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## Declaration of Covenants, Conditions and Restrictions

Mosaica 601

By

California Homestead Association, a California  
nonprofit public benefit corporation

**This Declaration contains alternative dispute resolution procedures. These procedures to not involve resolution by a jury trial. You are advised to read these procedures carefully and consult with legal counsel if you have any questions.**

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## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made as of this ~~25th~~ day of ~~JANUARY~~, 2009, by California Homestead Association, a California nonprofit public benefit corporation (the "Declarant").

### RECITALS

A. Declarant is the owner of that certain real property located in the City and County of San Francisco, state of California, more particularly described as Lot number A as shown on that certain map entitled "Final Map 4139 Alabama Street Housing" recorded on August 1, 2008 in Book 107 of Condominium Maps at Pages 67-77, in the Official Records of the City and County of San Francisco, also being Lot 5 of Assessor's Block 4021 and a Portion of Potrero Nuevo Block 16. (the "Property").

B. Declarant intends to establish on the Property a condominium project under the provisions of California Civil Code Sections 1350 et seq., the Davis-Stirling Common Interest Development Act. Each Owner of a Condominium will receive a separate interest in an individual Unit and an undivided interest in common in the Condominium Common Area.

C. Declarant intends by this Declaration to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of all of the Owners of Condominiums.

NOW, THEREFORE, Declarant hereby declares that the Property described above shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, sold and improved subject to the following declarations, limitations, covenants, conditions, restrictions, easements, servitudes, and liens, all of which are declared and agreed to be in furtherance of a plan for condominium ownership as described in the Davis-Stirling Common Interest Development Act, for the subdivision, improvement, protection, maintenance, and sale of condominiums within or upon the Property, and all of which are declared and agreed to be for the purpose of enhancing and protecting the value and attractiveness of the Property, and every part thereof. All of such limitations, covenants, conditions, restrictions, easements, servitudes, and liens shall run with the land, shall be binding upon and inure to the benefit of Declarant and its successors and assigns, and all parties having or acquiring any right, title or interest, in or to any part of the Property. Declarant further declares that it is the express intent that this Declaration satisfy the requirements of the Davis-Stirling Common Interest Development Act.

### ARTICLE I DEFINITIONS

Section 1.1 Definitions. Terms as used in this Declaration shall have the following meanings:

(a) "Annual Assessment" shall mean and refer to an Assessment against all Condominiums in the Development which is levied pursuant to Section 8.4.

(b) "Architectural Review Committee" shall mean the committee established and acting under Section 9.1.

(c) "Articles" shall mean the articles of incorporation of the Association and any amendments thereto.

(d) "Assessment" shall mean and refer to that portion of the cost of maintaining, improving, repairing, operating and managing the Development and the Joint Parcel Elements which is to be paid by each Condominium Owner as determined by the Association in accordance with this Declaration and the Reciprocal Easement and Maintenance Agreement, and includes both Annual Assessments and Special Assessments.

(e) "Association" shall mean the Mosaica 601 Homeowners Association, a California nonprofit mutual benefit corporation and its successors and assigns.

(f) "Association Common Area" shall mean all of the Development, excepting the individual Units and the Condominium Common Area, which shall be owned by the Association for the common use and enjoyment of all Owners in the Development as described on the Condominium Plan and in this Declaration.

(g) "Association Rules" shall mean the rules or regulations adopted by the Board from time to time pursuant to Section 5.5.

(h) "Board of Directors" or "Board" shall mean the Board of Directors of the Association.

(i) "Building" shall mean the structure containing Units and Association Common Area.

(j) "Bylaws" shall mean the Bylaws of the Association and any amendments thereto.

(k) "Common Area" when that term is used in this Declaration by itself, means the entire Development including the Association Common Area owned by the Association for the common use and enjoyment of all Owners and Condominium Common Area owned by the Owners as tenants in common, but excluding the Units.

(l) "Commercial Development" shall mean the commercial rental space to be developed by the Commercial Owner on the Commercial Parcel.

(m) "Commercial Owner" shall mean the owner of the Commercial Development from time to time.

(n) "Commercial Parcel" shall mean parcel 1, lot 2 as designated on the Parcel Map as the PDR Parcel.



(o) "Common Expenses" shall mean the actual and estimated expenses of the Association incurred in operating the Development including the Development's share of costs under the Reciprocal Easement and Maintenance Agreement and any reserve for such purposes required under the Reciprocal Easement and Maintenance Agreement or otherwise found and determined by the Board to be reasonable, together with all other sums designated Common Expenses by or pursuant to the Governing Documents.

(p) "Common Interest" shall mean the proportionate undivided interest in the Condominium Common Area which is appurtenant to each Unit as set forth in this Declaration and Exhibit B.

(q) "Condominium" shall mean an estate in real property as defined in California Civil Code Section 783 and Section 1351(f), consisting of: (a) an undivided interest as a tenant in common in the Condominium Common Area as set forth in Exhibit B; (b) a separate interest in fee in a Unit, and (c) the interests in other portions of the Development and in the Association described in this Declaration, in the Condominium Plan, or in the deed conveying the Condominium.

(r) "Condominium Common Area" shall mean the airspace within the Development as shown and depicted on the Condominium Plan as Condominium Common Area, owned in fee by the Owners, in equal undivided interest as tenants in common.

(s) "Condominium Plan" shall mean the recorded condominium plan prepared to comply with California Civil Code Section 1351(e) and Government Code Section 66247 in connection with the Development and any recorded amendments, entitled "Condominium Plan Mosaica 601, A 34 Unit Residential Condominium Project Being a Subdivision of Lot No. A as Shown on that Certain 'Final Map 4139 Alabama Street Housing' recorded on August 1, 2008 in Book 107 of Condominium Maps at Pages 67-77, in the Official Records of the City and County of San Francisco, Also Being Lot Five of Assessor's Block 4021 and a Portion of Potrero Nuevo Block 16.

(t) "County" shall mean the City and County of San Francisco.

(u) "Courtyard" shall mean the outdoor recreation area located on the podium level of the Building, a portion of which is part of the Development and a portion of which is part of the Family Development, open to use by the Family Owner, the Ownership Owner, the Senior Owner and their tenants, guests, invitees, licensees, or employees (except for those portions which are Exclusive Use Common Area), pursuant to the terms of the Reciprocal Easement and Maintenance Agreement.

(v) "Declarant" shall mean California Homestead Association, a California nonprofit public benefit corporation, and any successors or assign that expressly assume the rights and duties of the Declarant under this Declaration.

(w) "Declaration" shall mean this Declaration and its amendments, modifications and/or supplements. It is intended that this Declaration shall be a "declaration" as defined in Civil Code Section 1351(h), containing the information required by Civil Code Section 1353.

(x) "Development" shall mean the Property and all improvements constructed on the Property that have been made subject to this Declaration.

(y) "Environmental Restriction" shall mean the Covenant and Environmental Restriction by and between Declarant and the San Francisco Department of Public Health, recorded on November 13, 2008 as instrument number 2008-1678235-00 in the Official Records of the City and County of San Francisco, setting forth certain covenants and restrictions on the use of the Property.

(z) "Exterior Unit Stairwells" shall mean the stairways that provide access for the Units numbered 107, 108, and 109 on the Condominium Plan, which shall be Exclusive Use Common Area, designated "ES" on the Condominium Plan.

(aa) "Exclusive Use Common Area" shall mean those portions of the Association Common Area set aside for exclusive use of a Unit Owner or Owners, the boundaries or location of and limitations on which are described in Section 2.2(d).

(bb) "Family Development" shall mean the 93 units of rental housing to be developed by the Family Owner on the Family Parcel.

(cc) "Family Owner" shall mean the owner of the Family Development from time to time.

(dd) "Family Parcel" shall mean parcel 3, lot 4 designated on the Parcel Map as the Family Parcel.

(ee) "Garage" shall mean the parking structure and Utility Rooms located at the basement level of the Building, including ramps from grade level.

(ff) "Governing Documents" shall mean this Declaration, the Reciprocal Easement and Maintenance Agreement, the Articles, the Bylaws and the Association Rules.

(gg) "Joint Expense Budget" shall mean the written budget prepared by the Joint Maintenance Committee pursuant to the Reciprocal Easement and Maintenance Agreement, describing in reasonable detail the Joint Expenses that each Parcel Owner is expected to incur in each calendar year.

(hh) "Joint Expenses" shall mean all expenses that the Reciprocal Easement and Maintenance Agreement provide to be paid by each Parcel Owner according to its Joint Expense Share.

(ii) "Joint Expenses Assessment" shall mean the charge levied against the Development in the amount of the Joint Expense Share determined pursuant to the Reciprocal Easement and Maintenance Agreement.

(jj) "Joint Expense Share" shall mean each Parcel Owner's share of the Joint Expenses determined pursuant to the Reciprocal Easement and Maintenance Agreement.

(kk) "Joint Maintenance Committee" shall mean the committee comprised of one representative appointed by each Parcel Owner, and designated pursuant to the Reciprocal Easement and Maintenance Agreement as responsible for the coordination of the maintenance, repair, and/or replacement of Joint Parcel Elements.

(ll) "Joint Parcel Elements" shall mean (i) components of the Site Improvements that service all Parcels, such as the foundation and the structural walls, and (ii) components of any system in the Site Improvements that services more than one Parcel. Joint Parcel Elements include (without limitation) floors/ceilings which divide Parcels; expansion joints; internal fire exiting corridors; inter-Parcel life safety systems; security systems; those portions of reservoirs, tanks, pumps, motors, ducts, flues, chutes, conduits, pipes, plumbing, wires, and other utility installations contained within and immediately surrounded by or attached to any structure or space which is part of the Site Improvements and passes through more than one Parcel (as required to provide power, light, telephone, cable television, gas, domestic water, fire sprinkling water, irrigation water, sanitary sewerage, storm sewerage, drainage, heat and air conditioning services); other usual appurtenances; and any other Site Improvement element which is not located solely within one Parcel and which the Parcel Owners determine to be a Joint Parcel Element, except that any utility equipment which is part of a discrete and complete system servicing only one Parcel, or a part thereof, shall not be included. The Joint Parcel Elements shall be maintained as set forth in the Reciprocal Easement and Maintenance Agreement.

(mm) "Maintenance Manual" shall mean the documents attached to the Title 7 Master Declaration and Title 7 Individual Declaration delivered to the Association and each Owner by the Declarant on transfer of the Units and the Association Common Area, which establish procedures, practices, specifications, scopes and intervals for the Owner and Association to maintain the improvements for which an Owner and the Association respectively, is responsible.

(nn) "Member" shall mean a person entitled to membership in the Association as provided herein.

(oo) "Mortgage" shall mean a recorded mortgage or deed of trust encumbering a Condominium, which is given as security by an Owner for the payment of money.

(pp) "Mortgagee" shall mean either a mortgagee under a mortgage or the beneficiary under a deed of trust and any holder, governmental guarantor, or insurer of a mortgage. An "institutional" Mortgagee is a Mortgagee that is a bank, savings and loan association, mortgage company, credit union, 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, or any insurance company or pension or profit-sharing trust or any federal or state agency or instrumentality, including, without limitation, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration and the Veterans Administration, or any purchaser of a Mortgage originated by an institutional Mortgagee. Unless the Association is otherwise notified in writing, any third party servicer of a Mortgage having written authority to act on behalf of and to bind the Mortgagee shall be deemed to be the Mortgagee for purposes of requesting and giving required notices, consents, or approvals under this Declaration. A "first" Mortgage or "first" Mortgagee is one having priority as to all other Mortgages or holders of Mortgages encumbering the same Condominium or other portions of the Development. An "Eligible Mortgage Holder" is an institutional first Mortgagee who has submitted to the Association a written request for notice of matters to which an Eligible Mortgage Holder is entitled to receive notice under this Declaration or of any proposed action requiring the consent of a specified percentage of Eligible Mortgage Holders, including with such request the Mortgagee's name, address for notices, and the address of the Condominium to which its Mortgage (or guaranty or insurance) applies.

(qq) "Operating Budget" shall mean the pro-forma operating budget for the Development prepared by the Board pursuant to the Bylaws and distributed to each Owner prior to the beginning of each fiscal year of the Association. The Operating Budget shall include expenses from the Joint Expense Budget.

(rr) "Owner" shall mean each person or entity holding a record ownership interest in a Condominium. This shall include any Person having fee simple title to any Condominium, including Declarant, but shall exclude Persons or entities having any interest merely as security for the performance of an obligation. "Owner" also means "Member" whenever the context relates to an Owner as a Member of the Association.

(ss) "Parcels" shall mean the Family Parcel, Senior Parcel, Commercial Parcel, and the Property.

(tt) "Parcel Map" shall mean and refer to the map entitled "Four Lot Air Space Parcel Map 3382 of Alabama Street Housing" recorded on July 3, 2006 in Book 46 of Maps at Pages 174-183 in the Official Records of the City and County of San Francisco.

(uu) "Parcel Owners" shall mean the Commercial Owner, Family Owner, Senior Owner, the Declarant, and the Association upon transfer of the Development from the Declarant.

(vv) "Parking Space" shall mean the parking space located in the Garage and assigned to each Unit by Declarant upon initial sale, which is to be used for parking conventional vehicles as provided in Section 3.5.

(ww) "Patios" shall mean the outdoor areas adjacent to the Units numbered 103, 104, 105, and 106 on the Condominium Plan, which shall be Exclusive Use Common Area, and designated "PF" on the Condominium Plan.

(xx) "Person" shall mean and refer to a natural person, a corporation, a partnership, a trustee, or other legal entity.

(yy) "Property" shall mean that certain real property more particularly described in the attached Exhibit A.

(zz) "Reciprocal Easement and Maintenance Agreement" shall mean the First Amended and Restated Declaration of Covenants, Conditions and Restrictions Providing for Reciprocal Easements, Joint Use and Maintenance for Alabama Street Housing recorded November 13, 2006 as Series Number 2006-1282119 in the Official Records of the City and County of San Francisco setting forth joint easement rights and maintenance obligations among the Parcel Owners.

(aaa) "Reserves" shall mean that portion of Common Expenses collected as part of the Annual Assessments levied against the Condominiums in the Project allocated for contingencies and for deferred maintenance, repair, replacement, or additions to Major Components of the Building (as defined in the Bylaws), all as further set forth in the Bylaws.

(bbb) "Roof" shall mean the waterproof membrane on the uppermost surface of all parts of the Building that are exposed to the elements.

(ccc) "Senior Development" shall mean the approximately 24 units of rental housing for senior households to be developed by the Senior Owner on the Senior Parcel.

(ddd) "Senior Owner" shall mean the owner of the Senior Development from time to time.

(eee) "Senior Parcel" shall mean parcel 2, lot 3 designated on the Parcel Map as the Senior Parcel.

(fff) "Site Improvements" shall mean the Family Development, the Senior Development, the Commercial Development, the Development, and all other improvements that may be built on and fixtures that may be installed in the Parcels from time to time, including landscaping.

(ggg) "Special Assessment" shall mean an Assessment against all Condominiums in the Development which is levied pursuant to Section 8.5.

(hhh) "Title 7 Individual Declaration" shall mean an instrument signed by the Declarant and the initial Owner (other than a Declarant) of a Unit which shall be recorded against each Unit, setting forth certain maintenance, warranty, pre-litigation, and alternate dispute requirements pertaining to Division 2, Part 2, Title 7 of the California Civil Code (Sections 896. et seq.).

(iii) "Title 7 Master Declaration" shall mean an instrument signed by the Declarant which is recorded against the Development setting forth certain maintenance, warranty, pre-litigation, and alternate dispute requirements pertaining to Division 2, Part 2, Title 7 of the California Civil Code (Civil Code Sections 896, et. seq.).

(jjj) "Trash Rooms" shall mean the area used from time to time by the Owners to store and dispose of trash generated by the Development pursuant to Section 3.10.

(kkk) "Unit" shall mean shall the elements of a Condominium which are not owned in common with the Owners of other Condominiums or by the Association, the boundaries of which are shown and more particularly described in the Condominium Plan, deeds conveying Condominiums, and this Declaration.

(lll) "Utility Rooms" shall mean the Gas Meter Room, Fire Pump Room, Water Booster Room, Elevator Mechanical Room, Trash Room, and Janitor's room located on the Garage level of the Development.

EXHIBIT A: Legal Description of Property

EXHIBIT B: Undivided Common Interests

## ARTICLE 2 DESCRIPTION OF DEVELOPMENT

Section 2.1 Type of Development. This Development is a condominium project within the meaning of California Civil Code Section 1351(f) and shall consist of thirty-four (34) residential Units, and the Association Common Area and Condominium Common Area.

Section 2.2 Division of the Development. The Development is divided into the following:

(a) Units. Each of the Units as separately shown, numbered and designated on the Condominium Plan consists of the space bounded by and contained within the interior unfinished surfaces of the perimeter walls, floors, ceilings, windows, window frames, doors, and door frames of each Unit. In addition, each Unit includes the utility installations located within its boundaries that the Owner has exclusive use of, which are part of a discrete and complete system intended to serve only such Unit. The Unit does not include, however, any bearing wall or other structural member necessary to the support or adequate rigidity of any portion of the Building, the Association Common Area or any other Unit, except that any finished surface of such bearing wall or structural member which faces the Unit shall be a part of the Unit. Each Unit includes both the portions of the Building so described and the airspace so encompassed. The Unit does not include those areas that are defined as Condominium Common Area or as Association Common Area. Each Unit is subject to such encroachments as are contained in the Building, whether the same now exist or may be later caused or created. In interpreting deeds and the Condominium Plan, the existing physical boundaries of a Unit, or of a Unit rebuilt in substantial accordance with the original plans, shall be conclusively presumed to be its

boundaries, rather than the description expressed in the deed or Condominium Plan, regardless of minor variances between boundaries shown on the Condominium Plan or in the deed and those of the Building, and regardless of settling or lateral movement of the Building. Whenever reference to a Unit is made in this Declaration, in any Condominium Plan, in any deed, or elsewhere, it shall be assumed that the reference is made to the Unit as a whole, including each of its component elements.

