the rate of insurance for the Project or for any Condominium, or cause any insurance policy to be canceled or to cause a refusal to renew the same, or which will impair the structural integrity of any building, structure or Improvement. Outdoor loudspeakers or audio equipment on the exterior of any Building, Condominium Unit, EUA or Association Property are strictly prohibited at any time.

4.14 Parking and Vehicle Restrictions. Authorized Vehicles shall not be parked anywhere in the Project except in Permitted Parking Areas, as set forth in this Declaration.

4.14.1 Garages. Each Building (with the exception of Stacked Unit Buildings) will have a one-car garage to serve each Condominium Unit. The Stacked Unit Buildings will have two one-car garages within the same Building. There is limited guest parking within the Project.

(a) Each Owner shall keep his/her garage area in a neat and orderly condition with any storage areas completely enclosed. Garages are to be used for the parking of Authorized Vehicles, or the storage of similar items of personal property so long as such storage of personal property will not necessitate or result in the parking of Authorized Vehicles on streets or other areas within or outside of the Project.

(b) Garage doors shall remain closed except when the garage is in use.

(c) Garages shall not be converted to living quarters, workshops or storage which will preclude the parking of the number of Authorized Vehicles for which the garage was designed to hold.

4.14.2 Parking. Owners and residents of the Project are required to park their Authorized Vehicles in the garages with the maximum number of vehicles that the garage was designed to hold. Uncovered parking spaces within the Project are deemed “guest parking” only and residents are not allowed to park in guest parking spaces, subject to any Association Rules changing said designation. Recreational vehicles, motor homes, campers, off-road vehicles, land conveyances, vessels, aircraft, boats, trailers, trucks and other similar type vehicles or any dilapidated vehicles are strictly prohibited from being parked or stored anywhere in any Permitted Parking Areas or anywhere within the Project. Commercial Vehicles shall not be parked within the Permitted Parking Areas or the Project except for purposes of loading or unloading, and then for periods not in excess of six (6) hours. This restriction shall not apply to Commercial Vehicles involved in construction activities in the Project or Commercial Vehicles owned and operated by persons providing services during the time when the services are being rendered.

4.14.3 Enforcement. In addition to the remedies available under Section 10.2 of this Declaration, the Association may establish and implement rules and procedures from time to time under the California Vehicle Code and other statutes for the issuance of citations for violations of parking or vehicle restrictions set forth herein, for enforcement of civil penalties resulting from such citations through government authorities, if applicable, and for the removal and towing of vehicles based on, but not limited to, California Vehicle Code Section 22658. The Association shall have the authority to promulgate as part of the rules and regulations of the Association such further rules and restrictions regarding parking and vehicles within the Project as may be deemed prudent and appropriate.

4.15 Post Tension Foundations. The foundations of Buildings are post-tension foundations which are interconnected among clusters of Condominium Units. Post-tension foundations involve placing steel cables under high tension in the concrete slab serving as the foundations of buildings and Condominium Units. The Association and all Owners shall NOT make any Alterations, modifications, sawing, cutting, piercing, or drilling into the foundation of any Building which may damage, impair or affect the structural integrity of the foundation. The Association and the Owners shall not make any Alterations, modifications or install any Improvements that affect the post-tension foundation without prior written approval of the City. A written opinion from an engineer duly licensed by the State of California and qualified in post-

tension foundations is required prior to the commencement of any work and if an Owner or the Association is uncertain if any particular action will impact or affect the foundation. If the question or uncertainty arises in connection with a request for approval of Alterations pursuant to ARTICLE VI of this Declaration, an engineer shall be agreed upon by the Association and the Owner who has requested approval of the Alterations, and the engineer shall issue a written report/findings acceptable to the Association. The cost of the engineer shall be borne entirely by the Owner who is requesting approval of the Alterations.

4.16 Power Equipment and Car Maintenance. No non-electrically powered power equipment, workshops or major car maintenance (defined as any repair or other work on a car that takes in excess of two (2) hours to complete) of any nature shall be permitted on the Project without prior written approval of the Board. In deciding to grant approval, the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, and similar objections. Nothing in this Section shall prohibit the use and storage of hand tools reasonably necessary for routine household maintenance and upkeep.

4.17 Rental of Condominium Units. Except where expressly prohibited by some other agreement or written instrument including, but not limited to, an owner occupancy agreement or restrictions on affordable Condominium Units, if any, Owners may lease or rent his/her Condominium Unit. However, no Condominium Unit may be rented or leased for transient or hotel purposes which shall include, but not be limited to, rental for any period less than thirty (30) days. Initial lease terms shall be no less than six (6) months. All leases must (a) be in writing and be expressly subject to the Project Documents, (b) provide that the Association is notified of the name(s) of the tenant(s) and duration of the lease, and (c) provide that the breach of any provision shall be a default under the lease or rental agreement.

4.18 Restrictions on Balconies, Entries and Patios. No storage of any kind shall be permitted on Balconies, Entries or Patios, as applicable, with the exception of normal and customary furniture and propane or gas operated barbecues only. In order to protect the surface of the Balcony, Entry and Patio, including the waterproof membrane surface, if applicable, coasters shall be placed on all barbecue, table and chair legs, and the barbecue heat source shall be placed no closer than 24 inches from the floor surface of the Balcony, Entry and Patio. Potted plants and planters must be raised off of the surface and coasters must be placed on all plant stand legs and wheels. Owners must take appropriate precautions to prevent the waterproof membrane surface from being penetrated by sharp objects. If the waterproof membrane surface is damaged, Owners must promptly notify the Association. Balconies, Entries and Patios shall be kept clear of laundry, storage and mechanical equipment such that no such items or material may be seen from the public right-of-way or walkways within the Project.

4.19 Restrictions on Business.

4.19.1 Generally. Except as may be allowed or restricted in this Declaration, or for uses on or within Condominium Units permitted by local ordinances or state or federal law, the construction of Improvements and the business of Declarant in completing the development and sale of Condominium Units in the Project, no Owner or other occupant of a Condominium Unit may undertake any activity in or on any Condominium Unit, nor use any portion of the Project for any business, commercial or

non-residential purposes, nor for any other purpose that is inconsistent with the Project Documents. Such purposes including manufacturing, storage, vending, auctions, vehicle or equipment repair, entering into any lease or rental agreement under which the Condominium Unit would be occupied by numbers of persons in excess of the maximum occupancy permitted under applicable law, and transient occupancy of the Condominium Unit (such as hotel, inn, bed & breakfast, hostel, vacation rental, time-share or similar temporary lodging). Any lease or rental agreement for a term of fewer than thirty (30) days, and any lease or rental agreement pursuant to which the lessor provides any services normally associated with transient occupancy, shall be deemed to be for transient purposes and prohibited under this Declaration. All of the foregoing activities are prohibited whether they are engaged in full-time or part-time, whether they are for-profit or non-profit, and whether they are licensed or unlicensed.

4.19.2 Exceptions. This Section shall not be interpreted to prohibit any of the following:

(a) The hiring of employees or contractors to provide Maintenance, construction or repair services that are consistent with the Project Documents;

(b) Rental or leasing of a Condominium Unit to Declarant for use as a sales office, Model Home Units or parking area for any period of time;

(c) Exercise by Declarant of any rights reserved to it under this Declaration;

(d) The provision of in-home health care or assisted living services to any resident of the Condominium Unit;

(e) The provision of family home child care services as defined in California Health and Safety Code Section 1597.40, *et seq.*, as may be amended, so long as such services comply with all applicable state and local laws including, without limitation, licensing, inspection and zoning requirements;

(f) Small home-based service business that comply with all of the following:

(i) The operator of the business lives in the Condominium Unit on a permanent full-time basis;

(ii) When conducted within the Project, business activities take place solely inside the Condominium Unit;

(iii) The business does not generate in-person visits by suppliers or clientele;

(iv) The business complies with all laws, regulations and ordinances applicable to the Project including, but not limited to, zoning, health and licensing requirements;

(v) The business otherwise complies with the Declaration and is consistent with the residential character of the Project;

(vi) The operator of the business posts no business-related signage anywhere on the Buildings, Condominium Unit or anywhere in the Project;

(vii) There is no visible evidence in the Project of the business;

(viii) The business does not generate noise or odors that are apparent outside the Condominium Unit; and

(ix) The business does not increase the Association's liability or casualty insurance obligation or premium.

(g) Other activities that have been determined by governmental authorities to be consistent with the single-family residential uses in the Project including, for example, residential care facilities that are operated in accordance with California Health and Safety Code Section 1566.5, as may be amended.

4.20 Signs and Flags. Subject to the provisions of California Civil Code Sections 4705 and 4710, and any Association Rules, no signs or flags of any kind shall be displayed from view on or from any Condominium Unit, Building Common Area, EUA, Association Property or any portion of the Project without the approval of the Association, except as follows: (a) Noncommercial signs or posters not to exceed nine (9) square feet in size may be displayed from a Condominium Unit; (b) Noncommercial flags or banners not to exceed fifteen (15) square feet in size may be displayed from a Condominium Unit; (c) One sign of customary and reasonable dimensions, not to exceed four (4) feet in height and four (4) feet in width, advertising a Condominium Unit for sale, lease, rent or exchange may be displayed from a Condominium Unit; (d) Such signs as may be used by Declarant or its assignees in connection with the Project and sale of Condominiums; or (e) Such other signs or notices as are required by law.

4.21 Solar Energy Systems. PV Systems will be installed on the roofs of each Building to serve each Condominium Unit. Each Owner (and solar provider) shall be responsible for Maintenance of the PV System that serves his/her Condominium Unit. The PV System may be either leased or purchased by each Owner from the solar provider and Maintenance of the PV System will be the responsibility of the Owner and solar provider. Notwithstanding, Declarant does not warrant, promise, represent or guarantee that the Condominium Units or Buildings will be "solar-ready" for any particular type or manufacturer of PV System, or that it will be compatible for PV Systems in the future. Declarant shall not be responsible for any damage caused to or resulting from any PV System installed on any Building if installed by someone other than Declarant or authorized by Declarant. An Owner is not entitled to and shall not install his/her own PV System on any portion of a Building or anywhere else within the Project unless approved in accordance with ARTICLE VI of this Declaration. In every circumstance, all Conditions of Approval, regulations, orders and ordinances of the City with respect to the Project shall be satisfied with respect to the installation of a PV System. This Section, however, does not entitle any Owner to install a solar energy system on any Building,

Building Common Area, or anywhere in the Project if such installation potentially threatens, impedes or impairs an Owner's, Association's or the City's ability to Maintain any portion of the Project or areas adjacent to the Project.

4.22 Solar Shade Restrictions. No Owner nor the Association (in the case of adjacent Association Property) shall allow a tree, shrub, structure or other Improvement to be placed or, if placed, to grow so as to cast a shadow on any PV System in violation of the standards set forth in the Solar Shade Control Act (California Public Resources Code Section 25980, et seq.). The Owner or the Association, as circumstances warrant, shall bear the burden of calculating compliance of any such tree, shrub, structure or other Improvement with the provisions of California Public Resources Code Section 25982. The restrictions of this Section 4.22 does not apply to a tree, shrub, structure or other Improvement that had been growing or installed prior to the installation of a PV System or to the replacement of a tree, shrub, structure or other Improvement that had been growing or installed prior to the installation of a PV System and which, subsequent to the installation of the PV System, dies or is removed for reasons of public health or safety. Approval by the ACC of the installation of particular trees, shrubs, structures or other Improvements on property adjacent to a PV System or the installation of trees, shrubs, structures or other Improvements by the Association on Association Property adjacent to a PV System shall not be deemed to waive or alter the provisions of this Section 4.22, and the ACC shall not be liable to the Owner of the PV System for any such approval.

4.23 Sound Transmissions and Attenuation. An Owner shall not alter a Condominium Unit in any manner that would increase sound transmissions, resonances or reverberations to any adjoining Condominium Unit(s) including, but not limited to, replacement, modification or penetration of any flooring, floor covering, ceiling or wall, installation of recessed lighting, stereo speakers or the penetration of any floor, ceiling or wall that increases sound transmissions, resonances or reverberations to any other Condominium Unit. Owners are specifically prohibited from installing "built-in" speaker systems that penetrate ceilings and walls, and mounting any television or video screen to walls that are directly adjacent to another Condominium Unit, unless approved by the ACC. Any Alterations to the flooring and floor coverings (including hard surface or wood flooring in lieu of carpeting) and/or the installation of televisions, video screens, speakers or home theater systems in the interior of a Condominium Unit by an Owner (other than Declarant) requires approval from the ACC, as set forth in ARTICLE VI of this Declaration, and the ACC shall not approve any such installation unless there is an appropriate level of acoustical separation designed and approved by a licensed engineer.

4.24 Sports Apparatus. No basketball standard, fixed sports apparatus, skateboard or bicycle ramp or similar equipment shall be attached to the exterior of any Building or erected, constructed or placed in any Association Property, Building Common Area or EUA. It is the intent that this restriction also apply to portable basketball standards and other portable sports equipment.

4.25 Storage of Waste and Other Materials. Garbage, recycling and organics shall be regularly placed in appropriate sanitary containers. Containers must be stored within the garage in the areas designed for said containers. Containers may not be placed where visible from the streets, except in designated curbside areas on the night before and day that pick-up is to occur.

No garbage or other waste material shall be kept or permitted in any Condominium Unit or EUA except in appropriate sanitary containers, and shall be removed at least weekly, or more often if needed. Storage piles shall not be kept on decks and/or patios, and no unenclosed storage is permitted anywhere within the Project.