(b) Condominium Common Area. The Condominium Common Area shall consist of that portion of the Development designated as such on the Condominium Plan. Each Owner of a Unit located in the Development shall have, as appurtenant to his Unit, a Common Interest in the Condominium Common Area equal to the percentage of undivided interest shown on Exhibit B to this Declaration. Unless permitted in certain circumstances elsewhere in this Declaration, the Common Interest appurtenant to each Unit is declared to be permanent in character and cannot be altered without the consent of all of the Owners affected, as expressed in an amended Declaration. Such Common Interest cannot be separated from the Unit to which it is appurtenant, except by deed to correct a technical or administrative error.

(c) Association Common Area. The Association Common Area shall consist of the remaining portion of the Development, and shall include, without limitation, to the extent now or later included within the Development: the Courtyard, the Roof, the Garage, light wells, breezeways, stairways (except stairs within a Unit), roofs, foundations; elevators; elevator shafts; lobbies; bearing walls; exterior walls; columns; beams; sub-floors; unfinished floors; hallways which provide access to Units and other Association Common Area; life safety equipment (not located within a Unit); those portions of reservoirs, tanks, pumps, motors, ducts, flues, chutes, conduits, pipes, plumbing, wires and other utility installations lying within the Development or contained within and immediately surrounded by that portion of any structure or space which is defined herein as a part of the Association Common Area (as required to provide power, light, telephone, cable television, gas, water, sewage, drainage, heat and air conditioning service), except that air heating, air conditioning and water heating equipment and outlets thereof, which are a part of a discrete and complete system serving only one Unit shall be a part of such Unit; sprinklers, sprinkler pipes, and sprinkler heads which protrude into the airspace of a Unit; and any central television antenna and/or cable system. A number of the above-described Association Common Area elements are also Joint Parcel Elements as described in the Reciprocal Easement and Maintenance Agreement. Provisions for maintenance, repair and replacement of such Joint Parcel Elements are set forth in the Reciprocal Easement and Maintenance Agreement. Subject to this Declaration and the Association Rules, each Owner may have access to and use all Association Common Area in accordance with the purposes for which it is intended so long as such use does not hinder the exercise of or encroach upon the rights of any other Owners, subject further to the rights of each Owner in any Exclusive Use Common Area, and as long as such use is consistent with the Reciprocal Easement and Maintenance Agreement. Ownership of the Association Common Area shall be conveyed to the Association on or before the close of escrow of the sale of the first Condominium.

(d) Exclusive Use Common Area. Portions of the Association Common Area, referred to as "Exclusive Use Common Area", are hereby set aside and allocated for the exclusive use of one or more, but fewer than all of the Owners of Units. Said Exclusive Use

Common Area shall consist of an assignment or easement for the exclusive use of such areas including the Patios and Exterior Unit Stairwells, as may be specifically designated on the Condominium Plan, deed conveying the Condominium Unit, this Declaration, or grant or assignment by Declarant or the Association, as appurtenant to any particular Unit. The Exclusive Use Common Area shall also include the following portions of Association Common Area designated to serve an Owner's Unit exclusively: shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, exterior doors, door frames and hardware incident thereto, exterior screens and windows, internal and exterior telephone and telecommunications wiring designed to serve a single Unit, and any exterior treatment installed by an Owner pursuant to Association prior approval. In addition to those areas described herein, the Board, acting on behalf of all Owners, may grant for a specific purpose or use to one (1) or more Owners, in the name of all Owners as their attorney-in-fact (or in the name of the Association for any property to which the Association holds title), an assignment to or easement on specified Association Common Area as Exclusive Use Common Area for any purpose not inconsistent with the rights of other Owners under this Declaration.

**Section 2.3 Owner's Non-Exclusive Easement Rights.** Every Owner of a Condominium shall have a nonexclusive right to use, enjoy, and for ingress, egress and support appurtenant to the Unit or Condominium in, to and throughout the Association Common Area, and in, to and throughout the Condominium Common Area in which the Owner owns a Common Interest, and any improvements thereon, subject to the Association Rules established by the Board, and the other covenants, conditions, servitudes, and restrictions set forth in this Declaration including the rights of each Owner in any Exclusive Use Common Area.

**Section 2.4 Ownership of Condominium.** Ownership of each Condominium in the Development shall include: (i) a Unit; (ii) a Common Interest in the Condominium Common Area as set forth in Exhibit B; (iii) a membership in the Association; and (iv) any exclusive or non-exclusive easements, servitudes, or rights of use appurtenant to such Condominium over the Common Area or other Units as described in this Declaration, the Condominium Plan, deed to the Condominium, or in any other appropriate public record.

**Section 2.5 Property Rights Subject to Governing Documents.** All Owners, including Declarant as an Owner of unsold Condominiums, shall have and enjoy all the rights and shall be subject to all the duties of an Owner under the Governing Documents and Board resolutions.

**Section 2.6 Minor Encroachments.** If any portion of the Common Area landscaping or improvements, including, without limitation, any structure, fence, any related foundation, footings, pilasters, or posts encroaches on any Unit or if any portion of a Unit encroaches on the Common Area, regardless of the cause, a valid easement or right of use exists for such encroachment and for the maintenance of it as long as it remains, and all Units and the Common Area are made subject to such easements or rights of use. However, in no event shall a valid easement or right of use exist in favor of an Owner if the encroachment occurred by the Owner's willful misconduct or resulted from the Owner's noncompliance with any provision of this Declaration. If any structure is partially or totally destroyed and then rebuilt and any encroachment on the Common Area or any Unit results, a valid easement or right of use exists



for such encroachment and for the maintenance of it as long as it remains, and all Units and the Common Area are made subject to such easement and rights of use.

### ARTICLE 3 USE RESTRICTIONS

Section 3.1 Residential Use. Each Unit shall be used for residential purposes only, and for no other purpose, except that Declarant, or any successor Owner of the Condominium, may conduct office uses incidental to and not inconsistent with such residential use, such as an "office-in-the-home", provided that the primary use of the Unit is as a residence, no advertising or signage is used in any manner in connection with the office use, and no customers, clients or patients enter the Unit on any regular basis, and except that Declarant, its successors or assigns, may use the Common Area and/or a Unit(s) owned by Declarant for a model Unit site, design center, or display and sales office which promotes the Development until the last Unit is sold, all as more particularly set forth herein. Except as provided in the preceding sentence or as otherwise contemplated in this Declaration, no part of the Development shall be used or caused, allowed, or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storage, vending, or other nonresidential purpose. The Board shall have the authority to adopt Association Rules regarding the use of offices within the Development in order to maintain the residential characteristics in the Development.

Section 3.2 Rental Limitations and Rental Application Procedure. The Owners desire to preserve the Development primarily as an owner-occupied Development in order to: (i) retain and enhance the ability of Owners or prospective Owners to obtain financing for their condominiums; (ii) provide for a stable community of primarily owner-occupied Condominiums; (iii) protect the values of their Condominiums through occupancy by Persons with an ownership interest in the Condominiums; (iv) ensure active participation in the affairs of the Association by Persons with an ownership interest in the Development; and (v) retain a reasonable amount of Condominiums that may be rented at any one time. In order to achieve this, the Condominiums are subject to each of the following rental limitations and rental approval procedures.

(a) Maximum Number of Rental Condominiums. Except as otherwise authorized herein, not more than 11 Condominiums at any particular time shall be rented or occupied by anyone other than an Owner, members of the Owner's immediate family, or temporary guests. For purposes herein a "temporary guests" is a guest of the Owner who does not occupy the condominium for more than 30 days in any 12 consecutive month period. Any Owner that has represented to the Declarant or Declarant's agent in writing as a part of the sales process that the Owner intends to occupy the Condominium as the Owner's primary residence for a specified period of time is not eligible to rent the Owner's Condominium or to apply for the right to rent under the application procedures set forth below until two years after the date Declarant transferred title to the Owner.

(b) Rental Application Procedures. Any Owner desiring to rent his or her Condominium shall submit an application in writing to the Board which shall state the proposed rental term; the number of tenants; and such other information which the Board may reasonably

require. The Board may disapprove the application only if the rental will increase the number of Condominium Units rented within the Development to more than 11 Condominiums. The Board shall process applications on a first-come, first-serve basis. The application shall be deemed received on the date and at the time the application is received by the Person designated by the Board for purposes of receiving the applications unless the Board adopts another procedure for confirming the date and time of receipt. The Board may approve the application even if it would increase the rentals to more than 11 Condominiums if it grants a waiver as described below. The decision of the Board pursuant to this section in approving or disapproving an application of an Owner to rent his or her Condominium shall be final and conclusive.

(c) Waiting List. If 11 or more Condominiums are rented, the Board shall establish and maintain a priority list of Owners who submitted written requests to rent but could not rent because of the rental limitation. A Condominium that has received a waiver shall be retained on the priority list. At such time that the number of Condominiums rented in the Development is less than 11, the Board shall authorize the Owner who submitted the earliest application to rent his or her Condominium. If this Owner's Condominium is not occupied by a tenant within 90 days of the Owner's receipt of rental authorization or such later date as may be authorized by the Board, the authorization shall be revoked automatically, the Condominium shall be placed at the end of the priority list, and the Board shall grant the rental right to the next Owner on the priority list. Any Owner who is authorized to rent his or her Condominium may periodically renew rental agreements with existing tenants or execute new rental agreements with new tenants provided that, if any Condominium is not occupied by a tenant for a period in excess of 90 days and there are 11 or more Condominiums that are rented, the right to rent shall terminate automatically and the Owner must reapply for a rental right in accordance with the procedures described herein.

(d) Waivers. The Board from time to time may grant waivers to some or all of the provisions of this section either (i) in cases of hardship or (ii) for a limited term not to exceed one year upon written request of an Owner representing that he or she will retake possession and occupancy of the Condominium as a resident thereof upon the expiration of such limited term and subject to such other conditions as the Board may determine. The Board shall have the right to review and approve the rental agreement for such limited term. Waivers as authorized by the Board may, at the Board's discretion, take precedence over the priority list established herein. The decision of the Board to approve or disapprove a waiver request shall be final and conclusive. The grant of a waiver in a particular situation shall not in any manner bind the Board to grant a waiver in any other similar situation. Rental Condominiums pursuant to a waiver shall not count against the maximum number of rental Condominiums authorized herein.

(e) Enforcement. The Association shall have full power and authority to enforce the restrictions set forth in this Section, including but not limited, recovery of monetary damages and the receipt of appropriate equitable relief to require any Owner that violates the provisions of this Section to take the appropriate steps to evict the tenant. Each Owner acknowledges and agrees that monetary damages may not be sufficient to adequately compensate the Association and the other Owners for the damages caused by the Owner's violation of this Section. The provisions of this Section have priority over any rental agreements which agreements are subject to this Section. However the foregoing does not relieve the Owner for

any liability to the Owner's tenant for any breach of the rental agreement with the tenant, including any damages suffered by the tenant if the tenant must vacate before the end of the term set forth in the rental agreement because the tenant's occupancy violates the provisions of this Section.

(f) Renting. Subject to the foregoing restriction, the Owner of the Condominium shall have the right to rent his Condominium, provided that the lease (i) is for the entire Condominium (the taking in of a roommate by an Owner shall not be a violation of this clause); (ii) is in writing; (iii) is not for transient or hotel purposes which shall be defined as (1) rental for any period less than thirty (30) days, or (2), any rental if the occupants of the Unit are provided customary hotel services such as room service for food and beverage, maid services, or the furnishing of laundry and linen, and subject to a fee; and (iv) is expressly made subject to the Governing Documents, and further provides that the breach by the tenant of such covenants, conditions, restrictions, limitations, uses, or rules shall also be a breach of the lease (provided, however, and any breach of any provision in the Governing Documents shall be a breach of the lease agreement, regardless of whether it so provides in the lease agreement). If any tenant breaches any restriction contained in the Governing Documents, the Owner, on demand from the Association, immediately shall take such steps as may be necessary to correct the breach, including, if necessary, eviction of the tenant. The Association and each Owner shall have a right of action directly against any lessee or tenant of an Owner, as well as against the Owner, for nonperformance of any provision of this Declaration to the same extent that such right of action exists against such Owner.

In the event an Owner does lease his Condominium as herein provided, he shall, within three (3) days of execution of the lease, provide the Board or the manager with the following:

- a. Name of each occupant;
- b. Current address and telephone of the Owner;
- c. Duration of the lease;
- d. A statement by the Owner that the tenant has received a copy of the Declaration and any amendment thereto, the Articles, the Bylaws, the Reciprocal Easement and Maintenance Agreement, the Association Rules and that such tenant has been advised of any obligation he may have thereunder; and
- e. A statement by the Owner that the lease does not relieve the Owner of his obligation to pay each and every Annual Assessment and Special Assessment to the Association.

**Section 3.3 Provisions Restricting Delegation of Use**. An Owner's family members and guests and any such persons as may be permitted by the Association Rules may use and enjoy any Common Area improvements. All such use shall be subject to restrictions contained in this Declaration, and the Association Rules. If an Owner leases his or her Condominium, the Owner, members of the Owner's household, and the Owner's guest shall not be entitled to use any Common Area improvements other than such use as is directly related to the Owner's rights and duties as a landlord. Such rights may be enjoyed by the tenant and the tenant's family

members and guests during the term of the lease agreement. Any Owner who leases his or her Condominium must comply with the requirements of Section 3.2.

Section 3.4 Compliance with Law; Nuisance. No Owner shall do or permit anything to be done in the Development that: (i) violates any law, ordinance, statute, rule or regulation of any local, county, state or federal agency; (ii) is an unreasonable annoyance, inconvenience or nuisance or that unreasonably interferes with the use or quiet enjoyment of occupants of the Units; (iii) creates conditions that are hazardous, noxious or offensive through the emission of odor, fumes, smoke, cinders, dust, gas, vibration, glare, refuse, water-carried waste, or excessive noise; (iv) in any manner increases the rate of insurance for the Development, causes an insurance policy to be cancelled, or causes a refusal to renew an insurance policy; or (v) impairs the structural integrity or mechanical systems of the Building. No doorways, driveways, walkways, or streets shall be obstructed in any manner that would interfere with their use for ingress or egress in the event of a fire, earthquake or other emergency.

Section 3.5 Vehicle and Parking Restrictions.

(a) Parking Spaces. Appurtenant to each Unit shall be an easement in favor of the Unit Owner for the use of one (1) Parking Space. Such Parking Space shall be considered Exclusive Use Common Area. Only one (1) Permitted Vehicle (as defined below) per Unit shall be parked in the Garage at any one time in that Unit's Parking Space. The Declarant shall initially designate the Parking Spaces upon sale of the Units. The Board may from time to time re-assign the exclusive right to use a particular Parking Space between Units. Reassignment of spaces shall be based upon the mutual consent of the Unit Owners whose assignments are to be changed, and failing such consent, shall follow notice to such Owners and hearing before the Board. Notwithstanding the above, if a Unit has a Parking Space which is handicapped accessible, the Board may require such Owner to exchange such Parking Space for a standard, non-accessible space if another Unit Owner makes a valid reasonable accommodations request for a handicapped accessible space.

(b) Use of Parking Spaces. No Parking Space may be converted into any use that would prevent its use as a parking space. The Garage shall be used only for parking purposes and neither the occupant of a Unit nor the Association shall store equipment or other materials in any of the Parking Spaces, or use the Garage for the repair, rebuilding, servicing or repainting of vehicles. Cars that are non-operable are not permitted to be stored on the Property. The Association may establish Association Rules from time to time governing the use of the Garage.

(c) Permitted Vehicles. Unit occupants shall park only "Permitted Vehicles" in the Parking Spaces. "Permitted Vehicles" shall mean appropriately and currently licensed passenger automobiles or vans, motorcycles, and trucks having a carrying capacity of ½ ton or less. Except for commercial vehicles or construction equipment that are providing services to a Unit or to the Association, Permitted Vehicles shall not include any commercial vehicle, construction equipment, trailer, camper, mobile home, inoperable vehicles, boats.

(d) Use by Declarant. Notwithstanding the foregoing, as long as Declarant has the right to use Units or Common Area for models, sales office, and construction offices, the Declarant shall have the right to use any unassigned spaces in the Garage for sales or construction activity parking and other uses incidental to sales and construction activities provided such use does not unreasonably interfere with any Unit occupant's use of the Garage.

(e) Association's Right of Removal. Any officer of the Association or other person designated by the Board may authorize the removal of any vehicle or equipment parked or located in the Development that is in violation of this Declaration, the Association Rules, or the California Vehicle Code. The Association shall comply with the requirements set forth in California Vehicle Code Section 22658 as amended to the extent applicable. Such removal shall be at the expense of the owner of the vehicle or equipment.

Section 3.6 Courtyard. The Courtyard shall be used for the benefit of all Owners and their tenants and guests (except for those areas designated as Exclusive Use Common Area on the Condominium Plan), subject to the Association Rules and the Reciprocal Easement and Maintenance Agreement.

Section 3.7 Animals. The Board may establish Association Rules regulating household pets, including, but not limited to, Association Rules regulating the type and number of household pets that may be retained in any Unit, the use of the Common Area by household pets, and the temporary or permanent removal from the Development of any pet considered a nuisance or a danger to persons or property. Any Association Rules related to pets shall comply with California Civil Code Section 1360.5 or any successor statute related to pets in common interest developments. In no event shall any Owner authorize, bring or keep within the Development: (a) any pit bull, rottweiler, Doberman pinscher, mastiff, canaria presa, or any other breed known as a "fighting breed" or any dog being a mix thereof; or (b) any snakes, pigs, large lizards, spiders, rats or other vermin.

Each person bringing or keeping a pet within the Development shall be solely responsible for the conduct of such pet or animal and shall be responsible for seeing that the pet or other animal does not endanger health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Units. The Association, its Board, officers, employees and agents shall have no liability to any Owners, their family members, guests, invitees, tenants for any damage or injury to persons or property caused by any pet or other animal. No pets or other animals shall be permitted in the Common Area except as controlled on a leash or similar device held by its owner or his agent. No pet or other animal shall be left chained or otherwise tethered outdoors within the Development. Pet or other animal owners shall be responsible for the prompt removal and disposal of animal waste deposited by their animals in the Development.

The Board, after notice and a hearing, may require the permanent removal of any animal that the Board determines to be a danger to the health and safety of any occupant in the Development or otherwise to be a nuisance within the Development. The Board may find that an animal is a nuisance if the animal or its owner continues to violate the Association Rules regulating pets after receipt by the Owner of written demand from the Board to comply with the Association Rules.

Section 3.8 Television or Radio Equipment. No television, video or radio poles, antennae, satellite dishes, cables or other transmission and/or reception fixtures or personal property (individually and collectively the "Antenna Equipment") shall be installed or maintained on any Unit or Common Area except as follows:

(a) Antenna Equipment that is forty (40) inches or less in length or diameter or diagonal measurement, provided that the location, color and screening requirements shall be in accordance with any guidelines imposed by the Architectural Review Committee, which guidelines shall comply with applicable State and federal laws regulating restrictions on Antenna Equipment; and

(b) Antenna Equipment not covered under subparagraph (a) above, the installation of which is approved in advance by the Architectural Review Committee in accordance with the procedures described in Article 9.

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 Development.

Section 3.9 Signs. No sign of any kind shall be displayed from any Unit that is visible by the public or from any other portion of the Development except the following:

(a) any sign of a directional nature established by the Declarant or the Association;

(b) any sign that may be required for legal proceedings or notices;

(c) any residential identification sign that does not exceed one hundred forty-four (144) square inches;

(d) any sign of customary and reasonable dimensions and of a professional and dignified type appearance advertising the Unit for sale or for lease, provided that no more than one such sign is used, and the sign is displayed in the Unit or other area designated by the Board;

(e) any noncommercial sign, poster, flag or banner otherwise permitted by law, except that under no circumstances may a noncommercial sign or poster exceed nine (9) square feet or a noncommercial flag or banner exceed fifteen (15) square feet;

(f) Any sign or other advertising devices or structures used by Declarant in connection with the advertising and sale of the Development and the Condominiums; or

(g) any sign approved by the Board either on an individual basis or pursuant to Association Rules adopted by the Board.

Section 3.10 Trash Removal. Each Owner shall be responsible for the removal of all the trash and refuse from that Owner's Unit to the Trash Rooms designated within the Development for trash collection. No rubbish or debris or any kind shall be placed or permitted to accumulate within or adjacent to any Unit. The Board may adopt Association Rules regulating the Trash Rooms. The Association shall be responsible for the maintenance of the Trash Rooms.

Section 3.11 Commonly-Metered Utilities. The Board may adopt Association Rules regulating the use of any commonly-metered utilities that are paid by the Association, and may impose reasonable charges for the individual use thereof.

Section 3.12 No Hazardous Substances. No Owner (or any other occupant of a Unit) shall cause or allow any Hazardous Substances to be used, stored, generated or disposed of (collectively "Used") on, in or under the Development as the case may be, except for those Hazardous Substances which may lawfully be Used in the ordinary course of use of residential property, and then only to the extent no applicable local, state or federal laws are violated in so doing.

As used herein, "Hazardous Substance" means any substance that is toxic, radioactive, ignitable, flammable, explosive, reactive or corrosive and that is, in the form, quantity, condition and location then found upon or under the Development, regulated by any governmental authority. "Hazardous Substance" includes any and all materials and substances that are defined as "hazardous waste", "hazardous chemical", "pollutant", "contaminant" or "hazardous substance", in the form, quantity, condition and location then found upon the Development, pursuant to any applicable local, state or federal law. "Hazardous Substance" includes asbestos, polychlorinated biphenyls and petroleum.

Section 3.13 Segregated Real Property Taxes. Each Owner shall be obligated to pay any taxes or assessments assessed by the assessor of the County against his or her Condominium and against his or her personal property. Until such time as real property taxes against the Property are segregated so that real property taxes are assessed against each Condominium (in addition to any supplemental tax assessments levied against any Condominium as a result of the transfer of title from Declarant to the first purchaser), the non-segregated tax amount shall be allocated among all the Condominiums in accordance with an allocation method as may be selected by Declarant or by the Board. Unless paid directly by the Owner, each Owner shall pay the Owner's allocable share to the Association in a timely and proper manner so that the Association may make the non-segregated tax payment in a timely and proper manner. The Association may levy a Special Assessment against the Condominiums to collect the non-segregated tax amount. Any Owner who breaches the Owner's duty to pay the Owner's allocable share in a timely and proper manner shall be liable for any penalties, interest, fees or other such costs incurred as a result of the breach.

Section 3.14 Environment Restriction.

(a) Each Owner and the Association shall comply with the requirements of the Environmental Restriction. Attached to the Environmental Restriction are copies of the Cap

Maintenance Plan, Site Mitigation Plan, and Health and Safety Plan governing long term site mitigation measures at the Property. The Board may establish rules regarding compliance with the Environmental Restriction. The Association shall provide for monitoring of the Development pursuant to the Cap Maintenance Plan – biannually for the first year, and annually thereafter – for the term of the Environmental Restriction, and shall prepare a report every five years for submission to the San Francisco Department of Public Health (DPH). The cost of the monitoring shall be a Joint Expenses Assessment determined pursuant to the Reciprocal Easement and Maintenance Agreement.

(b) Pursuant to the requirements of DPH, a groundwater monitoring well has been installed on the Property. The Association shall cause the well to be monitored quarterly for the first year of ownership of the Development pursuant to DPH requirements. The Declarant has prepaid the cost of the initial year of well monitoring. Any future monitoring required by DPH shall be paid for through Assessments as determined by the Board.

#### ARTICLE 4 THE ASSOCIATION

##### Section 4.1 Formation of the Association.

The Association is a nonprofit mutual benefit corporation formed under the laws of the State of California. The Association shall commence operations no later than the date that Assessments commence.

Section 4.2 Governing Body. The governing body of the Association shall be the Board. It shall be the responsibility of the Board to ensure that the Association exercises its rights and performs its duties as described within the Declaration, the Articles, the Bylaws and any amendments thereto.

Section 4.3 Membership. Each Owner of a Unit automatically shall be a Member of the Association, and shall remain a Member thereof until such time as ownership ceases for reasons set forth herein, at which time membership in the Association shall automatically cease. If there is more than one Owner of a Unit, each Owner shall be a Member, but only one vote may be cast for each such Unit as further set forth in the Bylaws. The holder of a security interest in a Unit shall not be a Member of the Association except and until that holder obtains both the legal and equitable interest in the Unit. The Owner may also be a revocable inter vivos trust owning a Unit.

Section 4.4 Transfer of Membership. Membership shall be appurtenant to the Unit and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in anyway except on transfer or encumbrance of title to the Condominium to which it is appurtenant and then only to the transferee or encumbrancer. Any transfer of an Owner's interest in a Unit (other than a security interest), by operation of law or otherwise, automatically transfers the membership to the Owner's successor in interest. No Owner may resign or revoke his or her membership for any reason.



Section 4.5 Voting Rights. Voting rights shall vest at the time that Assessments are levied against the Owner's Condominium. Voting rights shall be as set forth in the Bylaws.

ARTICLE 5  
POWERS AND DUTIES OF THE ASSOCIATION

Section 5.1 General Powers of the Association. The Association shall have all the powers of a nonprofit mutual benefit corporation organized under the general nonprofit mutual benefit corporation laws of California as enumerated in California Corporations Code §7140 and California Civil Code §§1350-8, subject only to such limitations on the exercise of these powers as are set forth in the Articles, Bylaws and this Declaration. The Association shall have the power to do any lawful thing that may be authorized, required or permitted to be done by the Association under this Declaration, the Articles and the Bylaws and to do and perform any act that may be necessary or proper for or incidental to the exercise of any of the express powers of the Association, including without limitation, those powers listed in this Article.

Section 5.2 Authority Over Common Area. The Board or Declarant (as long as two classes of voting membership exist as further set forth in Section 3.2 of the Bylaws) shall have the power and the right in the name of the Association and all of the Owners as their attorney-in-fact to grant, convey, or otherwise transfer to any Owner or any other Person fee title, easements, leasehold estates, exclusive use easements or rights, licenses, in, on, over, or under the Common Area or other property interests in order to (i) construct, erect, operate, maintain, or replace lines, cables, wires, conduits, or other devices for electricity, cable television, internet services, fiber optics, telecommunication equipment, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities; (ii) accommodate any encroachment that in the sole discretion of the Board or Declarant does not unreasonably interfere with the use and enjoyment of the Common Area; or (iii) accomplish any other purpose that in the sole discretion of the Board or Declarant is in the interest of the Association and its Members and does not unreasonably interfere with the use and enjoyment of the Common Area. Each Owner in accepting a deed to a Condominium expressly consents to such action and authorizes and appoints the Association and Declarant (as long as Declarant owns any Condominium in the Development) as attorney-in-fact of such Owner to execute and deliver all documents and interests to accomplish the action, including, but not limited to, grant deeds, easements, and maps. Despite anything in this Declaration to the contrary, in no event shall the Board or Declarant take any action authorized hereunder that would permanently and unreasonably interfere with the use, occupancy, and enjoyment by any Owner of his or her Condominium or the use of any recreational facilities located on the Association Common Area without the prior written consent of that Owner. Furthermore, the conveyance of fee title to any portion of the Association Common Area as authorized in this section shall require the consent of (i) a majority of the total voting power of the Association other than Declarant and (iii) such consent of the Mortgagees as may be required by Article 14.

Section 5.3 Assessments. The Association shall have the power to establish, fix, and levy Assessments against the Condominiums and collect and enforce payment of such Assessments in accordance with the provisions of Article 8 of this Declaration.

Section 5.4 Recordation of Assessment Information. The Board may record a statement or amended statement identifying relevant information for the Association. The statement may include any or all of the following information: (i) the name of the Association; (ii) the name and address of the managing agent or treasurer of the Association or other individual or entity authorized to receive Assessments and fees imposed by the Association; (iii) a daytime telephone number of the authorized party identified in subsection (ii) if a telephone number is available; (iv) a list of Condominiums subject to Assessment by the Association, showing the assessor's parcel number, legal description, or both, of the Condominiums; (v) recording information identifying the Declaration and (vi) if an amended statement is being recorded, the recording information identifying the prior statement or statements which the amendment is superseding.

Section 5.5 Association Rules. The Association shall have the power to adopt, amend and repeal (i) Association Rules pertaining to elections in accordance with California Civil Code § 1363.03 or any successor statute thereto and (ii) Association Rules pertaining to the regulation of the use and enjoyment of the Development or such other matters as are authorized herein. 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 the Development if an appropriate space is available for such posting. If any provision of the Association Rules conflicts with the Declaration, the Articles or the Bylaws, the Declaration, the Articles or the Bylaws shall control to the extent of any such inconsistency. All Association Rules shall be adopted in compliance with the California Civil Code § 1357.100 et seq. or any successor statute thereto.

Any Association Rules adopted by the Board shall apply to all Owners or occupants in a uniform and nondiscriminatory manner. The Board may adopt an Association Rule as the result of an act or omission of any Owner or occupant or their family members or guests or an Association Rule that does not directly affect all Owners or occupants in the same manner as long as the Association Rule applies to all Owners or occupants.

Section 5.6 Association Contracts. The Association shall have the power to enter into contracts for services or materials for the benefit of the Association or the Common Area, including contracts with the Declarant, subject to the limitations provided in Section 5.13 and the Bylaws.

Section 5.7 Maintenance. The Association shall maintain in good condition and appearance, repair, replace, restore, operate and manage all of the Common Area, facilities, improvements, furnishings, equipment and landscaping thereon, and all property that may be acquired by the Association in compliance with all applicable municipal, state and federal laws, as more fully provided in Article 6 below.

Section 5.8 Discharge of Liens. The Association shall discharge by payment, if necessary, any obligation which, in the opinion of the Board, may become a lien against the Common Area, or any portion thereof, and assess the costs thereof as a monetary penalty against the Owner responsible for the existence of said lien, as determined by the Board after notice and a hearing in accordance with the Bylaws.

Section 5.9 Taxes and Assessments. The Association shall pay all real and personal property taxes and assessments, licenses, and all other taxes levied against the Association, the Common Area or the personal property owned by the Association if not included in the annual property tax bills of the Owners. Such taxes and assessments may be contested or compromised by the Association, provided that they are paid or that a bond insuring payment is posted before the sale or the disposition of any property to satisfy the payment of such taxes.

Section 5.10 Insurance. The Association shall maintain such policy or policies of insurance as are required by the Reciprocal Easement and Maintenance Agreement and this Declaration, or as the Board deems necessary or desirable, in protecting the interests of the Association and its Members.

Section 5.11 Operating Budget. The Association shall prepare and distribute the Operating Budget of the Association as provided in the Bylaws.

Section 5.12 Utility Service to Common Area. The Association shall acquire, provide and pay for water, sewer, garbage disposal, refuse and rubbish collection, electrical, telephone, gas and other necessary utility services for the Common Area and for the Condominiums when the Owners are not billed separately; provided, however, the Association shall have no liability to any Owner arising out of the temporary or permanent failure of any utility, governmental entity, or quasi-utility to deliver such services after the Association has contracted for such services.

Section 5.13 Right to Delegate Powers and Duties; Contract with Declarant and Management Agent.

(a) The Association acting by and through the Board can delegate its powers, duties, and responsibilities to committees, employees or agents, including a professional managing agent, subject to the limitations set forth in the Bylaws. The Board shall require a prospective managing agent to provide a written statement to the Board containing the information required by California Civil Code §1363.1, which shall be in addition to any other information the Board shall require. Any managing agent who accepts or receives funds belonging to the Association shall be required as part of the managing agent's management agreement to comply with the funds-handling and accounting requirements of California Civil Code §1363.2. As used in this Section, the term "managing agent" shall not include a full-time employee of the Association or any regulated financial institution operating within the normal course of its regulated business practice.

(b) Any agreement between the Association and Declarant pursuant to which the Declarant agrees to provide services, and any agreement for professional management of the

Development by a management agent shall be terminable by either party with or without cause and without payment of a termination fee on thirty (30) days' written notice. The term of any such agreement shall not exceed one (1) year except as provided in the Bylaws although the Association may renew the Agreement from year to year.

Section 5.14 Joint Maintenance Committee.

(a) Election. The Board shall elect a representative to serve on the Joint Maintenance Committee. Such representative shall be a member of the Association and may but need not be a member of the Board, and may be removed with or without cause at any time by a vote of the majority of the members of the Board. The representative may resign at any time by giving notice to the Board.

(b) Duties. The representative shall represent the interests of the Association on the Joint Maintenance Committee, pursuant to the Reciprocal Easement and Maintenance Agreement. The representative shall annually provide the Board the Joint Expense Budget and at the request of the Board, shall provide the Board a report setting out all other actions taken at the meetings of the Joint Maintenance Committee.

Section 5.15 Right of Enforcement.

(a) By Action or Alternative Dispute Resolution. The Association in its own name and on its own behalf, or on behalf of any Owner who consents or in whose name an action is authorized to be prosecuted under this Declaration, shall have the power to commence and maintain actions to collect monetary obligations for damages or to restrain and enjoin any actual or threatened breach of any provision of this Declaration or of the Articles, Bylaws, Association Rules, Architectural Review Committee decision, or any resolutions of the Board, and to enforce by mandatory injunction or otherwise all of those provisions. The failure of the Association to perform any duty under, or to enforce any provision of the Declaration, Articles, Bylaws, Association Rules, Architectural Review Committee decision, or any resolutions of the Board, shall give rise to a cause of action in any aggrieved Owner to compel such performance or enforcement or to recover damages or both. Unless the applicable time limitation for commencing the action would run within one hundred twenty (120) days, before initiating an "enforcement action" as defined in Civil Code Section 1369.510(b) that is solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages, other than Association Assessments, not in excess of the jurisdictional limits stated in California Code of Civil Procedure Section 116.220 and 116.221, related to the enforcement of this Declaration, the Articles, the Bylaws, Architectural Review Committee decision or the Association Rules, the Association and the Owner or Owners against whom the civil action is to be filed shall endeavor to submit the matter in a dispute to a form of alternative dispute resolution such as mediation or arbitration in accordance with the provisions and procedures in California Civil Code Sections 1369.520-1369.580.