4.26 Sub-metering for Water. The Association shall allocate to each Owner of a Condominium the costs of water usage provided to the Owner's Condominium Unit. The allocation for each Condominium shall be determined by actual usage, based on sub-meter readings for each Condominium Unit, and shall be billed to each Owner at the same rate that the Association pays for water services. The amount of the water surcharge assessment shall include any service charge imposed by any company retained by the Association to perform the sub-meter readings or billings. The amount of the water surcharge assessment shall be billed to the Owner either directly by the Association or by a company retained by the Association to perform the sub-meter readings, determine the appropriate charges or collect the water surcharge assessments on the Association's behalf. The total amount of all water surcharge assessments may not exceed the total amount of the water charges actually paid by the Association plus the service charges paid for by the Association to read the sub-meters, determine the water surcharge assessments and bill the water surcharge assessments. Water surcharge assessments are "Assessments" and are payable an enforceable in the same manner as Regular Assessments are payable and enforceable under ARTICLE IX of the Declaration.

4.27 Use and Occupancy. Except as may be allowed by Section 4.19 above, no Condominium Unit, Building Common Area or EUA, or any portion thereof, shall be occupied and used except for single family residential purposes by the Owners, their contract purchasers, lessees, tenants, or social guests. No trade, retail business or commercial activity shall be carried on or conducted within any Condominium Unit or Association Property, except that Declarant, its successors or assigns, may use any Condominium Unit, Association Property, Building Common Area or EUA in the Project owned by Declarant for a Model Home Unit and display and sales office during construction and until the last Condominium is sold by Declarant. The provisions of this Section shall not prohibit home offices so long as they are merely incidental to the use of the Condominium Unit as a dwelling, are permitted by local law, and are conducted in such a manner as to not adversely affect other Owner's use and enjoyment of the Project.

4.28 Utility Meters. Utility meters (including water submeters), when not enclosed within a cabinet or in the garage, shall be screened by either plant materials or decorative screens that allows for sufficient access for meter reading.

4.29 Window Coverings. Window coverings facing the exterior of the Condominium Unit shall be covered by white or neutral colored drapes, shades, shutters or other window coverings and shall not be painted or covered by foil, cardboard or other similar material. Any drapes or other window covering facing the exterior of the Condominium Unit and installed in compliance with the Design Guidelines may remain for the useful life thereof. Window coverings facing the exterior must be installed on all windows visible from the streets serving the Project within ninety (90) days after conveyance of title to the Condominium by Declarant, unless the Design Guidelines provide otherwise. All window coverings visible from other Condominium Units or Association Property shall be of a material and design which, in the

opinion of the Board or ACC, is compatible with the exterior design of adjacent portions of the Project, including other Condominium Units and Buildings.

ARTICLE V

MAINTENANCE OBLIGATIONS

5.1 Maintenance of Association Property. The Association shall Maintain or provide for the Maintenance of all Association Property and Improvements located thereon. The Association shall keep the Association Property and Improvements thereon in good condition and repair, and provide for all necessary services and cause all acts to be done which may be necessary or proper to assure the Maintenance of the Association Property in first class condition. A non-exclusive list of Association Property to be Maintained by the Association is attached hereto as **Exhibit A**. The Association's Maintenance Obligations include, but are not limited to, Maintenance of (a) the private streets, curbs, gutters, and all striping, (b) the private recreation space, landscaping and irrigation, (c) all stormwater treatment measures within Association Property, (d) the sanitary sewer, electric and gas service lines, fire protection lines, and domestic water lines located within Association Property up to the meters or other connections that will exclusive serve a Condominium Unit, and (e) private storm drainage easements where said Improvements are constructed and installed within the Project.

5.2 Maintenance of Association Maintenance Areas. The Association shall Maintain and keep the Association Maintenance Areas in good condition and repair, and provide for all necessary services and cause all acts to be done which may be necessary or proper to assure the maintenance of the Association Maintenance Areas are in first class working condition. A general, non-exclusive list allocating maintenance responsibilities of the Association for certain components and areas of the Project, including Association Maintenance Areas, are identified on **Exhibit A**, attached hereto and incorporated herein by reference.

5.3 Maintenance of Building Common Area. The Association shall Maintain, or cause to be Maintained, all Building Common Area Improvements including, but not limited to, the Buildings, including, but not limited to, the roofs, exterior siding, Balconies, Entries and Patios, and structural components of the Buildings, but excluding Condominium Units, the HVAC and the PV System that serves a Condominium Unit. A general, non-exclusive list allocating Maintenance responsibilities of Building Common Area in the Project by the Association are identified on **Exhibit A**, attached hereto and incorporated herein by reference.

5.4 Maintenance of Condominium Units.

5.4.1 Scope of Maintenance Obligations. Except as otherwise set forth in this Declaration and in addition to other provisions herein (including the provisions of ARTICLE VI pertaining to architectural review and approval), each Owner shall Maintain the interior surfaces of his/her Condominium Unit in good condition and repair, including all fixtures, appliances and appurtenances. Each Owner's Maintenance Obligations hereunder, which shall be in conformance with the Project Documents, includes, but is not limited to, the responsibility to (a) Maintain, paint, paper, panel, plaster, tile and finish the interior surfaces of the ceilings, floors, and the perimeter walls

of his/her Condominium Unit, and the bearing walls within his/her Condominium Unit; (b) repair, paint, finish, alter, substitute, add or remove any fixtures and utility connections attached to ceilings, floor or walls, including fireplaces, toilets, showers, bathtubs, sinks, kitchen appliances, lighting and plumbing fixtures, telephone facilities, doors and windows within the Condominium Unit; (c) Maintain and clean the interiors of any skylights, windows, interiors and exteriors of sliding glass doors, and other glass surfaces of his/her Condominium Unit; (d) Maintain doors, hardware, locks and screens covering doors and windows of his/her Condominium Unit, including the garage door; (e) Maintain the sub-meter and meter for the delivery of water, electricity, sewer and gas to the Condominium Unit; and (f) Maintain the PV System that serves the Condominium Unit in accordance with manufacturer's recommendations and requirements. A general, non-exclusive list allocating Maintenance responsibilities of Owners for certain components and areas of the Condominium Unit are identified on **Exhibit A**, attached hereto and incorporated herein by reference.

5.4.2 Failure of Owner to Maintain. If an Owner fails to Maintain his/her Condominium Unit, as provided herein, in a manner which the Board reasonably deems necessary to preserve the safety, appearance and/or value of the Project, the Board may notify the Owner of the work required and request that it be done within a reasonable and specific period. If the Owner fails to perform such Maintenance within said period, the Board shall, subject to the notice and hearing requirements set forth in the Bylaws, have the right to enter the Condominium Unit to cause such Maintenance work to be performed. The costs of any such Maintenance shall be charged as a Reimbursement Assessment to the Owner as provided in ARTICLE IX hereof. Notwithstanding the foregoing, in the event of an emergency arising of the failure of an Owner to Maintain his/her Condominium Unit, the Board shall have the right, through its agents and employees, to immediately enter the Condominium Unit to abate the emergency and individually charge the cost thereof to such Owner.

5.5 Maintenance of Balconies, Entries and Patios. Owners shall perform the cosmetic Maintenance, upkeep, cleaning and sweeping (as needed) to the surfaces, flooring and stairs of the Balcony, Entry and/or Patio appurtenant to his/her Condominium, as applicable. The Association shall be responsible for structural repair and/or replacement of the Balcony, Entry and Patio.

5.6 Maintenance of HVACs. Each Owner shall be solely responsible for the Maintenance and working condition of the HVAC that serves his/her/their Condominium Unit, including any platform upon which HVAC equipment sits, and any screening Improvements (fences, walls, landscaping, *etc.*) that are required to screen the HVAC. The failure of the Owner to properly Maintain the HVAC, including the screening, may result in the Association performing said Maintenance work and charging the Owner a Reimbursement Assessment, as provided in ARTICLE IX of this Declaration, for said costs.

5.7 Maintenance of PV Systems. Owners and the solar provider shall be solely responsible for the Maintenance and working condition of the PV System that serves his/her/their Condominium Unit. Because roofs are the Maintenance Obligation of the

Association, if a PV System requires service or Maintenance, the Owner and solar provider shall be required to follow the below described procedures:

5.7.1 Association Approval. Prior to the commencement of any Maintenance or repair of the PV System on the roof, the Owner and/or solar provider shall obtain written approval from the Association. A written maintenance request on a form provided by the Association shall be completed that identifies the proposed scope of work to be performed, and the start date of the work.

5.7.2 Service Providers. The Association shall have the discretion to limit certain service providers (each an “approved contractor”) to access the roof of each Building to perform any work on behalf of the Owner of the PV System. The Association may, at their discretion, change the list of approved contractors and distribute such to Owners.

5.7.3 Hours of Work. Any work on the PV System shall only be performed between the hours of 8:00 a.m. and 5:00 p.m., Mondays through Fridays, excluding weekends and holidays, and in accordance with City regulations and ordinances.

5.7.4 Insurance. As a condition precedent to commencing any work on the PV System, the Owner and the approved contractor shall provide proof of insurance policies that includes, at a minimum, the following coverages:

(a) Liability. As to Owner, comprehensive general liability insurance with limits of \$1,000,000 for bodily injury and property damage per each occurrence and \$1,000,000 in the aggregate. As to the approved contractor, commercial general liability insurance, including personal and bodily injury liability, broad form property damage liability, and blanket contractual liability with a combined single limit of not less than \$1,000,000 per each occurrence.

(b) Worker’s Compensation. Owner, to the extent necessary to comply with all applicable laws, shall be required to obtain worker’s compensation insurance. The approved contractor shall be required to procure and maintain worker’s compensation insurance including, but not limited to, coverage for the approved contractor’s employees, agents, subcontractors and volunteers, in statutory form to the extent necessary to comply with all applicable laws, and employer’s liability insurance of not less than \$1,000,000 per occurrence.

(c) Other Insurance. The Owner and/or approved contractor shall be required to obtain and procure, and provide proof thereof, of any other forms and types of insurance coverages that the Association deems necessary to protect the interests of the Association, other Owners, the Building, Condominium Units, Association Property and the Project, and which are required as part of the Association’s written approval.

(d) Policy Requirements. All policies of insurance shall be specifically endorsed to provide that the coverages will be primary and that any insurance

carried by the Additional Insureds (identified below) shall be in excess and non-contributory, and shall contain a waiver of subrogation in favor of said Additional Insureds. All insurance policies required herein shall be issued by insurance companies authorized to do business in California, and shall have an AM Best Rating of at least A-VIII, and shall be specifically endorsed to provide that such coverage shall not be canceled or materially changed without at least thirty (30) days' prior written notice to the Association. The certificates of insurance must list the Association, the management company, and each Owner of a Condominium Unit in the same Building as Owner as additional insureds (collectively, the "***Additional Insureds***") on a separate endorsement form. Owner represents and warrants that the Approved Contractor's liability insurance policy has no exclusions for limiting or eliminating coverage for work on condominiums or townhomes (also known as a "multi-family exclusion" endorsement).

5.7.5 Owner Responsibility for Damage. Each Owner assumes full responsibility for any damage to persons, property, Building, any Condominium Units or Association Property caused by the maintenance and/or operation of the PV System including, without limitation, damage to the structural integrity or water-tight properties of the roof or the Building, arising from the installation, maintenance or use of a PV System. If a PV System is removed, the Owner shall restore the roof and other affected locations, if any, to a condition had the PV System not been installed. Each Owner shall be solely responsible for all costs related to the restoration of these areas.

5.7.6 Indemnity of the Association. Each Owner consents and agrees to indemnify, protect, defend and hold the Association, its manager, agents, employees, officers, directors and volunteers, Declarant, and all other Owners of Condominium Units in the same Building as Owner, entirely and completely free and harmless from and against any and all claims, costs, expenses, liabilities, actions and damages, including, without limitation, attorney's fees and costs, and costs of enforcing this indemnification arising from or attributable to any acts or omissions of Owner, an approved contractor, or any of their respective heirs, representatives, successors, assigns, officers, directors, agents, employees, subcontractors or suppliers arising out of or based on (i) installation, use, maintenance, repair or replacement of the PV System, (ii) Owner's breach of these provisions, (iii) the conduct or actions of Owner as it pertains to the maintenance, use and operation of the PV System, (iv) any negligent acts or omissions or willful misconduct of Owner, or (v) any injuries to property and/or persons, including death.

5.7.7 Rights of the Association. The failure of the Owner to properly Maintain the PV System, or if such Maintenance causes damage to the roof, the Building or Association Property, the Association may perform the necessary repair and/or Maintenance work and charge the Owner a Reimbursement Assessment, as provided in ARTICLE IX of this Declaration, for said costs.

5.8 Maintenance of Fire Sprinkler and Fire Alarm System. The Association shall be responsible for the Maintenance and operating condition of the fire sprinkler monitoring system, fire alarms on the exteriors of Buildings, and portable fire extinguishers in Association Property and on Buildings, if any. Each Owner shall be solely responsible for the Maintenance and

operating condition and replacement of the fire sprinkler heads located within the Condominium Unit and EUA.

5.9 Termite and Wood Destroying Pests Eradication. If determined by the Board to be economically feasible, the Association shall adopt an inspection and prevention program for the prevention and eradication of infestation by wood-destroying pests and organisms in the Project. If the Association adopts such a program, the Association, on no less than fifteen (15) nor more than thirty (30) days' notice, may require each Owner and occupants to vacate the Condominium Unit to accommodate the Association's efforts to eradicate such infestation. The notice must state the reason for the temporary relocation, the date and time of the commencement of the treatment, the anticipated date and time when the treatment will be completed, that the occupants will be responsible for arranging and paying for their own accommodations during the temporary relocation, and that the Association shall not be responsible for any costs associated with the temporary relocation. Any damage caused to a Condominium Unit by such entry by the Association shall be repaired by the Association as a Common Expense. All costs associated with the inspection and preventative program and the repair and replacement of Association Property and Improvements thereon in exercising the rights set forth in this Section are Common Expenses.