(b) Recordation of Notice or Violation. On any violation of a provision of this Declaration or the Articles, Bylaws, Association Rules or Board resolutions by an Owner relating to the use, occupancy, or physical condition of the Owner's Condominium, the Board

may authorize the recording of a notice of violation in order to impart constructive notice to any subsequent purchaser, successor in interest or Mortgagee of the existence and nature of the violation. The notice of violation shall state the legal description of the Owner's Condominium and the name of the Owner as reflected in the recorded deed to the Condominium and shall describe the violation and action required to be taken in order to cure or correct the violation. The notice of violation shall not be recorded unless and until the Association or its authorized representative has delivered to the violating Owner or Owners, as least fifteen (15) days before the recordation of the notice of violation, a written notice of intent to file a notice of violation and a demand for cure or correction and unless the violation has not been cured within that fifteen (15) day period. If the Association files an action or obtains a judgment relating to any such violation, the Board may also authorize the recording of a notice of pendency of action or an abstract of judgment. On cure of the violation, dismissal of the action, or satisfaction of the judgment, the Board shall record a notice of cure, dismissal or satisfaction of judgment.

(c) By Penalty, Legal Action, Suspension. In addition to any other enforcement rights described in this Declaration and the Bylaws or as may be authorized by law and subject to any restrictions on the Association's enforcement rights, including any due process requirements imposed by this Declaration, the Bylaws or by law, the Board may take any or all of the following actions against any Person whose act or failure to act violates or threatens to violate any provisions of this Declaration, the Bylaws or Association Rules: (i) impose monetary penalties; (ii) suspend voting rights in the Association; (iii) commence any legal or equitable action for damages, injunctive relief or both; or (iv) suspend Common Area use privileges. The determination of whether to impose any of the foregoing sanctions shall be within the sole discretion of the Board. Notwithstanding the preceding sentence, any suspension of use privileges cannot exceed thirty (30) days for any one violation or such other reasonable period as may be established by the Board (except that if such suspension is due to the failure to pay Assessments, the suspension may continue until payment is made), and any monetary penalty cannot exceed the amount necessary to compensate the Association or other Owners for loss or expense resulting from such violation, and no suspension or penalty can be imposed unless it is accomplished in the manner provided for in subsection (c).

(d) Notice and Hearing. In accordance with Civil Code Section 1363.820, the Association shall provide a fair, reasonable and expeditious procedure to its Members for the resolution of disputes between the Association and a Member involving their common respective rights, duties or liabilities under the Davis Stirling Common Interest Development Act (California Civil Code Sections 1350-1376) under the Nonprofit Mutual Benefit Corporation Law (California Corporations Code Section 7110 et seq.) or under the Governing Documents. In addition to any notice given to an Owner or Owners as provided in subsection (c), when the Board is to meet to consider or impose discipline on any Owner, the Board shall notify the Owner in writing by either personal delivery or first-class mail, at least ten (10) days before the meeting. The notice shall contain, at a minimum, the date, time and place of the meeting, the nature of the alleged violation for which the Owner may be disciplined, and a statement that the Owner has a right to attend and may address the Board at the meeting. If requested by the Owner being disciplined, the Board shall meet in executive session and the Owner shall have the right to address the Board during its executive session rather than during its open session. If the Board imposes discipline on an Owner, the Board shall give written notice to the Owner of the

disciplinary action, by either personal delivery or first-class mail, within fifteen (15) days after the action. A disciplinary action shall not be effective against an Owner unless the Board fulfills the requirements of this Section.

(e) Monetary Penalties. Before adopting, amending, or repealing any schedule of monetary penalties for violation of the Declaration, the Articles, the Bylaws, or the Association Rules, or any procedure for the imposition of penalties, the Board shall provide to the Owners at least thirty (30) days' prior written notice of such proposed action. The notice shall include the text of the proposed schedule or procedure and a description of its purpose and effect. The Board shall decide on any such proposed action at a Board meeting, after considering any comments made by the Owners. Before exercising its power to assess monetary penalties or adopting a policy imposing any monetary penalty, including any fee, on any Owner for a violation of the Declaration, the Articles, the Bylaws, or the Association Rules, including any monetary penalty relating to the activities of an Owner's guest or invitee, the Board shall adopt and distribute to each Owner, by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed for those violations, which shall be in accordance with authorization of Owners discipline in this Declaration and in the Bylaws, if applicable. The Board shall not be required to distribute any additional schedules of monetary penalties unless changes are made to the schedule that was adopted and distributed to the Owners under this Section.

(f) Limitation on Enforcement Remedies. Except for the remedies expressly provided in this Section, or as a result of a judgment or decree of a court or a decision arising from arbitration or mediation or a foreclosure or sale under a power of sale based on the Owner's failure to pay Assessments duly levied by the Association, the Association does not have the power or authority to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of the Owner's Condominium on account of the failure of the Owner to comply with the provisions of the Declaration, Articles, Bylaws or Association Rules.

(g) Notice to Mortgagee. If the Owner fails to cure a default within sixty (60) days after written notice to that Owner, the Association shall give the notice required in Section 14.7 to the Mortgagee of record.

**Section 5.16 Limitations on Directors, Officers and other Association Representatives Personal Liability.** No member of the Board or member of any committee of the Association, officer of the Association, or Declarant or any employee, agent, or representative of Declarant when acting in his, her, or its capacity as a director, officer, or committee member of the Association, shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss, or prejudice suffered or claimed because of any act, omission, error, or negligence of any such Person if such Person has, on the basis of such information as may be possessed by him, her, or it, acted in good faith and in a manner such Person reasonably believed to be in the best interests of the Association or the Owners, without willful or intentional misconduct, except to the extent the damage, loss, or prejudice suffered or claimed is fully covered by insurance or the member of the Board or committee, officer, Declarant, or agent is fully indemnified under the Bylaws. In addition, no volunteer member of the Board or volunteer officer of the Association shall be personally liable in excess of available insurance

coverage to anyone who suffers injury, including, but not limited to, bodily injury, emotional distress, wrongful death, or property damage or loss, as a result of the tortious act or omission of the volunteer member of the Board or volunteer officer that was committed or omitted in his or her capacity as volunteer director or volunteer officer of the Association, if all criteria set forth in California Civil Code §1365.7 are met and the conditions to applicability of that section are satisfied. Nothing in this Section shall be construed to limit or expand the Association's liability for its negligent, willful, or intentional act or omission of for any negligent, willful, or intentional act or omission of an officer or director of the Association.

**Section 5.17 Enforcement of Bonded Obligations; Exoneration.**

(a) **Enforcement.** If the Association is the obligee under a bond or other arrangement ("bond") to secure performance of a commitment of the Declarant or its successors or assigns to complete Common Area or other improvements in the Development, not completed at the time the California Commissioner of Real Estate issues a final subdivision public report for the Development, the Board shall consider and vote on the question of action by the Association to enforce the obligations under the bond with respect to any improvement for which a notice of completion has not been filed within sixty (60) days after the completion date specified for that improvement in the "planned construction statement" appended to the bond. However, if the Association has given an extension in writing for the completion of any Common Area improvement, the Board shall consider and vote on the action to enforce the obligations under the bond only if a notice of completion has not been filed within thirty (30) days after the expiration of the extension. If the Board fails to consider and vote on the action to enforce the obligations under the bond, or if the Board decides not to initiate action to enforce the obligations under the bond, then on the petition in writing to the Board signed by Owners representing not less than five percent (5%) of the total voting power of the Association, the Board shall call a special meeting of Owners for the purpose of voting to override the decision of the Board not to initiate action or to compel the Board to take action to enforce the obligations under the bond. The meeting shall be called by the Board by fixing a date not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of said petition and by giving written notice to all Owners entitled to vote in the manner provided in this Declaration or in the Bylaws for notices of special meetings of Owners. At the meeting, the vote in person or by proxy of a majority of the Owners entitled to vote (other than Declarant) in favor of taking action to enforce the obligations under the bond shall be deemed to be the decision of the Association and the Board shall then implement this decision by initiating and pursuing appropriate action in the name of the Association.

(b) **Exoneration.** Upon written request of Declarant or its surety, the Association shall exonerate Declarant and its surety under any bond in favor of the Association, unless, under the terms of the bond, the time period covered by the bond has not expired or specific work or monetary amounts covered by the bond remain unperformed or unpaid at the time of the receipt of the written request, as evidenced by a claim or demand made in writing by the Association to the Declarant or its surety prior to receipt of Declarant's or its surety's written request for exoneration. In the event that the Association fails or refuses to exonerate Declarant or its surety when such exoneration is due, after written request by Declarant or its surety, the Association shall be liable to Declarant and its surety for any bond premiums charged by such

surety from and after the date exoneration is requested by Declarant or its surety plus any consequential damages and costs, including attorneys fees, incurred by Declarant or the surety to obtain exoneration.

ARTICLE 6  
ASSOCIATION MAINTENANCE AND REPAIR OBLIGATIONS

Section 6.1 Association Maintenance Obligations.

(a) Common Area. Coincident with the conveyance of the Association Common Area to the Association by the Declarant, the Association shall maintain, repair, replace (when necessary), operate and manage the Common Area and any improvements located on it, including but not limited to the maintenance and repair of the structural components, exterior surfaces, (except glass, doors and other Owner maintenance obligations) and the Roof, Garage, Trash Rooms, Utility Rooms, and all other facilities, amenities, entry gates, fences, improvements, slopes, landscaping, trees, common area stairways, decks, porches, balconies, and storage spaces, and all personal property originally transferred to the Association by Declarant or acquired by the Association.

(b) Exclusive Use Common Area. The Association shall be responsible for the maintenance of the Exclusive Use Common Area including the Parking Spaces, Patios and Exterior Unit Stairwells including but not limited to the maintenance and repair of the structural components, exterior surfaces and any landscaping located thereon and installed by the Association, provided that each Owner shall perform certain cleaning and general upkeep maintenance on the Patio and Exterior Unit Stairwells appurtenant to that Owner's Condominium in accordance with Section 7.2 below.

(c) Utility Maintenance. The Association shall maintain all utility connections, sanitary sewers and storm drainage facilities located in the Common Area which serve more than one Unit, except for those installations maintained by utility companies, public, private, or municipal, and except as otherwise provided in the Reciprocal Easement and Maintenance Agreement. All storm drainage facilities shall be regularly inspected and, if necessary, cleaned or otherwise maintained.

(d) Joint Parcel Elements. The Association shall maintain the Joint Parcel Elements to the extent required by and in the manner set forth in the Easement and Maintenance Agreement and only to the extent such maintenance is not the responsibility of the Joint Maintenance Committee.

(e) Environmental Monitoring. The Association shall perform the environmental monitoring required pursuant to Section 3.14 above.

(f) Repair of Common Area Damaged by Wood-Destroying Pests or Organisms. The Association shall repair any portion of the Common Area that is damaged by



wood-destroying pests or organisms. The Association shall have the right to cause the temporary removal of any Owner, at the Owner's cost, for such periods and at such times as are necessary for the prompt and effective treatment of the wood-destroying pests or organisms as long as the Association gives all Owners required to be temporarily removed at least fifteen (15) and no more than thirty (30) days' notice of the need to temporarily vacate the Owner's Unit, which notice shall state (i) the reason for the temporary relocation, (ii) the date and time of the beginning of the treatment, (iii) the anticipated date and time of termination of treatment, and (iv) that the Owner will be responsible for his or her own accommodations during the temporary relocation.

**Section 6.2 Common Area Inspection and Maintenance Guidelines.**

(a) The Declarant has provided the Association with a Maintenance Manual which establish procedures, practices, specifications, scopes and intervals for the Association to maintain the Common Area improvements. The Board shall comply with the Maintenance Manual for the periodic inspection and maintenance of the Common Area improvements for which the Association is required to maintain under this Declaration.

(b) In addition, the Board shall adopt inspection and maintenance guidelines for the periodic inspection and maintenance of the Common Area, and the improvements thereon. The guidelines shall require at a minimum, an annual inspection of each of the foregoing. The Board periodically, and at least once every two (2) years, shall review and update the inspection and maintenance guidelines. The Board shall take all appropriate steps to implement and comply with the inspection and maintenance guidelines.

**Section 6.3 Association Easement for Performance of Duties.** Each Unit is hereby declared to be subject to an easement in favor of the Association on, in, over, and under such Unit, including the right of ingress to and egress from such Unit, for the purpose of performing any of the Association duties under this Declaration, and for the purpose of building, installing, operating, maintaining, and repairing sanitary sewer, plumbing, electrical, heating, telephone, telecommunications, cable television, gas, sewer and water ducting, laterals, lines, wires, pipes, and other conduits, equipment, and systems located in or serving the Common Area or serving other Units.

**Section 6.4 Association Entry or Use Rights.**

(a) **Performance of Association Obligations.** The Association or its agents or contractors shall have the right to enter any Unit to perform its obligations under this Declaration, including obligations of construction, maintenance, or repair for the benefit of the Common Area or the Owners in common and to perform any maintenance that an Owner has failed to perform. Entry into the residential portion of a Unit shall be made only after forty-eight (48) hours notice to the Owner, provided, however, the right to enter shall be immediate in case of an emergency originating in or threatening the Common Area, Owners, or such Unit, whether or not the Owner is present. Entry shall be made with as little inconvenience as possible to the Owner and any damage caused by such entry, construction, or repair shall be repaired by the Association.

(b) Cure Violations. The Association, or its agents or contractors, shall have the right to enter any Unit to cure any violation or breach of this Declaration, the Bylaws, or the Association Rules as long as the Association has complied with the notice and hearing requirements of Section 5.15 and the Owner (as applicable) has not acted to cure such violation or breach, except that, in an emergency originating in or threatening the Common Area, the Owners, or such Unit, the right of entry shall be immediate. The Association shall be entitled to recover from such Owner its costs of effecting such cure.

Section 6.5 Cooperation and Access. Each Owner and occupant shall fully cooperate with the agents of the Association in the Association's performance of the Association's maintenance and repair obligations described in this Article 6. Such cooperation shall include, but is not limited to, immediate notification to the Board or its managing agent of any maintenance or repair problems for which the Association is responsible and access to the Owner or occupant's Unit as may be necessary to inspect and, if appropriate, to perform any necessary maintenance or repairs. For the purpose of performing the maintenance authorized by this Article or for any other purpose reasonably related to the performance by the Board of its responsibilities under this Declaration, the Association's agent or employee shall have the right, after reasonable written notice to the Owner (of not less than forty-eight (48) hours, unless an emergency exists, in which case no written notice need be given) to enter any Unit during reasonable hours and with as little inconvenience to the Owner as is practicable, and to enter upon Exclusive Use Common Area during normal business hours without notice.

Section 6.6 Reimbursement and Indemnification. The cost of performance by the Declarant or the Association of its duties under this Declaration with respect to maintenance, repair and management shall be included in the annual Operating Budget. Notwithstanding the above, the responsibility of the Association for maintenance and repairs shall not extend to repairs or replacements arising out of or caused by the willful or negligent act or neglect of an Owner, members of the Owner's family and the contract purchasers, tenants, guests, and invitees of the Owner, the cost of which is not covered by insurance. Each Owner shall be liable to the Association for any damage to the Common Area or to Association-owned property that may be sustained by reason of willful misconduct or negligence of the Owner, members of the Owner's family and the contract purchasers, tenants, guests, and invitees of the Owner, but only to the extent that any such damage is not covered by casualty insurance in favor of the Association or liability insurance covering the Owner, members of the Owner's family, or the contract purchasers, tenants, guests, and invitees of the Owner. Each Owner, by acceptance of the deed to his or her Unit, agrees to indemnify each and every other Owner and the Association, and to hold them harmless from, and to defend them against, any claim for personal injury or property damage occurring within the Unit of the indemnifying Owner, except to the extent that (i) such injury or damage is covered by liability insurance in favor of the Association or the indemnified Owners or (ii) the injury or damage occurred by reason of the willful or negligent act or omission of the Association or another Owner or person temporarily visiting his or her Unit. If an Owner shall fail to make the repairs or replacements which are the responsibility of such Owner as provided above, then, upon a vote of a majority of the Board, and after notice to the Owner and an opportunity for a hearing before the Board, the Association shall have the right, but not the obligation, to make such repairs or replacements and enter the Unit, if necessary. The cost of

such repairs or replacements shall be an individual Special Assessment payable to the Association by such Owner.

ARTICLE 7  
OWNER MAINTENANCE AND REPAIR OBLIGATIONS

Section 7.1 Maintenance of Interior of Unit.

Each Owner shall maintain, in good repair, the interior of such Owner's Unit including but not limited to the interior walls, ceilings, windows, and doors of the Owner's Unit including any entryways that may extend into the Common Area. Each Owner shall have complete discretion in choice of furniture, furnishings, and interior decoration of the Owner's Unit and shall have the exclusive right, at such Owner's sole cost and expense, to make, alter or modify its interior improvements that do not affect the exterior or other structural walls, utility lines, or mechanical systems of the Building and to paint, repaint, wax, paper, drape, carpet, and tile (as hereafter conditioned) and otherwise refinish and decorate the inner surfaces of the walls, ceilings, windows, floors, and doors within such Owner's Unit; subject to the following:

(a) All drapes, curtains, shutters, blinds or other window coverings subject to view from neighboring Units, the Common Area, or other property, shall be white or off-white in color or lined in white or off-white. No temporary materials may be used for window coverings, including sheets, blankets, paper or foil. The Board may establish Association Rules governing the types of permissible window coverings.

(b) No Owner or occupant shall replace the glass in the windows of his or her Unit.

(c) No change in floor covering materials originally installed in the Units shall be permitted except with the consent of the Architectural Review Committee. The Association Rules shall contain specifications which all Owners must comply with regarding changes in floor covering. To reduce sound transmission, all Units which are above other Units shall have all floor areas except kitchens and bathrooms covered with carpet or other material which provides equivalent insulation against sound transmission to the Unit below.

(d) No waterbeds shall be located in Units except with the prior approval of the Architectural Review Committee. An Owner shall be fully liable to other Owners, their families, guests, and invitees, and the Association for any damage to persons or property resulting from the placement, use, leaking, operation, or movement of any waterbed in such Owner's Unit.

(e) No acoustical device shall be operated in a manner that produces sound or vibration energy in excess of acoustical criteria adopted by the Board or by the Architectural Review Committee or in a manner that constitutes a nuisance, as determined by the Board.

Section 7.2 Exclusive Use Common Area Maintenance Obligations. Each Owner shall keep the Patios and Exterior Unit Stairways appurtenant to the Owner's Condominium in a

clean and neat condition at all times. In recognition of maintaining uniform aesthetic appearance of the Building, the Board shall have the authority to regulate or prohibit the amount and type of landscaping, furniture, and other items that may be placed or stored in, on, or around the Patios and Exterior Unit Stairways. Any landscaping, trees or plants installed shall be consistent with any landscaping, trees or plants installed by Declarant and with the standards established from time to time by the Architectural Review Committee. If the Owner fails to maintain the Patio or Exterior Unit Stairways in a manner which the Board deems necessary to preserve the appearance and value of the Development, the Board may notify the Owner of the work required and request it be done with sixty (60) days from the giving of such notice. No fences, awnings, screen enclosures or walls of any nature shall be erected or maintained on or around the Exterior Unit Stairways or Patios except as authorized by the Architectural Review Committee.

### Section 7.3 Utility Maintenance and Repair Obligations and Rights.

(a) Each Owner shall be responsible for maintaining and repairing the mechanical, air conditioning, plumbing, sewer, electrical, heating, water, gas, cable television, drains and other lines, equipment, systems, and fixtures exclusively serving the Owner's Unit whether located within the Owner's Unit or within the Common Area. In general, an Owner's maintenance responsibility begins at the junction box, meter, sewer connection, or other point at which exclusive service to the Owner's Unit begins or, if such exclusive service point cannot be determined or is disputed by the Owner, at the point designated by the Architectural Review Committee.

(b) Any Owner, or the Owner's contractor, representatives, or designees, shall have the right to enter the nonresidential portion of the Unit of any other Owner to perform maintenance or repairs to the entering Owner's Unit or to perform installations, alterations, or repairs to mechanical, electrical, utility or drainage services or devices, including water, gas and drain pipes and lines, and television antennas and cable facilities or equipment, which are reasonably necessary for the use and enjoyment of the entering Owner's Unit. Requests for entry shall be made at least three (3) days in advance and such entry shall be at a time convenient to the Owner whose Unit is being entered, except that in an emergency such right of entry shall be immediate. Any damage caused by such entry, maintenance, repairs, installation, or alterations shall be repaired by the entering Owner or by the Owner's representative.

(c) Whenever sanitary sewer, water, cable television, electricity, gas and telephone and telecommunications lines and facilities and heating and air-conditioning facilities, equipment, conduits, ducts and flues are installed within the Development, which connections serve more than one Unit, the Owner of each Unit served by said connection shall be entitled to full use and enjoyment of such portions of such lines and facilities as service his Unit.

Section 7.4 Owner's Maintenance Standards. All maintenance and repair work to be performed by an Owner under this Section or under any other provision of this Declaration or the Association Rules, shall be performed in a neat, clean, sanitary, workable, and attractive manner, in conformity with reasonable maintenance procedures and the specific requirements of the Architectural Review Committee applicable to the Owner's Unit and in accordance with the Maintenance Manual provided to the Owner. Each Owner shall retain the Maintenance Manual

and take all appropriate actions to comply with and implement the Maintenance Manual. Upon transfer of a Unit, the Owner shall deliver a complete copy of the Maintenance Manual to the transferee of the Unit.

**Section 7.5 Alterations, Modifications or Additions by Owners.**

(a) No structural alterations to the interior of any Unit or Common Area surrounding any Unit shall be made and no utility work (other than minor repairs and replacements) within any bearing or common walls shall be performed by any Owner without the prior written consent of the Architectural Review Committee under Article 9.

(b) No Owner shall construct any improvement or make any alterations or modifications to the exterior or other structural walls of the Building without first obtaining the prior written consent of the Architectural Review Committee.

(c) No Owner shall remove, alter or injure in anyway any portion of the Common Area including but not limited to all improvements and personal property and landscaping located in the Common Area. Nothing shall be stored, grown, affixed to or displayed in the Common Area, including the Patios and Exterior Unit Stairways, that is not approved in advance by the Architectural Review Committee.

(d) Before commencing any alterations or performing any utility work, an Owner shall obtain all required permits from the County or other governmental body having jurisdiction. All such work shall comply with applicable County ordinances and building codes.

**ARTICLE 8  
ASSESSMENTS**

**Section 8.1 Obligation to Pay Assessments; Working Capital Fund.**

(a) **Agreement to Pay; Lien.** The Declarant, for each Condominium owned by it in the Development that is expressly made subject to Assessment as set forth in this Declaration, covenants and agrees, and each purchaser of a Condominium, by acceptance of a deed, covenants and agrees, for each Condominium owned, to pay to the Association Assessments that are to be established, made, and collected as provided in this Declaration. The Owner of each Condominium is obligated to pay any Assessments levied against that Owner's Condominium on or before the due date of the Assessment. If there is more than one Owner of the Condominium, the obligation is joint and several. Each Owner on acceptance of title to a Condominium automatically personally assumes the obligation to pay any Assessments against the Owner's Condominium (including, but not limited to, any portion of the Annual Assessment not yet due and payable) together with interest, late charges, collection costs and reasonable attorneys fees. The Owner shall be liable for the full Assessment levied against that Owner's Condominium regardless of the Owner's possession or use of the Condominium, the Condominium Common Area, or Association Common Area or any services rendered by the Association. The Owner has no right or power to commit or omit any act, such as waiving the

right to use the Association Common Area, in an attempt to eliminate or reduce the Assessments against that Owner's Condominium. An Assessment shall be both a personal obligation of the Owners of the Condominium against which the Assessment is levied and, on the recordation of a Notice of Delinquent Assessment, a lien against the Condominium. Any Owner who transfers a Condominium shall remain personally liable for any unpaid Assessments that accrued on or before the date of the transfer. No Owner shall be liable for any defaults of the Owner's predecessor in interest in the payment of any Assessment and other charges, interest, costs and fees that have accrued prior to the Owner taking title to the Condominium unless that Owner expressly assumes the obligation to cure the delinquent Assessments. Notwithstanding the foregoing, any Owner who takes title to a Condominium on which a lien for a delinquent Assessment has been established will take title subject to the lien and the Association's enforcement remedies as a result thereof unless the Owner takes title under a foreclosure or trustee sale resulting from a foreclosure or exercise of a power of sale under a Mortgage, deed of trust, or other lien recorded before the recordation of the notice of delinquent Assessment and except as provided in Section 14.3.

(b) Working Capital Fund. To insure that the Association will have funds to meet unforeseen expenditures or to purchase any additional equipment or services, Declarant shall establish a working capital fund equal to two (2) months' Annual Assessments for each Condominium, unless a greater or lesser amount is required or permitted to be contributed by the Federal Housing Administration (the "Working Capital Fund"). Said amounts paid into the Working Capital Fund shall be considered reserves and shall not be considered as advance payments of Annual Assessments and are not repayable at the time an Owner sells or transfers the Owner's Condominium. Each Condominium's share of the Working Capital Fund shall be collected at the time the sale of the Condominium is closed. When control of the Development is transferred to the Association, the Working Capital Fund shall be transferred to the Association for deposit to a segregated fund. While Declarant is in control of the Association, it shall not use any of the Working Capital Fund to defray its expenses, reserve contributions, or construction costs or to make up any Association budget deficit. The Declarant may choose to advance funds for deposit in the Working Capital Fund. In the event the Declarant advances any funds to the Working Capital Fund, Declarant may be reimbursed from Working Capital contributions collected at the close of subsequent Condominium sales escrow.

**Section 8.2 Use of Assessments.** The Assessments levied by the Association shall be used exclusively for the recreation, health, safety, and welfare of the Owners, the improvement, replacement, repair, operation, and maintenance of the Common Area, the performance of the duties of the Association as set forth in this Declaration and in the Reciprocal Easement and Maintenance Agreement, and any other purpose that is for the common benefit of the Owners in their use and enjoyment of the Development. The Association shall not impose or collect an Assessment or fee that exceeds the amount necessary to defray the costs for which it is levied.

**Section 8.3 Limitation on Pledging Assessment Obligations.** The Association may not voluntarily assign or pledge its right to collect payments or Assessments, or to enforce or foreclose a lien to a third party, except when the assignment or pledge is made to a financial institution or lender chartered or licensed under federal or state law, when acting within the scope of that charter or license, as security for a loan obtained by the Association. However, the

restrictions imposed by this paragraph shall not restrict the right or ability of the Association to assign any unpaid obligations of a former Member to a third party for purposes of collection.

**Section 8.4 Annual Assessments.**

(a) **Commencement of Annual Assessments.** Annual Assessments shall commence for all Units on the first day of the month coinciding with or immediately following the date of the first transfer of title of a Unit by the Declarant to a purchaser under the authority of a final subdivision public report issued by the California Department of Real Estate. No Unit shall be subject to any Special Assessments until Annual Assessments have commenced against that Unit.

(b) **Establishing Annual Assessments.** Within fifteen (15) days after distributing the pro forma Operating Budget to Owners in accordance with the Bylaws but in no event less than thirty (30) days before the beginning of each fiscal year of the Association, the Board shall meet in order to establish the Annual Assessment for the forthcoming fiscal year. At such meeting, the Board shall review the proposed pro forma Operating Budget, and any written comments received and any other information available to it and, after making any adjustments that the Board deems appropriate, without a vote of the Owners, shall establish the Annual Assessment for the forthcoming fiscal year. Annual Assessment shall include the amount necessary to fulfill the Development's obligations under the Reciprocal Easement and Maintenance Agreement, and a portion for Reserves as more fully set forth in the Bylaws.

(c) **Restrictions on Increase in Annual Assessments.** Except as provided below and subject to the provisions of Section 14.5, the Board may not establish an Annual Assessment for any fiscal year of the Association which is more than one hundred twenty percent (120%) of the Annual Assessment for the prior fiscal year of the Association (except the first such fiscal year of the Association if it should be less than twelve (12) months) without the approval of such action by the vote or written assent of Members casting a majority of the votes at a meeting of the Association at which a quorum is present, called and conducted in accordance with California Corporations Code §§7510-7517 and 7613 and California Civil Code §1363.03 or any successor statute thereto. The presence of least fifty percent (50%) of the voting power of the Association shall constitute a quorum. The right of the Board to increase a Annual Assessment as set forth above is subject to the Board having complied with the provisions of California Civil Code §1365(a). These limitations do not apply to increases in Annual Assessments when the Board determines that an increase in excess of one hundred twenty percent (120%) of the prior year's Annual Assessment is for the purpose of addressing the following emergency situations:

- (i) Complying with the requirements of a court order.
- (ii) Repairing or maintaining the Development or any Joint Parcel Element, or any part of them for which the Association is responsible when a threat to the safety of persons is discovered.

(iii) Repairs to or maintenance of the Development or Joint Parcel Element that could not have been reasonably foreseen in preparing the pro forma operating statement or Operating Budget for the Development, as long as prior to the imposition of the Assessment the Board shall have made and distributed to the Owners written findings as to the necessity of such repairs or maintenance and the reason that they could not have been reasonably foreseen.

(iv) Paying any other expenses, costs, or charges regarding the matters on the list of "emergency situations" in California Civil Code §1366, and any amendments to that section.

(v) Restoring transferred funds to the Reserve account under the Bylaws.

#### Section 8.5 Special Assessment.

(a) Determining Amount of Special Assessments. If at any time the Board realizes that the estimated total amount of funds necessary to defray the Association's Common Expenses for a given fiscal year is or will become inadequate to meet expenses for any reason, including, but not limited to, insufficient Reserves, unanticipated delinquencies, costs of construction, costs to purchase Condominiums, costs related to damage or destruction, or unexpected repairs or replacements of capital improvements to the Common Area, and the Development's share of Joint Expenses, the Board shall determine the approximate amount necessary to defray such expenses, and, if the amount is approved by a majority vote of the Board, it shall become a Special Assessment. The Board may, in the Board's discretion, prorate such Special Assessment over the remaining months of the fiscal year or levy the Special Assessment immediately against each Condominium. As used here, the term "Special Assessment" shall not include charges to or obligations of an Owner or group of Owners incurred as a result of action by the Association to bring the Owner or group of Owners or their Condominiums into compliance with this Declaration, the Articles, the Bylaws, or the Association Rules but the term "Special Assessment" shall include Assessments levied under Article 11 for repair, reconstruction, or purchase of the Condominiums following damage or destruction. Unless exempt from federal or state income taxation, all proceeds from any Special Assessment shall be segregated and deposited into a special account and shall be used solely for the purpose or purposes for which the Special Assessment was levied or the proceeds shall be otherwise handled and used in a manner authorized by law or regulations of the Internal Revenue Service or the California Franchise Tax Board in order to avoid, if possible, the taxation of the proceeds as income of the Association.

(b) Limitations on Increase in Special Assessments. Except as provided below, the Board may not establish any Special Assessment that, singly or in the aggregate with previous Special Assessments for the fiscal year in which such Special Assessment is levied, would be in an amount in excess of five percent (5%) of the budgeted gross expense of the Association for the fiscal year, without the approval of such action by the vote or written assent of Members casting a majority of the votes at a meeting of the Association at which a quorum is present, called and conducted in accordance with California Corporations Code §§7510-7517



and 7613 and California Civil Code §1363.03 or any successor statute thereto. The presence of least fifty percent (50%) of the voting power of the Association shall constitute a quorum. These limitations do not apply to Special Assessments in excess of five percent (5%) of the budgeted gross expenses of the Association for any fiscal year when the Special Assessment is levied under Article 11 or when the Board determines that the Special Assessment is for the purpose of addressing the following emergency situations:

- (i) Complying with a court order;
- (ii) Repairing or maintaining the Development or any Joint Parcel Element, or any part of them for which the Association is responsible, when a threat to the safety of persons is discovered;
- (iii) Repairing or maintaining the Development, any Joint Parcel Element, or any part of them for which the Association is responsible, that could not have been reasonably foreseen in preparing the Operating Budget for the Development, as long as prior to the imposition of the Special Assessment, the Board shall have made and distributed to the Owners written findings as to the necessity of such repairs or maintenance and the reason that they could not have been reasonably foreseen.
- (iv) Making the first payment of the earthquake insurance surcharge under California Insurance Code §5003.
- (v) Paying any other expenses, costs, or charges related to matters listed as "emergency situations" in California Civil Code §1366, and any amendments to that section.
- (vi) Restoring transferred funds to the Reserve account under the Bylaws.

In all instances, the Board shall comply with Section 1366 of the California Civil Code.

Annual and Special Assessments shall be fixed at a uniform rate for all Condominiums, except for that portion of the Assessments allocated to meet the cost of insurance, any commonly metered domestic water, gas or electricity, painting, Roof reserves, rebuilding or major repairing of the Common Area. These specially allocated items shall be levied among the Condominiums in the proportion that the square footage of living space of each Unit bears to the square footage of all the Units subject to the Declaration as determined by the plan prepared by Declarant and set forth in the budget submitted to the California Department of Real Estate, and as set forth in Exhibit B.

In the event the Association is subject to a Joint Expense Assessment or special Joint Expense Assessment pursuant to the provisions of the Reciprocal Easement and Maintenance Agreement, said Joint Expense Assessment or special Joint Expense Assessment shall be included in the Assessments, and, if necessary, a Special Assessment shall be levied against the Owners of Condominiums in an amount adequate to pay such Joint Expense Assessment.

Section 8.6 Unallocated Taxes. In the event that any taxes are assessed against the Common Area, or any portion thereof, or the personal property of the Association, or the Development as a whole, rather than against the Condominiums, said taxes shall be included in the Assessments made under the provisions of Section 8.4, or if necessary, a Special Assessment may be levied against the Condominiums in an amount equal to said taxes, to be paid in two installments, thirty (30) days prior to the due date of each tax installment.

Section 8.7 Association Fiscal Year; Notice and Assessment Installment Due Dates. Unless the Board determines otherwise, the Association's fiscal year shall be a calendar year, and the Annual Assessment period shall commence on January 1 of each year and shall terminate on December 31 of that year. The Annual Assessment shall be payable in equal monthly installments unless the Board adopts another method for payment. The first Annual Assessment and all Special Assessments shall be adjusted according to the number of months remaining in the fiscal year and shall be payable in equal monthly installments unless the Board adopts another method for payment.