5.10 Maintenance Due to Acts of Owner. If any Maintenance (including, but not limited to, recoating, resurfacing or repairs to coatings or the surfaces of waterproof membranes on Decks or Patios) identified in this ARTICLE V is necessitated by the acts and/or omissions of the Owner, his/her family, guests or invitees, regardless if said acts and/or omissions were willful or negligent, the costs of such special restoration or repairs shall be chargeable to the Owner as a Reimbursement Assessment as provided in ARTICLE IX.

5.11 Utility Bills. Payment of any utility (e.g., water, electricity) bills for Association Property are the obligation of the Association.

5.12 Other Association Obligations. The Association shall contract with a professional management firm to handle Maintenance operations.

5.13 Inspection and Maintenance Guidelines. The Association and each Owner shall adopt and comply with the inspection and Maintenance guidelines for all Improvements (including, but not limited to, Condominium Units, Common Area, Association Property, *etc.*) for the periodic inspection and Maintenance of Association Property Improvements and any other Improvements that the Association is obligated to Maintain. The Association shall also have the right, but not the obligation to inspect and clean, if necessary, storm drains located within the Project. Each Owner shall provide the inspection and Maintenance guidelines to any subsequent purchaser. It is each Owner's responsibility to inspect for and remediate any mold or mildew in his/her Condominium Unit.

ARTICLE VI

ARCHITECTURAL REVIEW AND APPROVAL PROCEDURES

6.1 Formation and Composition of ACC. The ACC shall be formed and shall consist of at least three (3) but no more than five (5) Members. Until the first anniversary of the issuance of the original Final Public Report for the Project, Declarant may appoint all of the original members and any replacements of the ACC after which the Board shall have the power to appoint one member to the ACC. Declarant shall have the power to appoint a majority of the members of the ACC until ninety percent (90%) of all the Condominium Units in the Project have been sold or until the fifth (5th) anniversary of the original issuance of the Final Public Report for the Project, whichever occurs first. Upon the sale of ninety percent (90%) of all the Condominium Units in the Project or the fifth (5th) anniversary date of the original issuance of the Final Public Report, whichever occurs first, the Board shall have the power to appoint all of the members of the ACC. In the event of death or resignation of any member of the ACC, 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 ACC, and thereafter the Board shall have the full authority to designate such a successor. The members of the ACC shall not be entitled to any compensation for services performed pursuant hereto.

6.2 Duties of the ACC. The ACC shall review and approve, conditionally approve, or deny all plans, submittals, applications and requests made or tendered to it by Owners (except Declarant) or their agents for any Alterations, pursuant to the provisions of this Declaration. In connection therewith, the ACC may investigate and consider the architecture, design, layout, landscaping, energy conservation measures, water conservation measures, fence detail, and other features of the proposed Alteration, modification or Improvement. With the consent of the Board, the ACC may hire and the Association shall pay consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the ACC in performing its duties.

6.3 Design Guidelines. The ACC, from time to time and in its sole discretion, may adopt Design Guidelines. The Design Guidelines may include a schedule of fees for processing submittals (which shall not exceed the amount necessary to defray all costs incurred by the ACC in processing the submittals) and establish the time and manner in which such fees shall be paid. In the event of any conflict between the Design Guidelines and the regulations of the City (including the Conditions of Approval), the City's regulations shall control.

6.4 Submission of Plans. No Alterations, building, fence, wall, obstruction, screen, window, awning, landscape change or structure of any kind shall be commenced, erected or Maintained on or in any Condominium Unit or EUA by any Owner(s) (except Declarant), nor shall any Alterations or modification of Declarant-installed Improvements by any Owner(s) of any kind be made to the exterior thereto until the same has been approved in writing by the ACC. In addition to any approvals of the ACC herein, Owners are prohibited from installing, constructing, altering or modifying Condominium Units, Building Common Areas and/or EUAs without the express written approval of the ACC or the Board. All proposed Alterations contained in this ARTICLE VI shall meet the Design Guidelines, the Conditions of Approval of

the City, and the approvals of any government agency or department with jurisdiction over the Project.

6.5 Basis for Review. The ACC may approve the proposal or application only if the ACC finds that (a) the plans and specifications conform to this Declaration, and to the Design Guidelines in effect at the time the proposal was submitted, and (b) the proposed Alteration, modification or addition will be consistent with the standards of the Project and the provisions of this Declaration as to harmony of exterior design, visibility with respect to existing structures and environment, and location with respect to topography and finished grade elevation.

6.6 Form of Approvals, Conditional Approvals and Denials. All approvals, conditional approvals and denials shall be in writing. Any denial must state the reasons for the decision. The failure of the majority of the ACC to act within sixty (60) days after the plans have been submitted to it shall constitute approval.

6.7 Reconsideration of Denial of Application. If the ACC denies an application for Alterations, modifications, *etc.*, to Building Common Area, Condominium Unit or EUA, the decision may be appealed to the Board of Directors for reconsideration, unless the denial was made by the Board exercising the duties of the ACC, as set forth in Section 6.2, above, in which case, there shall be no right to reconsideration of the denial. An appeal by an Owner whose application was denied by the ACC shall follow the procedures set forth below:

(a) The appeal shall be in writing and must identify the grounds upon which the appeal or reconsideration is made to the Board.

(b) The appeal shall be delivered to the Board (pursuant to California Civil Code Section 4035) within sixty (60) days after the date of the ACC's written notice to the Owner denying the proposed Alterations, modifications, *etc.*

(c) The Board shall schedule a meeting within forty-five (45) days of receipt of the written appeal to allow the Owner an opportunity to be heard on his/her request for reconsideration, unless the parties mutually agree to a date beyond or less than the forty-five (45) day period.

(d) Unless expressly requested by an Owner, the meeting with the Board concerning the appeal of the ACC's decision shall not be held in executive session.

(e) The Board shall issue its decision in writing to the Owner within thirty (30) days after the date of the meeting, and said written decision shall be delivered in any manner allowed by California Civil Code Section 4040.

(f) The Board's decision on appeal shall be final, and not subject to further reconsideration by the Board.

6.8 Proceeding with and Completion of Work. Upon approval of the ACC, the Owner shall diligently proceed with commencement and completion of all work so approved. Work must be commenced within six (6) months from the date of approval by the ACC. All approved work must be completed within one (1) year from the date of approval. If the Owner

fails to comply with the provisions of this Section 6.8, the approval given shall be deemed revoked unless the ACC extends the time for commencement. Any request for an extension, and decision, shall be in writing. No extension shall be granted unless the ACC finds that there has been a material change in the circumstances under which the original approval was granted, or completion is impossible, or would result in great hardship to the Owner due to strikes, fires, national emergencies, natural calamities or other supervening forces beyond the Owner's control.

6.9 Compliance with Approval. If the ACC determines that an Owner has not constructed the Alterations or Improvements consistent with the specifications of the approval granted or within the time permitted for completion and if the Owner fails to remedy such non-compliance in accordance with the directives or orders of the ACC, the Board shall provide Notice and Hearing, pursuant to the Bylaws, to consider the Owner's continuing non-compliance. If the Board finds that there is no valid reason for the continuing non-compliance, the Owner shall have forty-five (45) days from the date of the Board's decision to remedy or remove the non-compliance. If the Owner fails to comply with the Board's directive or order, the Board, in its discretion, may either remove the non-complying Improvement or Alteration, remedy the non-compliance, or compel compliance pursuant Section 10.2 of this Declaration. The costs of such action shall be assessed against the Owner as a Reimbursement Assessment.

6.10 Compliance with Governmental Agency Procedures. Each Owner who seeks approval for Alterations shall first obtain written approval from the ACC prior to any approvals, permits, *etc.*, required by the City, County or any other governmental agency for permission to permitting the start of demolition, construction, landscaping and/or any other work.

6.11 Waiver. Approval or conditional approval of any plans, drawings or specifications for any Alterations proposed, or for any other matter requiring approval shall not be deemed to constitute a waiver of any right to deny approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

6.12 No Liability. Neither Declarant, the Association, the Board or the ACC nor the members or designated representatives thereof shall be liable for damages to anyone submitting plans and specifications to them for approval, or to any Owner of property affected by this Declaration by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications for Alterations, or for any defect, whether in design or construction, in any structure constructed from such plans and specifications. Neither the Declarant, Association, Board or ACC nor any member or representative thereof, shall be responsible for reviewing or approving any plans with respect to the adequacy of engineering design. Every person who submits plans or specifications to the ACC for approval agrees, by submission of such plans or specifications, and every Owner of said property agrees that he or she will not bring any action, suit or claim against Declarant, Association, Board or the ACC or any members or designated representatives thereof with respect to any matters for which such persons or entities are relieved of liability pursuant to this Section 6.12.

ARTICLE VII

ASSOCIATION ADMINISTRATION, MEMBERSHIP AND VOTING

7.1 Association to Manage Project. The management of the Project shall be vested in the Association in accordance with the Project Documents, and all applicable laws, regulations and ordinances of any governmental or quasi-governmental body or agency having jurisdiction over the Project.

7.2 Membership. Each Owner shall be a Member of the Association, and shall remain a Member thereof until such time as ownership ceases for any reason, at which time such membership in the Association shall automatically cease.

7.3 Transferred Membership. Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the sale or encumbrance of the Condominium or Condominium Unit to which it is appurtenant, and then only to the purchaser, in the case of a sale, or Mortgagee, in the case of an encumbrance of such Condominium or Condominium Unit. A Mortgagee does not have membership rights until it becomes an Owner by foreclosure or deed in lieu thereof. Any attempt to make a prohibited transfer is void. Any person or entity acquiring fee title or equitable title to a Condominium or Condominium Unit, whether by reason of a deed from the Owner or through a foreclosure, shall within fifteen (15) days of acquiring such title inform the Association in writing of the date such title transferred and the name or names in which title is held.

7.4 Voting. Any action required by law or by the Project Documents to be approved by the Owners, the Members or each class of Members, shall be approved, if at all, in accordance with the procedures set forth in the Bylaws and any Association Rules.

7.5 Proxies. For all matters required by law or the Project Documents in which Members are required to vote, including, but not limited to, those matters set forth in California Civil Code Section 5100, and except as specifically allowed by law, the Project Documents, or a court of law, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary before the appointed time of each meeting. Except for an irrevocable proxy permitted by California Corporations Code Section 7613(d), every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Condominium, or upon receipt of notice by the Secretary of the Board of the death or judicially declared incompetence of such Member prior to the counting of the vote. No proxy shall be valid after the expiration of eleven (11) months from the date thereof unless otherwise provided in the proxy, except that the maximum term of any proxy, other than an irrevocable proxy permitted by California Corporations Code Section 7613(d), shall be three (3) years from the date of execution. Any form of proxy or written ballot distributed by any person to the Membership of the Association shall afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon, except it shall not be mandatory that a candidate for election to the Board be named in the proxy or written ballot. The proxy or written ballot shall provide that, where the Member specifies a choice, the vote shall be cast in accordance with that choice. The proxy shall also identify the person or persons authorized to exercise the proxy and the length of time it will be valid. Except as specifically allowed by law

or a court of law, proxies shall not be allowed, counted towards, or recognized by the Association in any election for establishing a quorum.

7.6 Classes of Membership and Voting. The Association shall have two (2) classes of voting Members:

(a) Class A. Class A Members shall be all Owners except Declarant and shall be entitled to one (1) vote for each Condominium Unit owned, as applicable. When more than one person or entity owns a Condominium Unit, all such persons and entities shall be Members and the vote for such Condominium Unit shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Condominium Unit.

(b) Class B. The Class B Member shall be the Declarant and shall be entitled to cast three (3) votes for each Condominium Unit it owns and is paying the Assessments levied by the Association. This voting right shall cease and Declarant shall automatically become a Class A Member entitled to cast one (1) vote for each Condominium Unit it owns and is paying the Assessments levied by the Association upon the first to occur of the following events:

(1) The second (2nd) anniversary of the first close of escrow for the sale of a Condominium Unit pursuant to the original issuance by the DRE of the most recently issued Final Public Report for a Phase of the Project; or

(2) The fourth (4th) anniversary of the first close of escrow for the sale of a Condominium Unit pursuant to the original issuance by the DRE of the Final Public Report for the first Phase of the Project.

7.7 Special Voting Rights for Election of Directors. So long as the Declarant shall be entitled to exercise the Class B voting right to elect a majority of the members of the Board of Directors of the Association, as provided above, the Class A Members shall be entitled to solely elect at least twenty percent (20%) of the members of the Board.

7.8 Commencement of Voting Rights. Voting rights attributable to Condominium Units shall not vest until Assessments against those Condominium Units have been levied by the Association. The power to cast a particular Member's vote may be exercised by the Member's conservator, guardian, the parent(s) entitled to custody of a Member if the Member is a minor, or the executor or administrator of a deceased Member's estate if the Member's interest in the Condominium Unit is subject to estate administration.

7.9 Secret Ballot Voting. All voting on matters specified in California Civil Code Section 5100 shall be done by secret ballot and be in compliance with the Association Rules for elections and any and all other statutory provisions.

ARTICLE VIII

POWERS, DUTIES AND LIMITATIONS OF THE ASSOCIATION

8.1 Powers and Duties of Association. In addition to the powers and duties enumerated in its Articles and Bylaws or elsewhere provided for herein, and without limiting the generality thereof, the Association and the Board shall have the following powers and duties:

8.1.1 Delegation of Powers. To delegate all powers to committees, officers or employees of the Association as expressly authorized by the Project Documents.

8.1.2 Managing Agent. The Association shall be managed by a professional property management company to act as a managing agent and to contract with independent contractors to perform all or any part of the duties and responsibilities of the Association, provided that any contract with a firm or person appointed as a managing agent or any other contract providing for services of the Declarant, developer, sponsor or builder shall not exceed a one (1) year term renewable by the parties for successive one year periods and shall provide for the right of the Association to terminate the same at the first annual meeting of the Members of the Association, to terminate the same for cause on thirty (30) days written notice, and either party may terminate without cause and without payment of a termination fee on sixty (60) days written notice.

8.1.3 Maintenance. To Maintain the Project as required by the provisions of this Declaration.

8.1.4 Supervision. To supervise all officers, agents and employees of the Association and see that their duties are properly performed.

8.1.5 Assessments, Liens, and Fines. To levy and collect Assessments and as provided in the Project Documents, impose fines or take disciplinary action against an Owner for failure to pay Assessments or for violation of any provision of the Project Documents. Penalties may include, but are not limited to: fines, temporary suspension of voting rights or rights to use of the facilities on Association Property, or other appropriate discipline for failure to comply with the governing instruments, provided that the accused Member is given notice and the opportunity to be heard by the Board with respect to the alleged violations before a decision to impose discipline is reached. Such notice and hearing procedures shall satisfy the minimum requirements of California Corporations Code Section 7341, which are set forth in Article XIII of the Bylaws.

8.1.6 Enforcement of Project Documents. To enforce applicable provisions of the Project Documents for the ownership, management and control of the Project.

8.1.7 Adoption of Association Rules. To adopt, amend and repeal reasonable rules consistent with this Declaration relating to the use of Association Property and all facilities thereon, and the conduct of Owners and their tenants and guests with respect to the Project and other Owners, in compliance with California Civil Code Section 4340, *et seq.* A copy of the Association Rules as adopted, amended or repealed shall be mailed or otherwise delivered to each Owner and a copy shall be posted in a conspicuous place

within Association Property. Any modifications, changes, or repeal of the Association Rules shall follow these procedures:

(a) The Board shall provide written notice to its Members not less than thirty (30) days prior to making the rule change. The written notice shall include the text of the proposed rule change (or deletion, as the circumstances may warrant), and a description of the purpose and effect of the change. The written notice is not required if the Board determines that an immediate rule change is necessary to address an imminent threat to public safety or imminent risk of substantial economic loss.

(b) The decision on the proposed rule change shall be made at a meeting of the Board after consideration of any comments made by Members.

(c) Not more than fifteen (15) days after making the rule change, the Board shall deliver the modifications, changes or repeal of Association Rules to every Member in the manner allowed by California Civil Code Section 4045, unless the rule change was made on an emergency basis and in such an emergency basis the notice shall include the text of the change, a description of the purpose and effect of the rule change, and that the emergency rule change shall be in effect for not more than one hundred twenty (120) days.

8.1.8 Records. Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by five percent (5%) or more of the total voting power of the Association; keep adequate and correct books and records of account, minutes of proceedings of its Members, Board and committees, and a record of its Members giving their names and addresses and classes of membership.

8.1.9 Water and Other Utilities. To acquire, provide and pay for water, sewer, garbage and/or recycling disposal and collection, electrical, telephone, gas and other utility services as necessary for Association Property.

8.1.10 Granting of Easements. To grant easements where necessary for utilities and sewer facilities over Association Property to serve Association Property, Building and Condominium Units.

8.1.11 Exercise of Easements. To exercise all easement rights as granted to it in this Declaration for the purpose of performing the Maintenance authorized herein or for any other purpose reasonably related to the performance by the Association or the Board of their responsibilities, the Association's agents or employees.

8.1.12 Contracts. To contract for goods and/or services for Association Property facilities and interests, for other areas of the Project that is Maintained by the Association, or for the Association, subject to limitations elsewhere set forth in the Project Documents.

8.1.13 Limit Number of Guests. To limit the number of an Owner's guests who may use any facilities on Association Property.

8.1.14 Title to Association Property. To accept title to Association Property conveyed to it by Declarant.

8.1.15 Acquisition of Property. To acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, Maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association.

8.1.16 Budgets. To prepare budgets and financial statements for the Association as prescribed in this Declaration.

8.1.17 Legal and Accounting. To obtain and pay the cost of legal, accounting and other professional services necessary or proper for the Maintenance and operation of the Project and the enforcement of the Project Documents.

8.1.18 Emergency Repairs. To enter upon or in any Condominium Unit as necessary in connection with construction, Maintenance or emergency repair for the benefit of Association Property, or the Owners in common.

8.1.19 Election of the Board of Directors. To elect the Members of the Board.

8.1.20 Filling Vacancies. To fill vacancies on the Board created by the removal or resignation of a Board Member.

8.2 Property Taxes and Assessments. Each Owner shall be obligated to pay any taxes or assessments levied by the County Assessor against his/her Condominium and personal property. To the extent not assessed to or paid directly by the Owners, the Association shall pay all real and personal property taxes and assessments levied upon any portion of the Association Property or other property owned by the Association. The Association shall prepare and file annual tax returns with the federal government and the State of California and make such elections as may be necessary to reduce or eliminate the tax liability of the Association.

8.3 Discharge of Liens. The Association shall discharge by payment, if necessary, any lien against the Association Property, and assess the cost thereof to the Owners responsible for the existence of said lien.

8.4 Payment of Expenses. The Association shall pay all expenses and obligations incurred by the Association in the conduct of its business including, without limitation, all licenses, taxes or governmental charges levied or imposed against the property of the Association.

8.5 Dispute Resolution. In any dispute in which the Association is a party, the Association may perform any act reasonably necessary to resolve any such civil claim or action through dispute resolution proceedings found in ARTICLE XIV of this Declaration, as applicable.

ARTICLE IX

ASSESSMENTS

9.1 Agreement to Pay. Declarant, and its successor in interest, if any, for each Condominium Unit owned by it, and each Owner, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees to pay Regular Assessments, Special Assessments for capital improvements or unusual expenses to be established and collected as hereinafter provided, and Reimbursement Assessments and/or Additional Charges levied against an Owner, to be established and collected as provided in this Declaration and in the other Project Documents.

9.1.1 Liability for Payment. All Assessments and Additional Charges, together with any late charges, interest, collection costs and reasonable attorney's fees incurred in collecting delinquent Assessments and Additional Charges, as provided in California Civil Code Section 5650, shall be the obligation of the Owner of such Condominium Unit at the time when the Assessments or Additional Charges fell due. If more than one person or entity was the Owner of a Condominium Unit at the time the Assessments or Additional Charges fell due, the obligation to pay each Assessment and Additional Charge shall be joint and several. The obligation for delinquent Assessments and Additional Charges shall not pass to any transferee unless expressly assumed by him/her. No Owner may exempt himself from liability for his/her Assessments or Additional Charges obligation by waiver of the use or enjoyment of any portion of the Project.

9.1.2 Funds Held in Trust. The Assessments collected by the Association shall be held by the Association for and on behalf of each Owner and shall be used solely for the operation, care and Maintenance of the Project as provided in this Declaration.

9.1.3 No Offsets. No offsets against any Assessment shall be permitted for any reason including, without limitation, any claim that the Association is not properly discharging its duties.

9.1.4 Assessments in Dispute. If an Owner has a dispute with the Association regarding an Assessment levied by the Association, the Owner shall have the option of (a) paying the disputed amount of the Assessment under protest and filing a small claims action (California Civil Code Section 5658), (b) request a meeting with the Board to discuss the possibility of a payment plan, if applicable (California Civil Code Section 5665), (c) request to participate in the "meet and confer" program (California Civil Code Section 5900, *et seq.*), or (d) or request that the dispute be resolved by alternative dispute resolution with a neutral third party (California Civil Code Section 5925, *et seq.*), or any combination of the above.

9.2 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for paying the costs of and creating reserves for the costs of all obligations which the Association is authorized or obligated to perform as described in this Declaration.

9.3 Vacant Condominium Unit Assessment Exemption. The Declarant and any other Owner may be exempt from the payment of that portion of any Assessment for any Association Property or Condominium Unit that does not include a structural Improvement for human occupancy which is for the purpose of defraying expenses and reserves directly attributable to the existence and the use of the structural Improvements. The exemption may include, but shall not necessarily be limited to: roof replacement; exterior Maintenance; walkway and carport lighting; refuse disposal; cable television; and domestic water supplied to living Condominium Units. Any exemption from the payment of Assessments attributed to dwelling Condominium Units shall be in effect only until the earliest of the following: (a) a Notice of Completion of the structural Improvements has been recorded; (b) occupation or use of the dwelling Condominium Unit; or (c) completion of all elements of the residential structures which the Association is obliged to Maintain.

9.4 Common Facility Assessment Exemption. Declarant and any other Owner may be exempt from the payment of that portion of any Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of Association Property Improvements that are not complete at the time Assessments commence. Any exemption from the payment of Assessments shall be in effect only until (a) a Notice of Completion of Association Property has been recorded; or, (b) the common facility has been placed into use, whichever occurs earliest.

9.5 Regular Assessments. Regular Assessments shall be payable in equal monthly installments, due on the first day of each month, unless the Board adopts some other basis for collection. Regular Assessments may be increased pursuant to California Civil Code Section 5605. Notwithstanding any other provisions contained in this ARTICLE IX, the Board may increase Assessments necessary for emergency situations pursuant to California Civil Code Section 5610. If before expiration of any fiscal year the Association fails to fix Regular Assessments for the next fiscal year, the Regular Assessment established for the preceding year shall continue until a new Regular Assessment is fixed. Regular Assessments shall include costs and expenses for the Maintenance of Association Property and other portions of the Project that the Association is required to Maintain as set forth in this Declaration, and for the management and operation of the Project and Association.

9.6 Special Assessments. Special Assessments may be levied in addition to Regular Assessments for (a) constructing capital Improvements, (b) correcting an inadequacy in the Current Operating Account; (c) defraying, in whole or in part, the costs of any construction, reconstruction, unexpected repair or replacement of Improvements in the Association Property or in any other areas for which the Association is obligated to Maintain, or (d) paying for such other matters as the Board may deem appropriate for the Project. In addition, the Board may also levy Special Assessments, as circumstances warrant, to raise funds for unexpected operating or reserve funds, or the Association's Maintenance of portions of Association Property. Special Assessments shall be levied in the same manner as Regular Assessments. Notwithstanding any other provisions contained in this ARTICLE IX, the Board may impose Special Assessments necessary for emergency situations pursuant to California Civil Code Section 5610.

9.7 Reimbursement Assessments. The Association shall levy a Reimbursement Assessment against an Owner to (a) reimburse the Association for the costs of repairing damage

caused by that Owner or that Owner's Invitee, (b) if a failure to comply with the Project Documents has necessitated an expenditure of monies, including attorneys' fees, by the Association to bring the Owner or the Owner's Condominium Unit or Improvements into compliance or resulted in the imposition of a fine or penalty, or (c) failure to reimburse the Association for costs and expenses incurred on behalf of an Owner, as set forth elsewhere in this Declaration. A Reimbursement Assessment shall be due and payable to the Association when levied. A Reimbursement Assessment shall not be levied by the Association until Notice and Hearing has been given in accordance with the Bylaws. Reimbursement Assessments described in subparts (a) and (c) may be enforced by lien after Declarant no longer owns any portion of the Project. Reimbursement Assessments described in subpart (b) may not be enforced by lien.

9.8 Commencement of Assessments. The right to levy Assessments shall commence as to all Condominium Units in a Phase on the close of escrow for the first conveyance of a Condominium Unit in the Phase. Regular Assessments shall commence as to all Condominium Units in a Phase on the first day of the month following the first conveyance of a Condominium Unit under authority of a Final Public Report. Thereafter, Regular Assessments shall be levied on the first day of each month. After annexation of each Phase, the allocation and Assessment charges for Common Expenses shall be reallocated among all Condominium Units, including those in the annexed Phase of the Additional Property.

9.9 Accounts. Assessments collected by the Association shall be deposited into at least two (2) separate accounts with a responsible financial institution, which accounts shall be clearly designated as (a) the Current Operating Account, and (b) the Reserve Account. The Board shall deposit those portions of the Assessments collected for current Maintenance and operation into the Current Operating Account and shall deposit those portions of the Assessment collected as reserves for replacement and deferred Maintenance of major components which the Association is obligated to Maintain into the Reserve Account. Withdrawal of funds from the Reserve Account shall require the signatures of either two (2) Directors or one (1) Director and one (1) Officer of the Association who is not a Director. The Association may expend funds from the Reserve Account only for the purposes set forth in California Civil Code Section 5510. All other costs properly payable by the Association shall be paid from the Current Operating Account.

9.10 Enforcement of Assessments. Pursuant to California Civil Code Sections 5300, 5305, 5310, 5320, 5565 and 5730, the Board shall distribute a statement of the Association's policies and practices in enforcing its remedies against Owners for defaults in the payment of Regular and Special Assessments, including the recording and foreclosing of liens against Owners' Condominium Units. In addition to all other remedies provided by law, including, but not limited to, California Civil Code Section 5700, *et seq.*, the Association or its authorized representative may enforce the obligations of the Owners to pay each Assessment provided for in this Declaration in any manner provided by law or by either or both of the following procedures:

(a) By Suit. The Association may commence and maintain a suit at law against any Owner personally obligated to pay a delinquent Assessment. The suit shall be maintained in the name of the Association. Any judgment rendered in any action shall include the amount of the delinquency, and such Additional Charges, costs, fees, charges, and expenditures and any other amounts as the court may award. A proceeding to

recover a judgment for unpaid Assessments may be maintained without the necessity of foreclosing or waiving the lien established herein.