Section 8.8 Delinquent Assessments. Each Annual Assessment and Special Assessment, if payable in a single payment, or each installment of Annual Assessments and Special Assessments shall become delinquent if not paid within fifteen (15) days after its due date. There shall accrue with each delinquent Assessment or installment a late charge equal to the maximum amount permitted under California Civil Code §1366 (or under any successor provision of California law that limits the amounts of such late charge), unless the Association by resolution of the Board establishes a lesser late charge, and the Association may recover its reasonable fees and costs actually incurred in collecting delinquent Assessments or installments, including attorney fees. Interest on all Assessments or installments owing by an Owner, including reasonable fees and costs of collection and late charges, shall accrue at an annual interest rate of twelve percent (12%), commencing thirty (30) days after the Assessment or installment becomes due, or at such lower rate as may be specified from time to time by the Board or such higher rate as may be allowed by law and specified from time to time by the Board. Any payments toward a delinquent Assessment or installment shall first be applied to the Assessment or installments amounts owing, and only after the Assessment or installments owing are paid in full shall such payments be applied to the fees and costs of collection, attorney fees, late charges, or interest. When an Owner makes a payment, the Owner may request a receipt and the Association shall provide it. The receipt shall indicate the date of payment and the person who received it. The Association shall provide a mailing address for overnight payment of Assessments or installments. Before adopting, amending, or repealing any standards for delinquent payment plans, the Board shall provide to the Owners at least thirty (30) days prior written notice of such proposed action. The notice shall include the text of the proposed standard and a description of its purpose and effect. The Board shall decide on any such proposed action at a Board meeting, after considering any comments made by the Owners.

Section 8.9 Collection and Enforcement of Assessments. The right to collect and enforce Assessments is vested in the Association, which shall have the authority to delegate the exercise of such right to an agent, including any managing agent or representative. The Association or its authorized agent or representative acting on behalf of the Association can

enforce the Owners' obligations to pay Assessments provided for in this Declaration by commencement and maintenance of a suit at law or in equity or the Association may impose a lien under Section 8.13 and pursue its lien foreclosure and enforcement rights under Section 8.14. Except as provided in Section 8.14, Section 5.15 of this Declaration shall not apply to actions to collect and enforce Assessments. Suit to recover a money judgment for unpaid Assessments together with all other amounts described in Section 8.13 shall be maintainable without foreclosing or waiving the Association's lien rights. The Association shall have the right to attach, to seek appointment of a receiver, or to pursue any other remedy permitted by law in connection with any action to collect a delinquent Assessment or to foreclose its lien.

Notwithstanding any provision to the contrary in this Section, in the event the Association seeks to collect delinquent Annual Assessments or Special Assessments of an amount less than the amount referenced in Civil Code Section 1367.4(b) or successor statute, not including any accelerated Assessments, late charges, fees and costs of collection, attorney's fees or interest, the Association may not collect that debt through judicial or nonjudicial foreclosure, but may attempt to collect or secure that debt as set forth in Civil Code Section 1367.4. In addition, the Association may not collect a monetary penalty imposed by the Association as a disciplinary measure pursuant to Section 5.15 through judicial or nonjudicial foreclosure.

**Section 8.10 Notice to Owner of Assessment Lien.** At least thirty (30) days before recording a lien against the Condominium of an Owner under Section 8.13, the Association shall notify the record Owner in writing by certified mail of the following:

(a) A general description of the collection and lien enforcement procedures of the Association and the method of calculation of the amount, a statement that the Owner has the right to inspect the Association records under California Corporations Code §8333, and a statement in 14-point boldface type, if printed, or in capital letters, if typed: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION."

(b) An itemized statement of the charges owing by the Owner, including items on the statement that indicate the amount of any delinquent Assessments, the fees and reasonable costs of collection, reasonable attorney fees, and late charges, and any interest.

(c) A statement that the Owner shall not be liable to pay charges, interest, or collection costs, if it is found that the Assessment was paid on time to the Association.

(d) A statement that the Owner has the right to request a meeting with the Board to discuss a payment plan for the amount owing by the Owner pursuant to Civil Code Section 1367.1.

(e) A statement that the member has the right to dispute the debt by submitting a written request for dispute resolution to the Association under the Association's "meet and confer" program required by Civil Code Section 1363.810-1363.850; and

(f) A statement that the member has the right to request alternative dispute resolution with a neutral third party under Civil Code Section 1369.510 before the Association may initiate foreclosure against the member's membership interest.

**Section 8.11 Creation of an Assessment Lien.** If a delinquency occurs in the payment of any Assessment or installment applicable to a Condominium as determined under Section 8.10, or in the payment of any other amount with respect to which a lien is authorized to be imposed by the Association under this Declaration or by law, the Association shall offer the Owner and, if requested by Owner, participate in a dispute resolution program established pursuant to Civil Code Section 1363.810-1363.850 or Civil Code Section 1369.510. In the event the Owner does not respond to the Association's offer to participate in a dispute resolution program within ten (10) days of such offer or in the event the dispute resolution proceeding does not resolve the delinquency within thirty (30) days of offer, the Association shall have a lien against the Condominium in the amount of the delinquent payments, plus any late charges and interest and all costs that are incurred by the Association or its authorized agent or representative in collecting such amounts, including reasonable attorney fees. The lien shall be effective on the recordation in the office of the County Recorder of the County of a Notice of Delinquent Assessment under California Civil Code §1367.1. The Notice of Delinquent Assessment shall state the amount of the Assessment and other sums owing, a legal description of the Owner's Condominium the name of the Owner as reflected in the recorded deed to the Condominium and, if the lien is to be enforced by nonjudicial foreclosure, the name and address of the trustee authorized by the Association to enforce the lien by sale as provided in Section 8.14. The Notice of Delinquent Assessment shall be signed by the President of the Association or by a person authorized by resolution of the Board, and a copy of the recorded Notice of Delinquent Assessment shall be mailed by certified mail to every person whose name is shown as an owner of the Condominium in the Association's records and notice shall be mailed no later than ten (10) days after recordation. The Notice of Delinquent Assessment shall not be recorded unless and until the Association has complied with Section 8.12, the other provisions of this Section 8.13, and upon approval of the Board by a majority vote of all Board members in an opening meeting, which vote shall be recorded in the minutes of the applicable meeting. When the Notice of Delinquent Assessment is recorded, an itemized statement of the charges owed by the Owner and created pursuant to Section 8.12 shall be recorded with the Notice of Delinquent Assessment. The lien shall continue until the Association records a further notice stating the satisfaction and release of the lien as provided in California Civil Code §1367.1, or until foreclosure as provided hereinafter. Within twenty-one (21) days after payment of the sums specified in the Notice of Delinquent Assessment, the Association shall record or cause to be recorded in the office of the County Recorder of the County a lien release or notice of rescission and shall provide the Owner with a copy of the lien release or notice that the delinquent Assessment has been satisfied. A lien created under this Section shall be prior to all other liens recorded subsequent to the recordation of the Notice of Delinquent Assessment, except for Mortgages to which such lien is expressly made subordinate under this Declaration or by separate written instrument of subordination executed by the Association. The Association may not voluntarily assign or pledge the Association's right to collect payments or Assessments, or to enforce or foreclose a lien to a third party, except, when the assignment or pledge is made to a financial institution or lender chartered or licensed under federal or state law, when acting within the scope of that charter or license, as security for a loan obtained by the Association; however, this provision shall not restrict the

Association's right or ability to assign any unpaid obligations of a former Owner to a third party for purposes of collection. If a lien previously recorded against a Condominium was recorded in error, the party who recorded the lien shall, within twenty one (21) days, record or cause to be recorded in the office of the County Recorder of the County a lien release or notice of rescission and provide the Owner of the Condominium against which the lien was recorded with a declaration that the lien recording was in error and a copy of the lien release or notice of rescission. If the Association fails to comply with the procedures set forth in this Section, or Section 8.12, it shall, before recording a lien, recommence the required notice process, and any costs associated with recommencing that process shall be borne by the Association and not by the delinquent Owner.

Section 8.12 Enforcement of Assessment Lien. After the expiration of thirty (30) days following the recording of the Notice of Delinquent Assessment under Section 8.13 the Association shall offer the Owner and, if so requested by Owner, shall participate in dispute resolution pursuant to either the dispute resolution procedure established by the Association pursuant to Civil Code Sections 1363.810-1363.850 or Civil Code Sections 1369.510 to 1369.590 shall be the choice of the Owner, except that the dispute resolution pursuant to Civil Code Sections 1369.510 to 1369.590 shall not be available if the Association intends to initiate a judicial foreclosure. If the Owner does not respond to the Association's offer to participate in a dispute resolution program within ten (10) days of such offer or in the event the dispute resolution proceeding does not resolve the delinquency within thirty (30) days of offer, the lien may be enforced in any manner permitted by law, including sale of the Condominium by the court on judicial foreclosure, sale of the Condominium by the trustee designated in the Notice of Delinquent Assessment, or sale of the Condominium by the trustee substituted under California Civil Code §2934a. By acceptance of a deed to a Condominium, each Owner thereby confers a power of sale on the trustee designated in the notice of delinquent Assessment and any substitute trustee. Any sale of the Condominium by a trustee shall be conducted in accordance with California Civil Code §§2924, 2924b, and 2924c, applicable to the exercise of powers of sale in mortgages and deeds of trust. Nothing in this Declaration shall prohibit actions against an Owner to recover sums for which a lien is created under Section 8.13 nor shall anything in the Declaration prohibit the Association from taking a deed to a Condominium in lieu of foreclosure of its lien. In connection with any sale under California Civil Code §2924c, the Association is authorized to designate or to substitute its attorney, any officer or director, or any title insurance company authorized to do business in California as trustee for purposes of conducting the sale. If a delinquency is cured before sale, or before completing a judicial foreclosure, the Association or its authorized representative shall cause to be recorded in the office of the Recorder of the County a certificate setting forth the satisfaction of such claim and release of such lien on payment of the amount of the delinquent Assessment plus late charges, interest, and actual expenses incurred, including reasonable attorney fees and trustee's fees not to exceed the amounts prescribed in California Civil Code §2924c and §2924d. The Association shall have the power to bid on the Condominium at foreclosure sale and to acquire, hold, lease, mortgage and convey the Condominium.

In addition to the requirements of California Civil Code §2924, a notice of default shall be serviced by the Association on the Owner's legal representative in accordance with the manner of service of summons in Article 3 (commencing with Section 415.10) of Chapter 4 of

Title 5 of Part 2 of the California Code of Civil Procedure. Upon receipt of a written request by an Owner identifying a secondary address for purposes of collection notices, the Association shall send additional copies of any notices required by this Section to the secondary address provided. The Association shall notify Owners of their right to submit the secondary addresses to the Association, at the time the Association issues the pro forma Operating Budget pursuant to Section 1365. The Owner's request shall be in writing and shall be mailed to the Association in a manner that shall indicate the Association has received it. The Owner may identify or change a secondary address at any time, provided that, if a secondary address is identified or changed during the collection process, the Association shall only be required to send notices to the indicated secondary address from the point the Association receives the request.

The decision to initiate foreclosure of a lien for delinquent Assessments shall be made by a majority vote of all of the board members in an executive session. The Board shall record the vote in the minutes of the next meeting of the board open to all members. The Board shall maintain the confidentiality of the Owner by identifying the property, rather than the name of the Owner. The Board vote to approve foreclosure of a lien shall take place at least thirty (30) days prior to any public sale. The Board shall provide notice by personal service to an Owner of a Condominium who occupies a Condominium. The Board shall provide written notice to an Owner of a Condominium who does not occupy the Condominium by first-class mail, postage prepaid, at the most current address shown on the books of the Association. In the absence of written notification by the Owner to the Association, the address of the Owner's Condominium may be treated as the Owner's mailing address.

Section 8.13 Reversal of Charges, Fees and Costs. If it is determined through dispute resolution pursuant to the Association's dispute resolution procedure pursuant to Civil Code Sections 1363.810-1363.850 or Civil Code Sections 1369.510 to 1369.590, that the Association has recorded a lien for delinquent Assessment in error, the Association shall promptly reverse all late charges, fees, interest, attorney's fees, costs of collection, costs imposed for the notice, recordation and release required pursuant to this Article 8 and pay all costs related to the dispute resolution or alternative dispute resolution.

Section 8.14 Waiver of Homestead Protections. Each Owner, to the extent permitted by law, waives the protections of any declared homestead or homestead exemption under the laws of California as applied to any action to enforce the Assessments levied by the Association.

## ARTICLE 9 ARCHITECTURAL REVIEW

Section 9.1 Architectural Review Committee; Members. An Architectural Review Committee may be established by the Declarant or by the Board. The Architectural Review Committee shall consist of at least three (3) but no more than five (5) members. Declarant may appoint all of the original members of the Architectural Review Committee and all replacements until the first anniversary of the issuance of the original final subdivision public report for the Development. Declarant's appointees need not be Members of the Association. After the first anniversary of the issuance of the original final subdivision public report, Declarant shall have

the right to appoint a majority of the members of the Architectural Review Committee until ninety percent (90%) of all the Units in the Development have been sold or until the fifth anniversary of the issuance of the final public report for the Development, whichever occurs first. From and after the first anniversary date of the issuance of the original public report for the Development, the Board shall have the power to appoint one member to the Architectural Review Committee until ninety percent (90%) of the Units of the Development have been sold or until the fifth anniversary date of the issuance of the final public report for the Development, whichever first occurs. Thereafter, the Board shall have the power to appoint all of the members of the Architectural Review Committee. The Board appointees shall be the Owners. The term of the members shall be as designated by the Declarant or by the Board. If a member is removed from the Architectural Review Committee for any reason, the person appointing the member immediately shall appoint a replacement for the balance of the removed member's term. Until a replacement is named, the remaining members of the Architectural Review Committee shall have full authority to act on behalf of the Architectural Review Committee. No member of the Architectural Review Committee shall be entitled to any compensation for serving as a member, provided that member shall be entitled to be reimbursed by the Architectural Review Committee for any expenses incurred by the member in performing its duties, and provided the member received prior authorization for the incurrence of the expense.

**Section 9.2 Meetings and Notice.** The Architectural Review Committee shall meet at such times and places as it shall designate. As required under Civil Code Section 1363.05, notice to the Owners of an Architectural Review Committee meeting shall be given at least four (4) days prior to the meeting. Also, as required under Civil Code Section 1363.05, notice shall be given by posting the notice in a prominent place or places within the Common Area and by mail to any owner who had requested notification of board meetings by mail, at the address requested by the Owner. Notice may also be given, by mail or delivery of the notice to each Condominium in the Development or by newsletter or similar means of communication, as allowed under Civil Code Section 1363.05. Meetings of the Architectural Review Committee shall be open to all Members of the Association. The minutes of any meetings of the Architectural Review Committee shall be available to the members within thirty (30) days of the meeting as required under Civil Code Section 1363.05(d).

**Section 9.3 Actions Requiring Architectural Review.** Except for construction of improvements by Declarant in the Common Area or the improvements offered by Declarant to initial Owners as an optional improvement to the Owner's Unit, and their replacements, no building, fence, wall, screen, patio cover, trellis or other structure shall be commenced, installed, erected, or maintained in the Development, including physical improvements to the Patios and Exterior Unit Stairways which are visible from the street or Common Area, nor shall any exterior addition to or change or alteration in such structures or the Development be made or installed until the plans and specifications showing the nature, kind, shape, materials, and location of the same have been submitted to and approved in writing by the Architectural Review Committee. Whenever in this Declaration the prior consent or approval of the Association is required as a condition to any action by an Owner affecting any alterations, changes, additions, or modifications of the Common Area or such Owner's Unit, the Association through the Board may delegate to the Architectural Review Committee the right and duty to grant or withhold such consent or approval. Notwithstanding the foregoing, Owners may improve or alter

improvements within the interior boundaries of the Owner's Unit provided such improvement or alteration does not impair the structural or acoustical integrity of the Building, the utilities or other systems servicing the Common Area or other Condominiums, and does not involve altering any Common Area.

Section 9.4 Guidelines and Standards.

(a) The Architectural Review Committee may adopt guidelines regarding the type, location, quality, size, height and other matters relating to any improvements or landscaping to be constructed or installed in the Development and may establish a procedure for reviewing all plans and specifications submitted to it for prior approval and shall be responsible for periodic review and modification of the guidelines. The guidelines shall comply with the use restrictions described in Article 3.

(b) In reviewing and approving or disapproving a proposed change, the Association and its Architectural Review Committee shall satisfy the following requirements:

(i) the Architectural Review Committee shall provide a fair, reasonable, and expeditious procedure for making its decision. The procedures shall (i) be included in the Association Rules or other Governing Documents of the Association; (ii) provide for prompt deadlines, consistent with the requirements of this Article; and (iii) state the maximum time for response to an application or a request for reconsideration by the Board of Directors.

(ii) a decision on an improvement project shall be made in good faith and may not be unreasonable arbitrary or capricious;

(iii) a decision on an improvement project shall be consistent with any governing provision of law, including, without limitation, the Fair Employment and Housing Act (Government Code Section 12900 et seq.), or a building code or other applicable law governing land use or public safety;

(iv) a decision on an improvement project shall be in writing. If a proposed change is disapproved, the written decision shall include both an explanation of why the proposed change is disapproved and a description of the procedure for reconsideration of the decision of the Architectural Review Committee by the Board;

(v) if a proposed change is disapproved by the Architectural Review Committee, the Owner-applicant shall be entitled to seek reconsideration of the decision by the Board at an open meeting of the Board. However, if the architectural review and approval process is administered by the Board or by a body that has the same membership as the Board, any decision of the Board or that body that is made at a meeting satisfying the requirements of Civil Code Section 1363.05 shall not be eligible for reconsideration. Any reconsideration of a decision of the Architectural Review Committee by the Board shall not constitute dispute resolution within the meaning of Civil Code §1363.820.