(b) By Lien. The Association or a trustee nominated by the Association may commence and maintain proceedings to establish and/or foreclose Assessment liens. No action shall be brought to foreclose a lien until the lien is created by recording a Notice of Lien. Prior to recording a Notice of Lien, the Association shall comply with the provisions of California Civil Code Section 5673, *et seq.* The Notice of Lien must be authorized by the Board, signed by an authorized agent and recorded in the Official Records of the County. No later than ten (10) days after recordation of the Notice of Lien, copies of the Notice of Lien shall be mailed to all record Owners of the Condominium in the manner set forth in California Civil Code Sections 2924b and 5710. After expiration of the thirty (30) days following the recording of a Notice of Lien, the lien may be foreclosed subject to the right of redemption as set forth in California Civil Code Section 5715.

9.11 Satisfaction of Lien. All amounts paid by an Owner toward a delinquent Assessment shall be credited first to reduce the principal amount of the debt. Upon payment or other satisfaction of a delinquent Assessment for which a Notice of Lien was recorded, the Association shall record a certificate stating the satisfaction and release of the Assessment lien.

9.12 Lien Eliminated by Foreclosure. If the Association has recorded a Notice of Lien and the lien is eliminated as a result of a foreclosure of a Mortgage or transfer pursuant to the remedies provided in the Mortgage, the new Owner of the Condominium Unit shall pay to the Association a pro-rata share of the Regular Assessment for each month remaining in the Association's fiscal year after the date of the foreclosure or transfer pursuant to the remedies provided in the Mortgage.

9.13 Waiver of Homestead Protections. Each Owner does hereby waive, to the extent permitted by law, the protections of any declared homestead or homestead exemption or redemption laws under the laws of the State of California as applied to any action to enforce or collect Assessments levied by the Association.

9.14 Subordination of Lien. Notwithstanding any provision to the contrary, the liens for Assessments created pursuant to this Declaration shall be subject and subordinate to and shall not affect the rights of the holder of a First Mortgage made in good faith and for value. Upon the foreclosure of any First Mortgage on a Condominium Unit, any lien for Assessments which became due prior to such foreclosure shall be extinguished; provided, however, that after such foreclosure there shall be a lien on the interest of the purchaser at the foreclosure sale to secure all Assessments, whether Regular or Special, charged to such Condominium Unit after the date of such foreclosure sale, which lien shall have the same effect and shall be enforced in the same manner as provided herein. For purposes of this Section, a Mortgage may be given in good faith or for value even though the Mortgagee has constructive or actual knowledge of the Assessment lien provisions of this Declaration.

ARTICLE X

AMENDMENT AND ENFORCEMENT OF RESTRICTIONS

10.1 Amendment of Declaration.

10.1.1 Prior to First Close of Escrow. Prior to the close of escrow on the conveyance of the first Condominium, Declarant may amend or revoke this Declaration subject to the requirements of California Business and Professions Code Sections 11012 and 11018.7.

10.1.2 After First Close of Escrow. After conveyance of the first Condominium Unit, this Declaration may be amended or revoked only by the affirmative vote or written consent of Members representing a majority of the voting power of each class of Members of the Association and, if applicable, by Mortgagees. If only one class of membership exists at the time an amendment is proposed, then it must be approved by at least a bare majority of the total voting power of the Association, which shall include at least a bare majority of the votes of Members other than Declarant. The percentage of the voting power necessary to amend a specific clause or provision of this Declaration shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause or provision. If the approval of two (2) classes of membership is required, prior approval must be obtained from the FHA and/or VA if either is a First Mortgagee. Any amendment shall be executed by the President and Secretary of the Association and must be recorded and shall become effective only upon being recorded in the County Recorder's Office.

10.1.3 Amendments Requiring Mortgagee Consent. Approval of any proposed amendment to the Project Documents by Mortgagees shall be implied if a Mortgagee fails to submit a response to any written proposal for an amendment within sixty (60) days after it receives proper notice of the proposal, provided the notice to the Mortgagee was delivered by certified or registered mail, with a "return receipt" requested.

(a) Any amendments to the Project Documents of a "material adverse nature" to Mortgagees shall require approval of at least fifty-one percent (51%) of Mortgagees and sixty-seven percent (67%) of Owners. Amendments of a "material adverse nature" include the following:

- (i) Voting rights;
- (ii) Increases in Assessments that raise previously assessed amount by more than twenty five percent (25%), Assessment liens, or the priority of Assessment liens;
- (iii) Reductions in reserves for Maintenance of Association Property;
- (iv) Responsibility for Maintenance;

(v) Reallocation of interests in Association Property, Common Area, or rights to their use;

(vi) Redefinition of any Condominium Unit boundary;

(vii) Convertibility of Condominium Units into Association Property or vice versa;

(viii) Expansion or contraction of the Project, or the addition, annexation (except for the Additional Property) or withdrawal of real property to or from the Project;

(ix) Hazard or fidelity insurance requirements;

(x) Imposition of any restrictions on the leasing of Condominium Units;

(xi) Imposition of any restrictions on an Owner's right to sell or transfer his or her Condominium;

(xii) A decision by the Association to establish self-management when professional management had been required by the Project Documents or by an Institutional Mortgagee;

(xiii) Restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in the Project Documents;

(xiv) Any provisions that expressly benefit Mortgage holders, insurers or guarantors; or

(xv) Any action to terminate the legal status of the Project for any reason whatsoever.

(b) Prior approval of at least sixty-seven percent (67%) of Mortgagees and sixty-seven percent (67%) of Owners other than Declarant shall be required before the Association may do any of the following:

(i) By act or omission, seek to abandon or terminate the Project, other than after substantial destruction or condemnation occurs;

(ii) By act or omission, abandon, partition, subdivide, encumber, sell or transfer any property or Improvements owned, directly or indirectly, by the Association for the benefit of the Condominium Units and Owners (excepting therefrom, the granting of easements for public utilities or for other public purposes consistent with the intended use of the Project);

(iii) By act or omission, change, waive or abandon any scheme of regulations or enforcement thereof pertaining to architectural design or exterior appearance of Buildings and Condominium Units, the exterior Maintenance of Buildings and Condominium Units, or the upkeep of laws, plantings or other landscaping in the Project;

(iv) By act or omission, change the method of determining the obligations, Assessments, dues or other charges that may be levied against an Owner;

(v) Fail to maintain the fire and extended coverage insurance on insurable portions of Association Property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value based on current replacement cost; and

(vi) Use hazard insurance proceeds for losses to any property or Improvements owned by the Association other than for the repair, replacement or reconstruction of the property and Improvements.

10.1.4 Additional Approvals Required for Amendments. The provisions of Section 14.3.1 (Claims and Legal Actions), and this Section 10.1.4 may not be amended nor shall other provisions be adopted that purport to supersede them without the prior written consent of Declarant.

10.1.5 Unilateral Right to Amend the Declaration. The Declarant or the Association (upon Declarant's conveyance of all Condominium Units in the Project) shall have the unilateral right to amend this Declaration without the approval of Members to bring this Declaration into compliance with all requirements and regulations of any federal or state agency, or an insurer or governmental guarantor of a First Mortgage, or federally insured Mortgagee and/or lender including, but not limited to, FHA, VA, FNMA and/or FHLMC, or correct any errors, mistakes or conflicting language in this Declaration.

10.2 Enforcement.

10.2.1 Generally. The Association or any Owner, including Declarant as an Owner, shall have the right, but not the obligation, to enforce compliance with the Project Documents in any manner provided by law or in equity, or in bringing an action for damages, an action to enjoin the violation or to specifically enforce the provisions of the Project Documents, to enforce the liens provided for herein (except that no Owner shall have the right to enforce independently of the Association any Assessment, Additional Charges or Assessment lien created herein) and any statutory lien provided by law, including the foreclosure of any such lien and the appointment of a receiver for an Owner and the right to take possession of the Condominium Unit in the manner provided by law. In the event the Association or any Owner shall employ an attorney to enforce the provisions of the Project Documents against any Owner, the prevailing party shall be entitled to reasonable attorney's fees and costs in addition to any other amounts due as

provided for herein. All sums payable hereunder by an Owner shall bear interest at the maximum rate permitted by law from the due date, less any grace period provided, or if advanced or incurred by the Association or any other Owner pursuant to authorization contained in the Project Documents, commencing fifteen (15) days after repayment is demanded. Except as otherwise provided, the Association or any Owner(s) shall have the right, but not the obligation, to enforce, in any manner permitted by law or in equity, any and all of the provisions of this Declaration.

10.2.2 Enforcement by Declarant. Declarant shall have the right, but not the obligation, to enforce the provisions of this Declaration while it is still a record owner of at least one (1) Condominium Unit, including any decision made by the ACC, in any manner provided by law or in equity, and in any manner provided in this Declaration. The provisions of this Declaration are equitable servitudes and covenants running with the land, enforceable by Declarant against the Association and/or any Owner, tenant or occupant of any Condominium Unit in the Project. Declarant may elect to enforce any provision of this Declaration at any time against the Association or any Owner and no such action shall be construed to imply any obligation on the part of Declarant to enforce the same provision against another Owner.

10.2.3 Enforcement by the City. Notwithstanding any provision of this Declaration to the contrary, the City has the right, but not any duty or obligation, to enforce the terms and conditions of this Declaration in the City's absolute discretion.

10.2.4 No Forfeiture or Abridgement of Rights. The Association shall not cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of his/her Condominium for the Owner's failure to comply with the provisions of the Project Documents, including Association Rules, except by judgment of a court of law or a decision arising out of arbitration or on account of a foreclosure or sale under a power of sale for failure of the Owner to pay Assessments duly levied by the Association.

10.2.5 Violation of Law. The Association may treat any Owner's violation of any state, municipal or local law, ordinance or regulation which creates a nuisance to other Owners in the Project or to the Association or pertaining to the ownership, occupation or use of any property, Condominium Unit, Building, EUA or Association Property, within the Project is hereby declared to be a violation of the Project Documents and subject to any or all of the enforcement procedures set forth in this Declaration as long as the Association complies with the Notice and Hearing requirements.

10.2.6 Remedies Cumulative. Each remedy provided by this Declaration is cumulative and not exclusive.

10.2.7 No Waiver. The failure to enforce the provisions of any covenant, condition or restriction contained in this Declaration shall not constitute a waiver of any right to enforce any such provisions or any other provisions of this Declaration for the same or different violation thereof.

ARTICLE XI

BUDGETS AND FINANCIAL STATEMENTS

11.1 Preparation and Distribution of Budget. The Board shall annually prepare, adopt and distribute a Budget in accordance with the requirements of California Civil Code Sections 5300, 5305, 5320, and 5565. A summary of the Budget may be distributed in lieu of the entire Budget if the requirements set forth in California Civil Code Section 5300 are satisfied.

11.2 Annual Report. The Board shall annually prepare and distribute an annual report in accordance with the requirements of California Civil Code Sections 5300, 5305, 5310, 5320, 5565 and 5730.

11.3 Quarterly Reconciliation. Pursuant to California Civil Code Section 5500, at least quarterly, the Board shall: (a) cause a current reconciliation of the Association's Current Operating Account(s) to be made and review the same; (b) cause a current reconciliation of the Association's Reserve Account to be made and review the same; (c) review the current year's actual reserve revenues and expense compared to the current year's Budget; (d) review the most current account statements prepared by the financial institution where the Association has its Current Operating and Reserve Accounts; and (e) review an income and expense statement for the Association's Current Operating and Reserve Accounts.

11.4 Reserve Account Study. The Board shall (a) cause a study of the Reserve Account to be conducted by a person or entity not affiliated with the then-current manager for the Association, (b) review the study annually, and (c) consider and implement necessary adjustments to the Board's analysis of the Reserve Account requirements as a result of that review in compliance with the provisions of California Civil Code Section 5550.

11.5 Notice of Increased Assessments. The Board shall provide notice by first-class mail to the Owners of any increase in Regular Assessments or the levy of any Special Assessments in accordance with the provisions of California Civil Code Section 5615.

11.6 Statement of Outstanding Charges. Within ten (10) days of a written request by an Owner, the Association shall provide to the Owner a written statement which sets forth the amounts of delinquent Assessments, penalties, attorney's fees and other Additional Charges against that Owner's Condominium. A charge for the statement may be made by the Association, not to exceed the reasonable costs of preparation and reproduction of the statement.

11.7 Owner's Right to Conduct an Independent Audit. Each Owner shall have the right to conduct an independent audit of the Association's financial records at the Owner's sole cost and expense. The financial records that may be made available to the requesting Owner shall comply with California Civil Code Section 5200, *et seq.*

ARTICLE XII

INSURANCE, DESTRUCTION AND CONDEMNATION

12.1 Insurance. The Association shall maintain casualty, liability and other insurance on behalf of the Association as required by the provisions of this Declaration. The amount, term and coverage of any policy required hereunder (including the type of endorsements, the amount of the deductible, the named insureds, the loss payees, standard mortgage clauses, notices of changes or cancellations, and the insurance company rating) shall satisfy the minimum requirements for the Project by the FNMA, FHLMC, or any successor to either of those entities (with the exception of earthquake insurance which the Board shall have complete discretion to purchase). If the FNMA or FHLMC requirements conflict, the more stringent requirements shall be met. If FNMA and FHLMC do not impose requirements on any policy required hereunder, the term, amount and coverage of such policy(ies) shall be no less than that which is customary for similar policies on similar projects in the area. If the Association is unable to purchase a policy or if the Association believes that the cost of the policy is unreasonable, the Board shall call a special meeting of Members to determine what action to take.

12.2 General Provisions and Limitations. All insurance policies shall be subject to and, where applicable, shall contain the following provisions and limitations:

12.2.1 Underwriter. All policies (except earthquake insurance) shall be written with a company legally qualified to do business in the State of California and holding a “B” or better general policyholder’s rating and a “6” or better financial performance index rating as established by Best’s Insurance Reports, reinsured by a company described above or, if such a company is not available, the best rating possible or its equivalent.

12.2.2 Named Insured. Unless otherwise provided in this Section, the named insured shall be the Association or its authorized representative, as trustee for the Owners. However, all policies shall be for the benefit of Owners and their Mortgagees, as their interests may appear.

12.2.3 Authority to Negotiate. Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board or its authorized representative as trustee who shall have exclusive authority to negotiate losses under any policy provided property or liability insurance to perform such other functions as are necessary to accomplish this purpose; provided, however, that no Mortgagee having an interest in such losses may be prohibited from participating in any settlement negotiations related thereto.

12.2.4 Contribution. In no event shall the insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchased by Owners or their Mortgagees.

12.2.5 General Provisions. To the extent possible, the Board shall make every reasonable effort to secure insurance policies providing for the following:

(a) A waiver of subrogation by the insurer as to any claims against the Board, the manager, the Owners and their respective servants, agents and guests;

(b) That the policy will be primary, even if an Owner has other insurance which covers the same loss;

(c) That no policy may be canceled or substantially modified without at least ten (10) days prior written notice to the Association and to each First Mortgagee listed as a scheduled holder;

(d) An agreed amount endorsement, if the policy contains a coinsurance clause;

(e) A guaranteed replacement cost or replacement cost endorsement;
and

(f) An inflation guard endorsement.

12.2.6 Term. The period of each policy shall not exceed three (3) years. Any policy for a term greater than one (1) year must permit pro-rata cancellation by the insureds.

12.2.7 Deductible. The policy may contain a reasonable deductible and the amount of the deductible shall be added to the face amount of the policy in determining whether the insurance equals replacement cost.

12.3 Types of Coverage. Unless the Association determines otherwise pursuant to Section 12.1, the Board shall obtain at least the following insurance policies in the amounts specified:

12.3.1 Property Insurance. A Special Form or "All Risk" policy of property insurance for all insurable Association Property, and Building Common Area Improvements, including fixtures and building service equipment, against loss or damage, in an amount equal to the full replacement cost (without respect to depreciation) of the Association Property, and Building, and exclusive of land, foundations, excavation and other items normally excluded from coverage. The policy shall also cover permanent fixtures within the Condominium Unit originally installed by or on behalf of Declarant including upgrades and any equivalent replacements thereto, interior walls and doors, ceiling, floor and wall surface materials, cabinets, built-in appliances, HVAC systems and water heaters, but excluding personal property within the Condominium Unit and any additions or upgrades installed or constructed after completion of the Condominium Unit by Declarant to the extent that the replacement cost exceeds the replacement costs of the original Improvements as of the date immediately preceding the damage or destruction of the Improvement. A replacement cost endorsement shall be part of the policy.

12.3.2 Liability Insurance. A policy of commercial general liability insurance in an amount not less than Two Million Dollars (\$2,000,000.00) per occurrence covering Association Property, and Building Common Area, and all damage or injury caused by

the negligence of the Association, the Board or any of its agents or the Owners against any liability to the public or to any Owner incident to the use of or resulting from any accident or intentional or unintentional act of an Owner or a third party occurring in or about any Association Property or Building Common Area. If available, each policy shall contain a cross liability endorsement in which the rights of the named insured shall not be prejudiced with respect to any action by one named insured against another named insured.

12.3.3 Worker's Compensation. Worker's compensation insurance to the extent necessary to comply with all applicable laws of the State of California or the regulations of any governmental body or authority having jurisdiction over the Project.

12.3.4 Fidelity Bond. A fidelity bond naming the Board, the Owners, the Association and such other persons as the Board may designate as obligees, in an amount not less than a sum equal to three (3) months aggregate Assessments on all Condominium Units for which Assessments have commenced or equal to at least one-fourth (1/4) of the total sum budgeted for the Current Operating Account and Reserve Account for the current fiscal year, whichever amount is greater. The fidelity bond shall contain a waiver of any defense based on the exclusion of persons serving without compensation.

12.3.5 Directors and Officers. Directors and Officers Liability insurance covering individual liability of Directors and Officers for their negligent acts or omissions while acting in their capacities as Directors and Officers in an amount equal to at least the minimum amount specified in California Civil Code Section 5800(a)(4).

12.3.6 Other Insurance. Other types of insurance as the Board may determine from time to time to be necessary or beneficial to fully protect the interests of the Owners and Association.

12.4 Waiver of Subrogation. All insurance carried by the Association, or the Owners, shall contain provisions whereby the insurer waives rights of subrogation as to the Association, Directors, Officers, Declarant, Owners, occupants of Condominium Units, their family, guests, agents and employees.

12.5 Insurance by Owner. Each Owner shall obtain and maintain, at his/her expense, fire and casualty coverage as may be required by the Owner's individual Mortgagee, or if no Mortgagee encumbers a Condominium Unit, fire and casualty coverage as may be determined by the Board, with respect to damage or destruction to personal property, upgrades or additions to any fixtures or Improvements within Owner's Condominium Unit that is not covered by Section 12.3.1, above, provided, however, that no Owner shall be entitled to maintain insurance coverage in a manner so as to decrease the amount which the Association, on behalf of all Owners and their Mortgagees, may realize under any insurance policy which the Association may have in effect at any time. All such individually carried insurance shall also contain a waiver of subrogation rights by the carrier as to other Owners, the Association, Declarant and First Mortgagee of such Condominium Unit. It is recommended that Owners obtain general liability insurance for injuries or damage caused to any person or personal property or Improvements caused by Owner and loss assessment coverage in an amount as may be recommended by a

qualified consultant. If a Condominium is subject to an FHA-insured Mortgage, the Owner of said Condominium shall obtain an HO-6 or “walls-in” coverage policy. Each Owner is strongly urged to contact an insurance specialist to determine the appropriate type and amount of insurance including insurance to cover those portions of the Condominium Unit not covered by the policy held by the Association.

12.6 Release of Liability. Each Owner and the Association, each for itself and its property insurer, hereby releases the other Owners and the Association and their property insurers from and against any and all liabilities, claims, causes of action, obligations, demands, damages, losses, costs, or expenses, including attorney’s fees and costs, for damage to each other Owner’s or the Association’s property or loss of rents or profits of any Owner resulting from or in any way connected with any fire or other casualty whether or not such fire or other casualty shall have been caused by the negligence or the contributory negligence of the party being released or by any officer, agent, employee or associate of the party being released, this release being effective only to the extent that such damage or loss is covered by the property insurance which the releasing Owner is obligated hereunder to carry or carries in fact, or, if the releasing Owner is not carrying such insurance, then to the extent such damage or loss would be covered if the releasing Owner were carrying the insurance required hereby. This limited release extends to all liabilities, claims, causes of action, obligations, demands, damages, losses, costs or expenses, whether known or unknown, suspected or unsuspected, matured or unmatured, contingent or fixed, and liquidate or unliquidated, arising directly or indirectly out of the subject matter of the release. The Owners acknowledge that all of their rights under the appropriate sections of the California Civil Code are hereby expressly waived, and acknowledge that they have been advised that Section 1542 of the California Civil Code, which is waived by all Owners, reads as follows:

“A General Release does not extend to claims which the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

Each Owner, Occupant, Mortgagee, trustee or beneficiary, in accepting a conveyance of an interest in the Project shall be deemed to have acknowledged that it is a party to the foregoing release and to a waiver of its potential claims under the appropriate sections of the California Civil Code.

12.7 Annual Review of Policies. The Board shall review the adequacy of all insurance, including the amount of liability coverage and the amount of property insurance coverage, at least once a year. At least once every three (3) years, the review shall include a replacement cost appraisal of all insurable Association Property Improvements without respect to depreciation. The Board shall adjust the policies to provide the amounts and types of coverage and protection that are customarily carried by prudent owners of similar property in the area in which the Project is situated.

12.8 Payment of Premiums. Premiums on insurance maintained by the Association shall be a component of Common Expenses funded by Assessments levied by the Association.

12.9 Damage or Destruction.

12.9.1 Association. The Board shall have the duty to repair and reconstruct Association Property without the consent of Members and irrespective of the amount of available insurance proceeds or other funds, in all instances of partial damage destruction where the estimated cost of repair and reconstruction does not exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. If there is total damage or destruction to any Improvement, including Association Property, which is insured under an insurance policy held by the Association, the Association shall proceed with the filing and adjustment of all claims arising under the existing policies to restore, rebuild and reconstruct such Improvements to substantially the same condition and appearance in which it existed prior to the damage or destruction. The insurance proceeds shall be paid to and held by the Association.

(a) Bids. Whenever restoration, rebuilding or reconstruction is to be performed pursuant to this Section 12.9.1, the Board shall obtain such bids from responsible licensed contractors to restore the damaged Improvement as the Board deems reasonable, and the Board, on behalf of the Association, shall contract with the contractor whose bid the Board deems to be the most reasonable.

(b) Proceeds. The costs of restoring, rebuilding or reconstructing the damaged Improvements shall be funded pursuant to the provisions and in the priority established in this Section 12.9.1. A lower priority procedure shall be utilized only if the aggregate amount of funds then available pursuant to the procedures of higher priority as insufficient to restore the damaged Improvements. The priorities are as follows:

(i) Any and all insurance proceeds paid to the Association under existing insurance policies.

(ii) Any and all reserve account funds designated for the repair or replacement of the Improvement(s) that has been damaged or destroyed.

(iii) Any funds raised by a Special Assessment against all Owners levied by the Board up to the maximum amount permitted without approval of the Members as allowed by law.

(iv) Any funds raised by a Special Assessment against all Owners levied by the Board pursuant to a vote of the Members pursuant to Section 12.9.1(c) below.

(c) Additional Special Assessment. If the total funds available pursuant to Section 12.9.1(b) are insufficient to restore, rebuild or reconstruct the damaged or destroyed Improvement(s), then a special meeting of the Members shall be called for the purpose of voting whether to impose an additional Special Assessment and deciding upon the amount thereof. The Board shall then contract

for the restoration, rebuilding or reconstruction of the damaged Improvement(s) as described above, making use of all funds available to it.

12.9.2 Owners. If all or any portion of a Condominium Unit is damaged or destroyed by fire or other casualty and the loss is not covered by an insurance policy held by the Association, the Owner(s) of the Improvement shall either (a) restore the damaged Improvements or (b) remove all damaged Improvements, and leave the Condominium Unit in a clean and safe condition. Any restoration, rebuilding or reconstruction under subpart (a) above must be performed so that the Improvements are in substantially the same condition in which they existed prior to the damage or destruction, unless the Owner complies with the provisions of ARTICLE VI of this Declaration. Unless extended by the Board, the Owner must commence such work within one hundred twenty (120) days after the damage occurs and must complete the work within one (1) year thereafter.

12.10 Condemnation.

12.10.1 Condemnation Affecting Association Property.

(a) Sale in Lieu. If an action for condemnation of all or a portion of Association Property is proposed or threatened by an entity having the right to eminent domain, then on the unanimous written consent of all of the Owners and subject to the rights of all Mortgagees, if any, the Association Property, or a portion of it, may be sold by the Board. Subject to California Corporations Code Section 8724, the proceeds of the sale shall be distributed among the Condominiums on the same basis as their Regular Assessment obligations and between the Owners and their Mortgagees as their respective interests shall appear; provided, however, there shall be no reallocation of interests in the Association Property resulting from a partial condemnation or partial destruction of the Project that may be effected without approval of at least fifty-one percent (51%) of First Mortgagees.

(b) Award. If Association Property, or a portion of it, is not sold, but is instead taken, the judgment of condemnation shall by its terms apportion the award among the Owners and their respective Mortgagees. If the judgment of condemnation does not apportion the award, then the award shall be distributed as provided above.

12.10.2 Condemnation Affecting Building Common Area and Condominium Units. If an action for condemnation of all or a portion of, or otherwise affecting Building Common Area and Condominium Units is proposed or threatened, the Owner and the Mortgagees of the affected Building Common Area and Condominium Unit, as their respective interests shall appear, shall be entitled to the proceeds of any sale or award relating to the affected Building Common Area and Condominium Unit. If all Condominium Units in a Building are rendered irreparably uninhabitable as a result of such a taking, the Building Common Area shall be deemed deleted from the Project and the Owners and Mortgagees of the affected Building, upon receiving the award and any

portion of the reserve funds of the Association reserved for the Building Common Area, if any, shall be released from the applicability of the Project Documents and deemed divested of any interest in Association Property and Building Common Area. Any restoration or repair of the Building Common Area and/or Condominium Unit after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with the Declaration and the original plans and specifications unless approval of fifty-one percent (51%) of the First Mortgagees is obtained. Any election to terminate the Project after substantial destruction or a substantial taking in condemnation of the Project shall require the approval of fifty-one percent (51%) of First Mortgagees.