(vi) factors that shall be considered in approving proposed plans and specifications shall include without limitation: (x) effect of the proposed location on neighboring units; (y) overall conformity with the general purpose of the Development and the restrictions in this Declaration; and (z) the guidelines.

(vii) the foregoing requirements set forth in subparagraphs (i) through (vi), inclusive, shall not be construed to authorize a physical change to the Common Area in a manner that is inconsistent with the Association's Governing Documents unless the change is required by law.

(c) The Association shall annually provide its Members with notice of any requirements for Association approval of improvement projects. This notice shall describe the types of changes that require Association approval and shall include a copy of the procedure used to review and approve or disapprove a proposed change.

(d) If the boundaries of a Unit are contained within a Building, despite the foregoing, if an Owner submits plans and specifications to modify his or her Unit to facilitate access for persons who are blind, visually handicapped, deaf, or physically disabled, or to alter conditions that could be hazardous to those persons, including a proposed modification of an existing route or means of access to the Owner's Unit, the review of the plans and specifications by the Architectural Review Committee shall be limited to a determination that the proposed modifications are consistent with the intent of otherwise applicable provisions of this Declaration pertaining to safety or esthetics and are consistent with the requirements of Civil Code §1360; then the Architectural Review Committee shall not deny approval of the Owner's plans and specifications without good cause.

(e) In addition, the Architectural Review Committee shall from time to time propose and recommend to the Board modifications or additions to the maintenance standards, as well as procedures and schedules for meetings and hearings concerning such standards and policies or their enforcement. In establishing or modifying the standards, the Architectural Review Committee shall act with a view toward achieving uniform appearance and standards and policies consistent with the original design and construction of the Development and equality among Owners. Before recommending to the Board the adoption, amendment, or repeal of any of such standards, the Architectural Review Committee shall provide to all Owners at least thirty (30) days' prior written notice of such proposed action. The notice shall include the text of the proposed or revised standards and a description of their purpose and effect. The Architectural Review Committee shall make its recommendation to the Board after considering any comments made by the Owners. The Board's decision to adopt, amend, or repeal any of the standards shall be final and binding on the Owners. On request of any Owner, the Association shall provide the Owner with a copy of the then applicable standards.

**Section 9.5 Completion of Work.** Subject to Section 9.8, on receipt of approval from the Architectural Review Committee, the Owner shall commence the work as soon as reasonably practicable and shall diligently pursue the completion of the work. Any member of the Architectural Review Committee, or any authorized agent of the Architectural Review Committee, from time to time and anytime during normal business hours, may enter any

Condominium for the purpose of inspecting any construction to confirm compliance with the plans and specifications as approved by the Architectural Review Committee. If the work is not commenced within one hundred eighty (180) days after receipt of approval or completed within one year after receipt of approval or such later date as the Architectural Review Committee shall approve in writing, the approval automatically shall be deemed revoked and no further work shall be done without again obtaining the written approval of the Architectural Review Committee as described herein. The work shall be done in strict compliance with the approved plans except for minor non-material changes as may be necessary during the course of construction.

Section 9.6 Non-Liability. The Association, the Architectural Review Committee, the Declarant, or the other Owners, or their respective successors or assigns, shall not be liable to any Person submitting plans to the Architectural Review Committee for approval or to any other Owners or occupants by reason of any act or omission arising out of or in connection with the approval or disapproval of any plans or specifications. Approval shall not constitute any warranty or representation by the Architectural Review Committee or its members that the plans satisfy any applicable governmental law, ordinance or regulation or that any improvement constructed in accordance with the plans shall be fit for the use for which it was intended and safe for use and occupancy. Applicants shall make their own independent verifications of the foregoing and shall not rely on the Architectural Review Committee or its members in any manner in this regard.

Section 9.7 Board's Authority. If for any reason the Architectural Review Committee is not established or not active, the Board shall perform the duties and shall have the rights of the Architectural Review Committee as described in this Article.

Section 9.8 Governmental Approval. Before commencement of any alteration or improvement approved by the Architectural Review Committee, the Owner shall comply with all the appropriate governmental laws and regulations. Approval by the Architectural Review Committee does not satisfy the appropriate approvals that may be required from any governmental entity with appropriate jurisdiction.

Section 9.9 Permits. Before commencement of any improvements, the Person or constructing such improvements, shall comply with all appropriate governmental laws and regulations and shall obtain, at such Person's sole expense, all required permits.

Section 9.10 Estoppel Certificate. Within thirty (30) days after written demand is delivered to the secretary of the Association by an Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Board), the Board (by any two of its members) shall execute an estoppel certificate certifying (with respect to any Unit owned by the applicant Owner) that as of the date thereof, either (i) all improvements made and other work completed by said Owner with respect to the Unit comply with this Declaration; or (ii) that such improvements or work do not so comply, in which event the certificate shall also identify the non-complying improvements or work and set forth with particularity the bases of such noncompliance. Any purchaser from the Owner, through the Owner, shall be entitled to rely on

said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, all Owners and any persons deriving any interest through them.

Section 9.11 Declarant Exemption. Declarant, or its successor or assign, shall not be subject to the approval requirements of this Article 9 in connection with the construction, alteration or repair of any improvement within the Development.

## ARTICLE 10 INSURANCE

### Section 10.1 Joint Insurance Policy.

Pursuant to the Reciprocal Easement and Maintenance Agreement, the Joint Maintenance Committee is required to select a single insurance carrier and single insurance agent to provide the insurance coverage required below for the Parcels, naming all Parcel Owners as insureds (the "Joint Policy"):

a. Property insurance covering all Parcels and Site Improvements, as now or hereafter erected on the Parcels, and all equipment and fixtures located thereon or used in connection therewith, insuring the Parcel Owners against loss or damage by the perils insured under the standard Causes of Loss -- Special Form.

b. Commercial General Liability insurance, with combined limits not less than Six Million Dollars (\$6,000,000) per occurrence and Seven Million Dollars (\$7,000,000) general aggregate limit of bodily injury and property damage liability, as such limits may be increased by the Reciprocal Easement and Maintenance Agreement.

Costs associated with the Joint Policy shall be a Joint Expense payable by the Parcel Owners according to their Joint Expense Share.

Section 10.2 Liability Insurance. If the Joint Policy has not been procured or is terminated or provides less coverage than set forth below, the Association shall obtain and maintain, to the extent not included within the Joint Policy, a commercial general liability insurance policy insuring the Association, any manager, Declarant, the Association's directors and officers, and the Owners and occupants of the Condominiums and their respective family members, guests, invitees, and the agents and employees of each against any liability incident to the ownership or use of the Development or any other Association-owned or -maintained real or personal property. The policy shall include, if obtainable, a cross liability or severability of interest endorsement insuring each insured against the liability to each other. The limits of such insurance shall not be less than Two Million Dollars (\$2,000,000) covering all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, liability for nonowned and hired automobiles, liability for property of others, and other liability or risk customarily covered with respect to projects similar in construction, location and use.

Section 10.3 Association Property Insurance. If the Joint Policy has not been procured or is terminated or provides less coverage than set forth below, the Association shall obtain and maintain, to the extent not included within the Joint Policy, a master or blanket property insurance for the full insurance value on a replacement cost basis of all improvements within the Development. The policy shall provide amounts of coverage as shall be determined by the Board; however, the form, content, and term of the policy and its endorsements and the issuing company must be satisfactory to all institutional first Mortgagees. To the extent available, the policy shall contain an agreed amount endorsement or its equivalent; an increased cost of construction or contingent liability from operation of building laws endorsement or their equivalent; an extended coverage endorsement; vandalism and malicious mischief coverage; a special form endorsement; and a determinable cash adjustment clause or a similar clause to permit cash settlement covering full value of the improvements in the event of partial destruction and a decision not to repair or reconstruct the insured improvements. The policy shall name as insured the Association, the Owners, and Declarant, as long as Declarant is the Owner of any Condominium, and all Mortgagees, as their respective interests may appear, and may contain a loss payable endorsements in favor of the trustee described in Section 10.12. Subject to the rights of the Mortgagees and to the provisions of Article 14, the Association shall make available to each affected Owner, or to the trustee described in Section 10.12 for the benefit of all affected Owners, solely for repair, replacement, or reconstruction, all insurance proceeds received by the Association on account of damage or destruction affecting the appliances, systems, equipment or fixtures, or nonstructural interior improvements located in Units that the Owner is obligated to repair or replace under Section 11.5.

Section 10.4 Earthquake Insurance. If available in the opinion of the Board, on commercially reasonable and economic terms and conditions, the Association may obtain and maintain earthquake insurance for the full insurance value on a replacement cost basis of all improvements within the Development, including, if insurable, buildings and structures, streets and sidewalks, and appliances, mechanical systems equipment, fixtures, or nonstructural interior improvements (but not Owners' furnishings or other personal property located in the Units) less a deductible amount of self-insured retention not to exceed fifteen percent (15%) of the limit of liability of earthquake damage insurance or lesser deductible amount of self-insured retention as may be established from time to time by the California Earthquake Insurance Authority.

Section 10.5 Flood Insurance. The Association may and, if the Development is located in an area designated by an appropriate government agency as a special flood hazard area, shall purchase and maintain a blanket policy of flood insurance.

Section 10.6 Other Insurance. In addition to the policies described in Sections 10.1 through 10.5, the Association may obtain and maintain the following insurance:

- (a) Workers Compensation Insurance to the extent required by law;
- (b) fidelity bonds or insurance covering officers, directors and employees of the Association and employees of any managing agent, whether or not such persons are compensated for such services, naming the Association as obligee or as insured, which shall be in an amount of at least one hundred fifty percent (150%) of each year's estimated annual

operating expenses and accumulated reserves and which shall be sufficient to meet the requirements of any institutional first Mortgagee; and

(c) such other insurance as the Board in its discretion considers necessary or advisable.

Section 10.7 Directors and Officers Insurance. To the extent insurance is available, the Association shall purchase and maintain insurance in the minimum amounts required by California Civil Code Section 1365.7 on behalf of any Director, Officer, or Member of a committee of the Association (collectively the "agents") against any liability asserted against or incurred by the agent in such capacity or arising from the agent's status as such, regardless of whether the Association would have the power to indemnify the agent against such liability under applicable law.

Section 10.8 Cancellation; Other Requirements; Deductibles. All of the policies of insurance maintained by the Association shall contain a provision that such policy or policies shall not be cancelled or terminated, or expired by their terms, or not renewed without thirty (30) days' prior written notice to the Board, the Owners and their respective first Mortgagees (provided that such Owners or Mortgagees have filed written requests with the carrier for such notice) and every other Person in interest who shall have requested such notice of the insurer. The policies shall be primary and noncontributing with any other insurance policy covering the same loss. The policies shall waive all subrogation rights against any Owner or occupant and his or her family members and invitees. The amount of any deductible shall be paid by the Association pursuant to guidelines adopted by the Board.

Section 10.9 Periodic Insurance Review. The Board periodically (and not less than once every three (3) years) shall review the Association's insurance policies and make such adjustments to the policies' terms and conditions as the Board considers to be in the best interests of the Association. The review shall include an appraisal by a qualified appraiser of the current replacement costs of all covered property under the Association's policy unless the Board is satisfied that the current dollar limit of the property policy, coupled with the amount of actual Reserves on hand, is equal to or greater than the current replacement costs.

Section 10.10 Board's Authority to Revise Insurance Coverage. Subject to restrictions imposed by Mortgagees, and the requirements set forth in the Reciprocal Easement and Maintenance Agreement, the Board shall have the power and right to deviate from the insurance requirements contained in this Article 10 in any manner that the Board, in its discretion, considers to be in the best interests of the Association. If the Board elects to materially reduce the coverage from the coverage required in this Article 10, the Board shall make all reasonable efforts to notify the Members of the reduction in coverage and the reasons therefore at least thirty (30) days prior to the effective date of the reduction.

The Board is authorized to negotiate and agree on the value and extent of any loss under any policy carried by the Association, including, but not limited to, the right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

Each Owner, by acceptance of a deed to a Unit, irrevocably appoints the Association or the insurance trustee, described in Section 10.12, as that Owner's attorney-in-fact for purposes of procuring, negotiating, accepting, compromising, releasing, settling, distributing and taking other related actions in connection with any insurance policy maintained by the Association and any losses or claims related thereto and agrees to be bound by the actions so taken as if the Owner had personally taken the action.

The Association and its directors and officers shall have no liability to any Owner or Mortgagee if, after a good faith effort: (1) the Association is unable to obtain any insurance required hereunder because the insurance is no longer available; (2) if available, the insurance can be obtained only at a cost that the Board, in its sole discretion, determines is unreasonable in the circumstances; or (3) the Members fail to approve any Assessment increase needed to fund the insurance premiums.

Section 10.11 Payment of Premiums. Insurance premiums for the Association policies required hereby shall be a Common Expense to be included in the monthly Assessment levied by the Association. The portion of Assessment payments necessary for the insurance premiums may be held in a separate account of the Association to be used solely for the payment of the premiums for such policies. The Association shall pay its share of the expenses of the Joint Policy obtained by the Joint Maintenance Committee, to the extent required under the Reciprocal Easement and Maintenance Agreement.

Section 10.12 Insurance Trustee. All property insurance proceeds payable to the Association under any property insurance policy procured by the Association as described in Section 10.1 through 10.5, subject to the rights of Mortgagees under Article 14, may be paid to a trustee as designated by the Board to be held and expended for the benefit of the Owners, and Mortgagees as their respective interests shall appear. The trustee shall be a commercial bank or other financial institution with trust powers in the County that agrees in writing to accept such trust. If repair or reconstruction is authorized, the Association will have the duty to contract for such work as provided for in this Declaration.

Section 10.13 Owners' Property Insurance. No Owner shall separately insure any property covered by the Association's insurance policy as described in Section 10.1 through 10.5 above. If any Owner violates this provision and, as a result, there is a diminution in insurance proceeds otherwise payable to the Association, the Owner will be liable to the Association to the extent of the diminution. The Association may levy a reimbursement Assessment against the Owner's Unit to collect the amount of the diminution. The insurance maintained by the Association does not cover the personal property in the Units and does not cover personal liability for damages or injuries occurring in the Units. Each Owner shall insure his or her personal property and any improvements within the Unit against loss. In addition, an Owner may separately insure any improvements the Owner made within the Unit, but this insurance must be limited to the type and nature of coverage commonly known as "tenant's improvements". All such insurance that is individually carried must contain a waiver of subrogation rights by the carrier as to other Owners, the Association, Declarant and the institutional first Mortgagee of such Unit.

Section 10.14 Distribution to Mortgagees. Subject to the provisions of Section 14.6, any Mortgagee has the option to apply insurance proceeds payable on account of a Unit in reduction of the obligation secured by the Mortgage of such Mortgagee.

Section 10.15 Notice of Changes. The Association shall, as soon as reasonably practicable, notify Owners by first-class mail if any of the policies described in this Article on Insurance have lapsed, been canceled, and are not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible, for any of those policies. The Association shall immediately notify Owners if the Association receives any notice of nonrenewal of any of the policies described in this Article and replacement coverage will not be in effect by the date the existing coverage lapses.

Section 10.16 FNMA, FHLMC and Reciprocal Easement and Maintenance Agreement Requirements. Notwithstanding anything herein to the contrary but subject to the provisions of Section 10.4 regarding earthquake coverage, the Association shall maintain such policies, containing such terms, amount of coverage, endorsements, deductible amounts, named insureds, loss payees, standard mortgage clauses, notice of changes or cancellation, and an appropriate insurance company rating that shall satisfy the minimum requirements imposed by the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), the Federal Housing Administration ("FHA") or any successor thereto, and the Reciprocal Easement and Maintenance Agreement. If the FNMA, FHLMC, FHA, or Reciprocal Easement and Maintenance Agreement requirements conflict, the more stringent requirements shall be met.

## ARTICLE 11 DAMAGE OR DESTRUCTION

Section 11.1 Damages or Destruction to Units and/or Common Area. Subject to the requirements set forth in the Reciprocal Easement and Maintenance Agreement regarding damage to more than one Parcel:

(a) If there is a total or partial destruction of any of the buildings, structures, or improvements in the Development the Board shall obtain estimates from at least two reputable contractors to repair and reconstruct the improvements in accordance with the original plans and specifications. If the Board determines, based on the estimates received, that available proceeds of the insurance carried pursuant to Article 10 are sufficient to cover at least eighty-five percent (85%) of the costs of repair and reconstruction, the damaged or destroyed buildings, structures, or improvements shall be promptly repaired or reconstructed, unless, within ninety (90) days from the date of damage or destruction, Owners holding at least seventy-five percent (75%) of the total voting power of Owners entitled to vote, in person or by proxy at a duly constituted meeting, determine that repair or reconstruction shall not take place.