ARTICLE XIII

MORTGAGEE PROTECTIONS

13.1 Mortgages Permitted. Any Owner may encumber his/her Condominium with Mortgages.

13.2 Priority of Mortgage. Notwithstanding any other provision of this Declaration, it is hereby provided that a breach of any of the conditions contained in the Project Documents by any Owner or of any re-entry by reason of such breach, shall not defeat or render invalid the lien of any Mortgage or deed of trust made in good faith and for value as to said Condominium or any part thereof. Any lien which the Association may have on any Condominium in the Project for the payment of Common Expense Assessments attributable to such Condominium will be subordinate to the lien or equivalent security interest of any First Mortgage on the Condominium recorded prior to the date of recordation of a Notice.

13.3 Rights of Institutional Mortgagees. Any Institutional Mortgagee who obtains title to a Condominium pursuant to the remedies provided in the First Mortgage, including judicial foreclosure under a power of sale (but excluding voluntary conveyance to the First Mortgagee), shall not be liable for the Condominium's unpaid Regular Assessments, including Additional Charges, accrued prior to acquisition of title by the Institutional Mortgagee. The Institutional Mortgagee, as Owner of the Condominium shall be obligated to pay any and all future Assessments levied against the Condominium as long as the Institutional Mortgagee remains in title, including any Special Assessments levied by the Association to raise funds needed because of uncollected delinquent Assessments, as long as the Special Assessment is allocated among all of the Condominiums as provided in ARTICLE IX of this Declaration.

13.4 Rights of Mortgagees Upon Default of Mortgagor. In the event of a default by any Owner in any payment due under the terms of any Mortgage held by an Institutional Mortgagee encumbering a Condominium Unit, or the promissory note secured by the Mortgage, the Mortgagee or his or her representative, upon giving written notice to such defaulting Owner and the Association, and placing of record a notice of default, is hereby granted a proxy and may exercise the voting rights of such defaulting Owner attributable to such Condominium Unit at any regular or special meeting of the Association held during such time as such default may continue. Unless such written notice is provided to the defaulting Owner and the Association, any Mortgagee may appear (but cannot vote) at meetings of Members and the Board to draw

attention to violations of this Declaration that have not been corrected or made the subject of remedial proceedings or Reimbursement Assessments.

13.5 Payment of Taxes or Premiums by Mortgagees. Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against Association Property or Building, unless such taxes or charges are separately assessed against the Owners, in which case the rights of Mortgagees shall be governed by the provisions of their Mortgages. Mortgagees may, jointly or singly, also pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for Association Property or Building Common Area and Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of any Mortgagee which requests the same to be executed by the Association.

13.6 Effect of Breach. No breach of any provision of this Declaration shall invalidate the lien of any Mortgage made in good faith and for value, but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through foreclosure sale, trustee's sale, or otherwise.

13.7 Conflict with Declaration. To the extent that any of the provisions of this Declaration conflict with the rules and regulations of FNMA, FHA, VA and/or FHLMC for those Condominium Units in which these entities are either holders, insurers or guarantors of a First Mortgage on said Condominium Unit, the rules and regulations of FNMA, FHA, VA and/or FHLMC shall control.

13.8 Notice to Mortgagees. First Mortgagees are entitled to timely written notice from the Association of (a) any condemnation or casualty loss that affects a material portion of the Project or the Condominium Unit securing the Mortgage; (b) any sixty (60) day delinquency in the payment of Assessments or Additional Charges owed by the Owner of any Condominium Unit on which it holds the Mortgage if the delinquency is not cured within sixty (60) days after its due date; (c) a lapse, cancellation or material modification of any insurance policy maintained by the Association; (d) any proposal to take any action specified in this ARTICLE XIII, or Sections 12.9 and 12.10 of this Declaration; (e) any default by the Owner of a Condominium Unit that is subject to a First Mortgage held by the First Mortgagee in the performance of his or her obligations under this Declaration or the Bylaws which is not cured within sixty (60) days; and (f) any proposed action that requires the consent of a specified percentage of First Mortgagees.

13.9 Inspect Books and Records. Any Owner, First Mortgagee and insurers of any First Mortgage shall be entitled to inspect and copy the books, records, financial statements, and the Project Documents. The Association shall also make available to prospective purchasers of Condominium Units current copies of the Project Documents and the most recent annual audited financial statement, if any is prepared. The Association must provide an audited financial statement for the immediately preceding fiscal year if the First Mortgagee submits a written request for it. Said financial statement shall be furnished by the Association within a reasonable time following such request.

ARTICLE XIV

DISPUTE RESOLUTION PROCEDURES

14.1 In General. This ARTICLE XIV contains procedures concerning disputes between an Owner and the Association, as well as between (a) an Owner and/or the Association and (b) the Declarant, related to the Project or each other. Regarding disputes between an Owner and the Declarant, the procedures in this ARTICLE XIV do not replace or in any manner modify Declarant's customer or warranty service procedures, and Owners are encouraged to resolve disputes through those procedures prior to initiating any procedures hereunder. ***This ARTICLE XIV contains alternative dispute resolution procedures that include a waiver of a trial by a jury. Each Owner is advised to read these procedures carefully and consult with legal counsel if there are any questions.***

14.2 Disputes Between Association and Owners. All disputes, controversies, claims and demands between the Association and any Owner pertaining to the subject areas described in California Civil Code Section 5900 shall be governed by the procedures set forth in this Section 14.2.

14.2.1 Election of Statutory Procedures. Except as excused by law, prior to the initiation of a Request for Resolution or any legal proceeding, the Association and any Owner shall "meet and confer" using the procedures set forth in California Civil Code Section 5900, *et seq.*, as amended from time to time, and any successor statute.

14.2.2 Request for Resolution. If the Association and Owner are unable to resolve their dispute, controversy, claim or demand through the "meet and confer" procedures of California Civil Code Section 5900, *et seq.*, and to the extent applicable, prior to the initiation of any legal proceeding, the parties shall comply with the Request for Resolution procedures set forth at California Civil Code Section 5925, *et seq.*

14.2.3 Attorney's Fees and Costs. In any action, including arbitration and civil action, between the Association and any Owner (excluding Declarant) to enforce the Project Documents, the prevailing party shall be entitled to recover reasonable attorney's fees and costs, pursuant to California Civil Code Section 5975.

14.3 Disputes with Declarant – Alternative Dispute Resolution Procedures.

14.3.1 Claims and Legal Actions.

(a) Defined Terms. For purposes of this Section and this Declaration, the following terms shall have the meanings set forth below.

(i) "Claim" means any Construction Defect Claim or Other Claim.

(ii) "Claim Process" means the pre-litigation process for the resolution of Construction Defect Claims and Other Claims as described in Section 4.2 of the Master Dispute Resolution Declaration.

(iii) “Construction Defect Claim” means any claim, issue or controversy, whether or not the claim, issue or controversy is governed by or subject to the Right to Repair Act or is based upon common law, that arises from or is related in any way to any alleged deficiencies in construction, design, specifications, surveying, planning, supervision, testing, or observation of construction, including, but not limited to, any alleged violation of the standards set forth in California Civil Code Sections 895 to 897, inclusive of the Right to Repair Act.

(iv) “Dispute” means any claim, issue or controversy that arises from or is related in any way to (1) the Project, (2) any Condominium Unit, (3) the Association Property, (4) the Building Common Area, (5) the relationship between the Association and Declarant, and/or (6) the relationship between any Owner and Declarant, whether contractual, statutory or in tort, including, but not limited to, claims, issues or controversies that arise from or are related to the purchase, sale, condition, design, construction or materials used in construction of any portion of the Project or any Condominium Unit, AP, BCA, the agreement between Declarant and Owner to purchase the Condominium Unit or any related agreement, the Limited Warranty, disclosures, or alleged deficiencies in construction, design, specifications, surveying, planning, supervision, testing, or observation of construction related to Improvements within the Association Property, BCA or the Condominium Unit, including, but not limited to, the following: (A) a Construction Defect Claim; (B) an Other Claim; (C) any disagreement as to whether a Construction Defect Claim has been properly repaired; (D) any disagreement as to the value of repairing damages which are the subject of a Construction Defect Claim; (E) the cost of repairing damage caused by the repair efforts, the cost to remove or replace an improper repair, and any alleged relocation expenses, storage expenses, lost business income, investigation costs and all other fees and costs recoverable by contract or statute as a result of a Construction Defect Claim; and (F) any disagreement concerning the timeliness of Declarant’s performance or an Owner’s notification under the Limited Warranty or the Claim Process.

(v) “Other Claim” means a Dispute that does not involve a Construction Defect Claim.

(b) Dispute Resolution. Declarant has recorded a Master Dispute Resolution Declaration which sets forth the procedures that shall be used to resolve Disputes with Declarant or a Declarant Party for any Claims asserted by an Owner and/or the Association. For any Construction Defect Claims, the Owners and the Association shall comply with the Claims Process set forth in the Master Dispute Resolution Declaration. For any Construction Defect Claims not resolved through the Claims Process or any Other Claims, the Owners and the Association shall comply with the procedures set forth in the Master Dispute Resolution Declaration which require the Dispute to be mediated or arbitrated.

The Owners have also agreed to comply with the Claim Process under the Individual Dispute Resolution Agreement executed by the Owners and the Declarant which sets forth the same Claim Process as the Master Dispute Resolution Declaration. Each Owner and the Association acknowledge and agree that the terms and provisions set forth in the Master Dispute Resolution Declaration and any Individual Dispute Resolution Agreement are covenants running with the land which are binding upon the Owners and the Association and successor Owners. To the extent any Condominium is not encumbered by an Individual Dispute Resolution Agreement, the Owner, in accepting title to his or her Condominium, acknowledges and agrees that such Owner is still bound by all of the covenants and agreements set forth in the Master Dispute Resolution Declaration and the failure to record an Individual Dispute Resolution Agreement shall not effect in any way or invalidate the covenants and agreements set forth in the Master Dispute Resolution Declaration which are binding on each Owner and the Association.

(c) Relinquishment of Control. Notwithstanding any other provision in the Declaration or the Master Dispute Resolution Declaration to the contrary (including, without limitation, any provision which expressly or implicitly provides Declarant with control over Association decisions for any period of time), while the Declarant has majority control of the Board, Declarant hereby relinquishes control over the Association's ability to decide whether to initiate any Claim against Declarant or any of Declarant's agents or contractors ("**Declarant's Agents**"). No representative of Declarant on the Board shall vote on the initiation of any Claim including without limitation, any Construction Defect Claim under California Civil Code Section 895, *et seq.* of the Right to Repair Act, such that from and after the first election of directors in which Class A Members of the Association participate, Declarant shall have no control over the Association's ability to decide whether to initiate a Claim including without limitation, any Construction Defect Claim and in the event of such a vote, the affirmative vote of the two non-Declarant representatives on the Board shall be binding so long as a quorum of the Board is present at any meeting where such vote is taken.

(d) Pursuit of Claims. An Owner may only assert Limited Warranty claims pertaining to such Owner's Condominium. The Association and not the individual Owners shall have the power to pursue any Construction Defect Claims for the Association Property and/or Building Common Area. The Association and each Owner shall comply with the Claim Process in bringing any such Construction Defect Claims. Each Owner hereby agrees to delegate authority to the Association and assigns to the Association all power and authority as is necessary for any settlement or release of any Claim relating to the Association Property and/or Building Common Area.

(e) Notification to Prospective Buyers. In the event that the Association commences a Claim pursuant to the Master Dispute Resolution Declaration, or pursues any other legal action, all Owners must notify prospective

purchasers of such action or Claim and must provide such prospective purchasers with a copy of the notice produced by the Association and delivered to the Owners in accordance with Section 6000 of the California Civil Code and this Declaration.

(f) Members' Approval of Certain Actions. The Association shall not initiate or commence any lawsuit or other legal action unless the Association first obtains the consent of the Owners other than Declarant constituting a majority of the total voting power of the Association.

14.3.2 Conflict. In the event of any conflict between the provisions of this Section 14.3 and the Master Dispute Resolution Declaration, the terms of the Master Dispute Resolution Declaration shall control.

14.4 Exceptions; Admissibility of Communications; Statute of Limitations. The procedures set forth in Sections 14.2 and 14.3 above shall not apply to any action taken by the Association against Declarant for delinquent Assessments, which shall be governed by ARTICLE IX entitled "Assessments", or in any action involving any Bond, which shall be governed by the provisions of ARTICLE XV entitled "Enforcement of Bonded Obligations." Any and all communications by and between the parties, whether written or oral, which are delivered by the parties or their attorneys or other representatives in an effort to settle the claim shall be considered communications undertaken in the course of effecting a settlement or compromise and as such shall not be admissible as the admission on the part of any party or any representative or agent of the party to be utilized for any such purpose in any action or proceeding. Nothing herein shall be considered to reduce or extend any applicable statute of limitations.

14.5 Legal Proceeding Against Declarant. Not later than thirty (30) days prior to the filing of any legal proceeding by the Association against the Declarant for alleged damage to Association Property, Building Common Area, or other Improvements that the Association is obligated to Maintain, the Board shall provide written notice to each Member of the Association. This notice shall specify all of the following: (a) that a meeting will take place to discuss problems that may lead to the filing of a legal proceeding; (b) the options, including civil actions, that are available to address the problems; and, (c) the time and place of this meeting. In addition, the notice also shall specify the following: (i) a good faith estimate of the costs to repair the alleged defects prepared by a licensed contractor who has submitted a bid to perform the necessary repair work; (ii) how the necessary repairs will be funded; (iii) the name of the attorney whom the Association is contemplating retaining and an estimate of the attorney's fees, consultant's fees and any other costs to be incurred to prosecute such proceedings; (iv) how such fees and costs will be funded; (v) each Member's duty to disclose to prospective purchasers the alleged defects; and (vi) the potential impact the proceedings may have on the marketability and availability of financing and/or insurance for the Condominiums in the Project. Notwithstanding, if the Association has reason to believe that the applicable statute of limitations will expire before the Association files the legal proceeding, the Association may give the notice, as described above, within thirty (30) days after the filing of the legal proceeding.

ARTICLE XV

ENFORCEMENT OF BONDED OBLIGATIONS

15.1 Bonded Obligations. When Association Property Improvements have not been completed prior to the issuance of the original Final Public Report to which the Association Property is subject and the Association is the obligee under a Bond to secure performance of the commitment of Declarant to complete Association Property Improvements, the following provisions shall apply:

(a) Completed Improvements. If all Improvements identified in the planned construction statement appended to the Bond are covered by one or more recorded notices of completion, the Board shall execute all required documents by the surety to release the Bond.

(b) Improvements Not Completed. If a notice of completion has not been filed within sixty (60) days after the completion date specified for that Improvement in the planned construction statement appended to the Bond, the Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond. If the Association has given an extension in writing for the completion of any Association Property Improvements, the Board shall consider and vote on the aforesaid question if a notice of completion has not been filed within thirty (30) days after the expiration of the extension.

(c) Action by Members. If the Board fails or refuses to initiate action to enforce the bonded obligations, upon receipt of a petition for a special meeting signed by Members representing five percent (5%) or more of the total voting power of the Association, the Board shall call a special meeting of the Members to override the Board's failure or refusal to act. The special meeting shall be held not less than thirty-five (35) days or more than forty-five (45) days after receipt of the petition by the Board. At the special meeting, the affirmative vote of a majority of Members, excluding any votes of Declarant, shall be required to take action to enforce the obligations under the Bond and shall be deemed to be the decision of the Association. The Board shall thereafter implement the decision by initiating and pursuing appropriate action in the name of the Association.

15.2 Release of Bond. Upon satisfaction of Declarant's obligation to complete the Association Property Improvements, the Association shall acknowledge in writing that it approves the release of the Bond and shall execute any other documents that may be reasonably necessary to effect the release of the Bond. The Association may not condition its approval on the satisfaction of any condition other than completion of the Association Property Improvements. If the Association breaches any of the foregoing obligations, it will be liable to Declarant for any damages incurred thereby, including reasonable attorney's fees. Any dispute between Declarant and the Association shall be resolved in accordance with the provisions of the escrow instructions which accompany the Bond.

ARTICLE XVI

GENERAL PROVISIONS

16.1 Term. The covenants and restrictions of this Declaration shall run with and bind the Project, and shall inure to the benefit of and be binding on the Association and the Owners, their legal representatives, heirs, grantees, tenants, successors and assigns, subject to this Declaration, for a term of fifty (50) years from the date this Declaration is recorded. Thereafter, this Declaration shall be automatically extended for successive periods of (ten) 10 years. Notwithstanding anything to the contrary herein, this Declaration shall not expire or be terminated without the prior written consent of the City.

16.2 Owner's Compliance. Each Owner, tenant or occupant of a Condominium Unit shall comply with the provisions of this Declaration, and (to the extent they are not in conflict with the Declaration), the Project Documents, the decisions, resolutions and Association Rules of the Association or the Board, as lawfully amended from time to time. Failure to comply with any such provisions, decisions, or resolutions, shall be grounds for an action to recover all Additional Charges, for damages, for injunctive relief, or to enforce such provisions, decisions or resolutions by the Association. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in the Project Documents shall be deemed to be binding on all Owners, their successors and assigns.

16.3 Notices. Unless otherwise stated in this Declaration or as allowed by law, any notice permitted or required by the Project Documents may be delivered in any manner set forth in California Civil Code Sections 4040, 4045, 4050 and 4055. If delivery is by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the Condominium United States mail, first class or registered, postage prepaid, addressed to the person to be notified at the current address given by such person to the Secretary of the Board or addressed to the Condominium of such person if no address has been given to the Secretary.

16.4 Notice of Transfer. No later than fifteen (15) days after the sale or transfer of any Condominium whereby the transferee becomes the Owner thereof, the transferee shall notify the Association in writing of such sale or transfer. Such notice shall set forth: (a) the Condominium involved; (b) the name and address of the transferee and transferor if known; and (c) the date of sale. Unless and until such notice is given, the Association shall not be required to recognize the transferee for any purpose, and any action taken by the transferor as an Owner may be recognized by the Association. Prior to receipt of any such notification by the Association, any and all communications required or permitted to be given by the Association shall be deemed duly given and made to the transferee if duly and timely made and given to said transferor.

16.5 Delivery of Project Documents to Transferee. Prior to the transfer of title to a Condominium, the transferor shall provide to the prospective transferee a copy of the Project Documents, the documents identified in Section 14.3 of this Declaration, and such other documents and information as are required by California Civil Code Sections 4525 and 4535 at the close of escrow, buyer shall be deemed to have all of these documents and shall be bound by them.

16.6 Easements Reserved and Granted. Any easements appurtenant to a Condominium referred to in this Declaration shall be deemed reserved and/or granted by reference to this Declaration in a deed to said Condominium.

16.7 Termination of any Responsibilities of Declarant. If Declarant shall convey all of its right, title and interest in and to the Project to any partnership, individual or corporation, then and in such event, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership, individual or corporation shall be obligated to perform all such duties and obligations of the Declarant.

16.8 Mergers and Consolidations. To the extent permitted by law, the Association may participate in mergers and consolidations with other non-profit organizations organized for the same purposes as this Association, provided that any such merger or consolidation shall have the written consent of all of the Members or the assent by vote of two thirds ($\frac{2}{3}$) of the Members voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be given to all Members at least thirty (30) days in advance.

16.9 Limitation of Restriction on Declarant. Nothing in this Declaration shall be understood or construed to (a) prevent Declarant, its contractors, or subcontractors from doing on the Project or any Condominium Unit or parcel, whatever is reasonably necessary or advisable in connection with completing the Project as proposed; or, (b) prevent Declarant or its representatives from erecting, constructing and Maintaining on any part or parts of the Project, such structures as may be reasonable and necessary for the conduct of its business of completing the Project and establishing said Project as a residential community and disposing of the same in Condominiums by sale, lease, or otherwise; or, (c) prevent Declarant from conducting on any part of the Project its business of completing the Project and of establishing a plan of ownership and of disposing of said Project in Condominiums by sale, lease or otherwise; or, (d) prevent Declarant from Maintaining such sign or signs on any of the Project 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/her Condominium Unit, EUA or Association Property. The foregoing limitations of the application of the restrictions to Declarant shall terminate upon the sale of Declarant's entire interest in the Project, or ten (10) years after the close of the first escrow, whichever occurs earlier. Any action taken by Declarant pursuant to any provision of this ARTICLE XVI will not unreasonably interfere with the Owners' rights and use of the Project.

16.10 Assignment by Declarant. The rights of Declarant in this Declaration may be assigned by Declarant to any successor to all or any part of Declarant's interest in the Project, as developer, by an express assignment incorporated in a recorded deed that transfers any such interest to a successor or to a Mortgagee acquiring Declarant's interest in the Project by foreclosure or by deed in lieu of foreclosure.

16.11 Severability. Should any provision or portion hereof be declared invalid or in conflict with any law of the jurisdiction where this Project is located, the validity of all other provisions and portions hereof shall remain unaffected and in full force and effect.

16.12 Estoppel Certificate. Within ten (10) days of the mailing or delivery of a written request by any Owner, the Board shall provide the Owner with a written statement containing the following information: (i) whether to the knowledge of the Association, the Owner or the Owner's Condominium Unit is in violation of any of the provisions of the Project Documents; (ii) the amount of Regular and Special Assessments, including installment payments, paid by the Owner during the fiscal year the request is received; and, (iii) the amount of any Assessments levied against the Owner's Condominium that are unpaid as of the date of the statement, including any Additional Charges, late charges, interest, or cost of collection that as of the date of the statement are or may be made a lien against the Owner's Condominium as provided by the Project Documents.

16.13 Successor Statutes. Any reference in the Project Documents to a statute shall be deemed a reference to any amended or successor statute.

16.14 Conflict with Project Documents. If there is a conflict among or between the Project Documents, the provisions of this Declaration shall prevail; thereafter, priority shall be given to Project Documents in the following order: Articles, Bylaws, and Association Rules.

16.15 Exhibits. All exhibits attached to this Declaration are incorporated by this reference as though fully set forth herein.

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

16.17 Owner's Acknowledgement. Each Owner shall sign an acknowledgement that he/she has received and read the Project Documents.

16.18 Construction of Provisions. The provisions of this Declaration shall be liberally construed to effect its purpose of creating a uniform plan for the development and operation of a common interest development pursuant to the provisions of the Davis-Stirling Common Interest Development Act, California Civil Code Section 4000, *et seq.*, as may be amended or superseded.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

[Signature Page for Declaration]

IN WITNESS WHEREOF, the undersigned have executed this Declaration.

TRI POINTE HOMES, INC.,
a Delaware corporation,

Dated: _____, 201__

By: _____

Name: _____

Title: _____

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)
) ss.
COUNTY OF CONTRA COSTA)

On _____, 201__, before me, _____,
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
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

EXHIBIT A

MAINTENANCE RESPONSIBILITY CHART

The following represents a *non-exclusive* list of Improvements to be Maintained either by the Owner or Association. Its purpose is to describe Maintenance responsibilities over certain items where there may be some uncertainty as to the responsible maintaining party.

“Unit” refers to the Condominium Unit

“HOA” refers to the Association

<u>Improvement</u>	<u>Clean</u>	<u>Maintain</u>	<u>Repair</u>	<u>Replace</u>	<u>Paint</u>	<u>Resurface</u>	<u>Repave</u>
Interior doors and hardware (locks, hinges, etc.)	Owner	Owner	Owner	Owner	Owner	Owner	Owner
Unit entry door, hardware and weather stripping	Owner	Owner	Owner	Owner	HOA (exterior surface only)	N/A	N/A
Door bells	N/A	Owner	Owner	Owner	N/A	N/A	N/A
Garage doors, openers, hardware, and opening equipment	Owner	Owner	Owner	Owner	HOA (exterior surface only)	N/A	N/A
Windows	Owner	Owner	Owner	Owner	N/A	N/A	N/A
Window frame	N/A	HOA	HOA	HOA	N/A	N/A	N/A
Sliding glass doors	Owner	Owner	Owner	Owner	N/A	N/A	N/A
Sliding glass door frame	N/A	HOA	HOA	HOA	N/A	N/A	N/A
Exterior light fixtures on Unit’s meter	Owner	Owner	Owner	Owner	Owner	N/A	N/A
Unit entry light fixture, bulb and electricity	Owner	Owner	Owner	Owner	N/A	N/A	N/A
Exterior light fixtures on HOA’s meter	HOA	HOA	HOA	HOA	HOA	N/A	N/A
Address lights	HOA	HOA	HOA	HOA (fixture and light bulb)	N/A	N/A	N/A
Gas and electric meters serving a Unit	Owner	Owner	Owner	Owner	N/A	N/A	N/A
Water main	HOA	HOA	HOA	HOA	N/A	N/A	N/A

Improvement	Clean	Maintain	Repair	Replace	Paint	Resurface	Repave
Utility closet (for meters and other equipment)	HOA	HOA	HOA	HOA	HOA	N/A	N/A
Plumbing systems within and exclusively servicing a Unit (including pipes in interior walls)	N/A	Owner	Owner	Owner	N/A	N/A	N/A
Electrical systems within and exclusively servicing a Unit (including lines in interior walls)	N/A	Owner	Owner	Owner	N/A	N/A	N/A
Sub-meters for water	Owner	Owner	Owner	Owner	N/A	N/A	N/A
Solar panels, regulator, batteries, inverter and related equipment of PV System	Owner	Owner	Owner	Owner	N/A	N/A	N/A
Fire sprinkler heads, smoke detectors and carbon monoxide detectors	Owner	Owner	Owner	Owner	N/A	N/A	N/A
Back up battery for smoke detectors and carbon monoxide detectors	N/A	Owner	N/A	Owner	N/A	N/A	N/A
Front stoops and landings	Owner	Owner	HOA	HOA	N/A	N/A	N/A
Drainage systems within AP	HOA	HOA	HOA	HOA	N/A	N/A	N/A

Improvement	Clean	Maintain	Repair	Replace	Paint	Resurface	Repave
Utility facilities, equipment, lines, pipes, trenches, and conduits that exclusively service AP	HOA	HOA	HOA	HOA	N/A	N/A	N/A
Cluster mailboxes (excluding locks, keys and door)	HOA	HOA	HOA	HOA	HOA	N/A	N/A
Foundation	N/A	HOA	HOA	HOA	N/A	N/A	N/A
Perimeter walls and fences	HOA	HOA	HOA	HOA	HOA	N/A	N/A
Balcony, Entry and Patio waterproof membrane	Owner	Owner	HOA	HOA	HOA	N/A	N/A
Balcony, Entry and Patio structural components	N/A	HOA	HOA	HOA	HOA	N/A	N/A
HVAC system and pad	Owner	Owner	Owner	Owner	N/A	N/A	N/A
Roofs	HOA	HOA	HOA	HOA	N/A	N/A	N/A
Gutters and downspouts	HOA	HOA	HOA	HOA	HOA	N/A	N/A
Landscaping, entry walks around Buildings	HOA	HOA	HOA	HOA	N/A	N/A	N/A
Private streets, sidewalks, curbs, gutters, striping	HOA	HOA	HOA	HOA	N/A	HOA	HOA
Parkstrip landscape and irrigation on Cambridge Street	HOA	HOA	HOA	HOA	N/A	N/A	N/A

EXHIBIT B

FORM OF MASTER DISPUTE RESOLUTION DECLARATION

[See Attached]