(b) If the Board determines, based on the estimates received, that proceeds of insurance carried pursuant to Section 10.3 are less than eighty-five percent (85%) of the costs of

repair and reconstruction of the buildings, structures, or improvements, repair and reconstruction shall take place unless, within ninety (90) days after the date of damage or destruction, Owners holding at least two-thirds of the total voting power of the Owners entitled to vote, in person or by proxy, at a duly constituted meeting, determine that repair and reconstruction shall not take place.

Any amounts of insurance obtained by the Association pursuant to this Declaration shall be added to those proceeds received from insurance obtained pursuant to the applicable provisions of the Reciprocal Easement and Maintenance Agreement, and shall be used to repair or replace the Development.

Section 11.2 Recordation of Certificate of Intention to Rebuild. If the damaged or destroyed buildings, structures, or improvements are to be repaired or reconstructed, the Association shall execute, acknowledge, and record in the office of the Recorder of the County, no later than one hundred twenty (120) days after the date of destruction, a certificate declaring the Owners' intention to rebuild.

Section 11.3 Repair or Reconstruction Assessment. If repair or reconstruction of the buildings, structures, or improvements in the Development is authorized pursuant to Section 11.1 each Owner shall be obligated to contribute his or her proportionate share of the cost of repair or reconstruction over and above the available insurance proceeds. The proportionate share of each Owner, in the event of damage or destruction to the Development that do not constitute buildings or structures within which residential units are located, shall be equal and, as to damage or destruction to the portions of the Common Area within which residential elements of Units are located, shall be based on the ratio that the square footage of the living area of each owner's Unit bears to the total square footage of the living area of all Units. If any Owner fails to pay his or her proportionate share, the Association may levy a Special Assessment in the amount of the Owner's proportionate share, which may be enforced under the lien provisions in Article 8 or in any other manner provided in this Declaration. In the event the insurance proceeds received are inadequate to pay the full cost of repair under the Reciprocal Easement and Maintenance Agreement, the Association shall assess a Special Assessment to pay its share of any Special Assessment assessed pursuant to the Reciprocal Easement and Maintenance Agreement. Said amounts shall be used for the exclusive purpose of repairing and restoring the damage.

Section 11.4 Repair or Reconstruction Contract. If the repair or reconstruction of the buildings, structures, or improvements in the Development is authorized under Section 11.1, the Board shall obtain bids from at least two reputable licensed contractors and shall award the repair and reconstruction work to the lowest qualified bidder. The Board shall have the authority to cause the Association to enter into a written contract with the contractor for the repair and reconstruction, and the insurance proceeds and any other available funds shall be disbursed to the contractor according to the terms of the contract. It shall be the obligation of the Board to take all steps necessary to ensure the commencement and completion of authorized repair and reconstruction at the earliest possible dates.

Section 11.5 Repair, Replacement, and Reconstruction of Appliances, Fixtures, Equipment, or Interior Improvements.



(a) Owner's Duty to Repair. If repair or reconstruction of the buildings, structures, or improvements in the Development is authorized under Section 11.1, appliances or mechanical, plumbing, sewer, water, gas, cable television, heating, air conditioning and electrical systems, equipment or fixtures and nonstructural interior partition walls, windows, and doors located within a Unit or exclusively serving a Unit that are damaged or destroyed, regardless of the cause, whether or not covered by insurance, shall be repaired, replaced, or reconstructed by the Owner of the Condominium in accordance with the original plans and specifications for the Development, except as to modifications required by the County, or other governmental body having jurisdiction of the Development or approved by the Architectural Review Committee. If an Owner has modified or replaced any portion of the appliances or mechanical, plumbing, sewer, water, gas, cable television, heating, air conditioning and electrical systems, equipment, or fixtures and nonstructural interior partition walls, windows, and doors located in or exclusively serving the Owner's Unit in compliance with the requirements of this Declaration, and all applicable building codes, the repair or reconstruction of the Owner's Unit shall include such modifications or replacements.

(b) Availability of Insurance Proceeds. Subject to the rights of Mortgagees and the provisions of this Declaration, and as long as proceeds are sufficient to repair or rebuild the buildings, structures, and Common Area improvements, the Association shall make available to each such Owner, or to the insurance trustee described in Section 10.12 for the benefit of such Owner, solely for the purpose of repair, replacement, or reconstruction, all insurance proceeds received by the Association on account of damage or destruction affecting the appliances or mechanical, plumbing, sewer, water, gas, cable television, heating, air conditioning and electrical systems, equipment or fixtures, and nonstructural interior partition walls, windows, and doors in the Owner's Unit.

(c) Uninsured or Underinsured Loss. Any costs of repair, replacement or reconstruction of appliances or mechanical, plumbing, sewer, water, gas, cable television, heating, air conditioning, and electrical systems, equipment or fixtures or non-structural interior partition walls, windows and doors located within a Unit or exclusively serving a Unit which are not covered by available insurance proceeds, including any uninsured or underinsured damage or destruction, shall be paid by the Owner of the Condominium of which the affected Unit is a part, and no other Owner nor the Association shall have any obligation or liability with respect thereto.

(d) Repair or Reconstruction by Owner Affecting Structure. If an Owner is required to make any repair, or if an Owner desires to reconstruct any improvement or install any fixture or equipment, that will affect or involve the exterior walls of the Owner's Unit or any interior bearing wall or other portion of the Common Area, prior written approval of the Architectural Review Committee must be obtained. However, such approval need not be obtained to make emergency repairs, as long as the structure, other Common Area so affected is restored to its original condition at the Owner's expense. All repairs and or reconstruction shall be performed by the contractor selected by the Association as provided in Section 11.4 and shall be included in the contractor's bid and contract, unless the Architectural Review Committee

determines that, because of the separate nature of the repair or reconstruction work, the Owner may use a separate contractor or supplier.

Section 11.6 Rebuilding Not Authorized. If by operation of the procedures set forth in this Declaration and the Reciprocal Easement and Maintenance Agreement, the Owners decide not to repair or rebuild the damaged or destroyed buildings, structures, or improvements, any proceeds of insurance available for such repair or reconstruction, subject to the provisions in the Reciprocal Easement and Maintenance Agreement, shall be used or distributed as follows:

(a) Purchase of Condominiums by Association.

(i) If, at the meeting of Owners described in Section 11.1, or at a separately called and noticed meeting held within thirty (30) days thereafter, Owners holding at least seventy-five percent (75%) of the total voting power of each class of Owners entitled to vote, in person or by proxy, approve the purchase of Condominiums with Units that were rendered uninhabitable by the damage or destruction, and within one hundred twenty (120) days thereafter sixty-seven percent (67%) of the institutional first Mortgagees with Mortgages encumbering Condominiums in the Project (excluding those with Mortgages encumbering Condominiums with Units, that were rendered uninhabitable) consent in writing, the Board acting on behalf of the Association shall have the right to purchase the Condominiums with Units that were rendered uninhabitable by damage or destruction at the fair market value thereof immediately prior to the damage or destruction (as determined pursuant to Section 11.7), using, first, the available proceeds of insurance for such purpose and, second, the proceeds of a Special Assessment levied against all Owners in the Project whose Condominium is not being purchased in the manner described in Section 11.3 (but without the consent or approval of Owners despite any contrary provisions in the Declaration). The Board's decision as to whether or not a Unit is uninhabitable shall be final and binding on all parties.

(ii) The purchase price of a Condominium purchased by the Association shall be paid jointly to the selling Owner and to all Mortgagees of the Owner's Condominium, and each Owner by accepting a deed to a Condominium agrees to be bound by these provisions and to sell and to convey the Condominium by grant deed to the Association as provided herein.

(iii) Concurrently with the purchase of a Condominium by the Association, the Association, acting as attorney-in-fact of all Owners pursuant to Section 16.11, shall amend the applicable Condominium Plan, any conditional use permit (if necessary), and this Declaration to eliminate from the Development the Condominiums so purchased.

(iv) Notwithstanding a determination not to rebuild pursuant to Section 11.1 and approval by the requisite number of Owners and Mortgagees to purchase Condominiums with Units that were rendered uninhabitable by damage or destruction as provided in Section 11.6(a)(i), any Units (exclusive of furnishings and other personal property of Owners), which were not rendered uninhabitable by the damage or destruction, and any other portion of the Common Area which was damaged or destroyed, shall be repaired and reconstructed to a condition as near as possible to the condition existing immediately before such damage or destruction. Such repair and reconstruction shall be paid for, first, from the

insurance proceeds remaining after setting aside funds for the purchase of Condominiums authorized to be purchased pursuant to Section 11.6(a)(i), if any, and second, from a Special Assessment levied against all remaining Owners in the Project in the manner described in Section 11.3 (but without the consent or approval of Owners, despite any contrary provisions in the Declaration).

(b) Apportionment of Insurance Proceeds if Purchase of Condominiums Not Authorized. If the required seventy-five percent (75%) of all Owners and sixty-seven percent (67%) of institutional first Mortgagees do not consent to purchase the Condominiums with Units that were rendered uninhabitable, the proceeds of insurance shall be apportioned among all Owners, and their respective Mortgagees, in proportion to the relative fair market values of their Condominiums determined pursuant to Section 11.7. The Board shall have the duty, within two hundred seventy (270) days from the date of damage or destruction, to execute, acknowledge and record in the office of the Recorder of the County, a certificate declaring the intention of the Owners not to repair or reconstruct or to purchase, and the Board shall commence proceedings to wind up and dissolve the Association and shall execute and record a grant deed conveying all Condominium Common Area to the Owners in equal undivided interests. On recordation of the certificate and grant deed, the right of any Owner to maintain a partition action as to the entire Project as described in Section 13.1 shall revive immediately.

Section 11.7 Fair Market Value. Wherever in this Article 11 reference is made to a determination of the relative fair market value of one or more Condominiums, it shall mean the relative fair market value of each such Condominium as of a date immediately prior to any damage or destruction as determined by an appraisal by an independent appraiser selected by the Association, who shall be a member of the Society of Real Estate Appraisers or other nationally recognized appraiser organization and who shall apply its or such other organization's standards in determining the relative fair market value of each such Condominium. The cost of such appraisal shall be paid from the available insurance proceeds or from the Reserves or general funds of the Association.

Section 11.8 Minor Repair and Reconstruction. The Association shall have the duty to repair and rebuild the Development (except furnishings or other personal property of the Owners), without the Owners' consent and regardless of the amount of available insurance proceeds, in all cases of partial destruction when the estimated cost of repair and reconstruction does not exceed Twenty Thousand Dollars (\$20,000). The Association is empowered to levy a Special Assessment to repay and rebuild improvements to the extent insurance proceeds are unavailable, such Assessment to be levied as described in Section 11.3 (but without the Owners' consent or approval, despite any contrary provisions in this Declaration).

## ARTICLE 12 CONDEMNATION

Section 12.1 Condemnation and Sale by Consent. If an action for condemnation of all or a portion of the Development is proposed or threatened by any governmental agency having the right of eminent domain, then, upon unanimous written consent of all of the Owners in the

Development, and all institutional Mortgagees whose Mortgages encumber Condominiums on the Development, the Development or a portion of it may be sold and conveyed to the condemning authority by the Association or its designees acting as the attorney-in-fact of all Owners in the Development under an irrevocable power of attorney, which each Owner by accepting a deed to a Condominium in the Development hereby grants and which shall be coupled with the interest of all other Owners, for a price deemed fair and equitable by the Board. If fewer than all affected Owners or their institutional Mortgagees consent to a sale of all or a portion of the Development and the condemning authority institutes condemnation proceedings, the court shall fix and determine the condemnation award to each Owner, Mortgagee, the Association and anyone else having a compensable interest, including any award for severance or other damages in favor of the Association or owners or Mortgagees of Condominiums in the Development not directly affected by the condemnation action.

**Section 12.2 Revival of Right to Partition.** If less than the entire Development is sold to or taken by a condemning authority, the remaining Development shall continue to be operated as a Condominium project. However, if the sale or taking (i) renders more than seventy-five percent (75%) of the Units uninhabitable, as determined by the Board, or (ii) renders the Development remaining after the sale or taking uneconomic or undesirable, as determined by the vote or written consent of sixty-seven percent (67%) of the Owners whose Units will remain habitable after the sale or taking, and with the written consent of sixty-seven percent (67%) of their institutional first Mortgagees, the Board shall commence proceedings to wind up and dissolve the Association and shall execute and record a grant deed conveying all remaining Association Common Area to the Owners in equal undivided interests. In this event, the right of any Owner to partition through legal action as described in Section 13.1 shall revive immediately. However, any such determination reviving each Owner's right of partition must be made before the proceeds from any sale or condemnation award are distributed.

**Section 12.3 Total Sale or Taking or Partial Taking Followed by Partition.** After payment of all expenses of the Association in effecting the sale or to any prevailing party in any condemnation or partition action to whom such expenses are ordered by the Court to be paid from the amount awarded or from the sale proceeds, the proceeds from any sale or taking of the entire Development, or the proceeds of any partial sale or taking and of any sale of the balance of the Development following the revival of the right of partition under Section 13.1 shall be paid to all Owner and the respective Mortgagees of each Condominium, as their interest may appear, based upon the ratio that the fair market value of each Condominium bears to the fair market value of all Condominiums in the Development; as fair market value is determined pursuant to Section 12.5 below.

**Section 12.4 Partial Sale or Taking Without Partition.** In the event of a partial sale or taking of the Development not resulting in the revival of the right of partition under Section 13.1, the proceeds from the sale or taking shall be paid or applied in the following order of priority, and any judgment of condemnation shall include the following provisions as part of its terms:

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

(b) To each Owner, and to the Owner's Mortgagees, as their interests may appear, whose ownership interest has been sold or taken, an amount up to the aggregate fair market value of each such Condominium as determined pursuant to Section 12.5, less such Owners' share of expenses paid pursuant to Subsection (a) (which share shall be based upon the ratio that the then Assessment ratio of such Owner as determined pursuant to Section 8.6 above bears to the aggregate Assessment ratios of all Owners whose Condominiums have been sold or taken). After such payment, the recipient shall no longer be deemed an Owner, and the Association or individuals authorized by the Association, acting as attorney-in-fact of all Owners, shall amend the applicable Condominium Plan, and this Declaration to eliminate from the Development the Condominiums so sold or taken and to adjust the undivided ownership interest of the remaining Owners in the Condominium Common Area based on the ratio that each remaining Owner's undivided interest bears to all the remaining Owners' undivided interest in the same Condominium Common Area; then

(c) To any remaining Owners and to the Owner's Mortgagees, as their interest may appear, whose Condominiums have been diminished in fair market value as a result of the sale or taking disproportionate to any diminution in fair market value of all Condominiums, as determined pursuant to Section 12.5 below, but as of the date immediately after any announcement of condemnation, an amount up to the total diminution in value; then

(d) To all remaining Owners and to their respective Mortgagees, as their interest may appear, the balance of the sale proceeds or awards based upon the ratio that the fair market value of each remaining Owner's Condominium bears to the fair market value of all remaining Owners' Condominiums as determined pursuant to Section 12.5 below.

Section 12.5 Fair Market Value. Whenever in this Article 12 reference is made to a determination of the relative fair market value of one or more Condominiums, it shall mean the relative fair market value of each such Condominium as of a date immediately prior to any announcement of condemnation as determined by an appraisal by an independent appraiser selected by the Association, who shall be a member of the Society of Real Estate Appraisers or other nationally recognized appraiser organization and who shall apply its or such other organization's standards in determining the fair market value of each such Condominium. The cost of such appraisal shall be paid from the sale proceeds.

### ARTICLE 13 PARTITION; SEVERANCE

Section 13.1 Suspension. Except as expressly provided in this Declaration, an Owner shall have no right to partition or divide his or her ownership of the Condominium Common Area or the Association's ownership of the Association Common Area. Partition of the Common Area can be had on a showing that the conditions to such partition as stated in Section 11.6(b) (relating to damage or destruction) or in Section 12.2 (relating to condemnation) or on a showing that one of the conditions described in Civil Code §1359(b)(1), (2), or (3) have been met. Nothing in this Declaration shall prevent partition of a co-tenancy in a Condominium.

Section 13.2 Distribution of Proceeds. Proceeds or property resulting from a partition sale of the Common Area shall be distributed to and among the Owners and their Mortgagees, as their interest may appear, in proportion to the ratio the fair market value of each Owner's Condominium bears to the fair market value of all Owner's Condominiums in the Development, determined as provided in Section 11.7 or 12.5, but as of the date immediately prior to the event giving rise to the partition of the Common Area.

Section 13.3 Power of Attorney. The Association, pursuant to Section 16.11 below, acting as attorney-in-fact for the Owners, may sell the entire Development, or any part of it, and execute deeds and conveyances to it, in one or more transactions, for the benefit of all Owners when partition of the Development may be had under Civil Code §1359 and under the circumstances authorizing a partition sale under this Declaration.

Section 13.4 Provision to Prohibit Severance. An Owner shall not be entitled to sever the Unit of any Condominium from the Owner's Membership in the Association and shall not be entitled to sever the Unit and the Membership from the Owner's undivided interest in the Condominium Common Area for any purpose. None of the component interests in a Condominium can be severally sold, conveyed, encumbered, hypothecated, or otherwise dealt with; and any violation or attempted violation of this provision shall be void. Similarly, no Owner can sever any easement or right appurtenant to the Owner's Unit over the Common Area from the Owner's Condominium, and any attempt to do so shall be void. This provision is intended to restrict severability under California Civil Code §1358. Nothing herein shall affect the right of an Owner to limit the duration of the enjoyment of his/her Condominium estate, or from creating a tenancy in common or joint tenancy in the ownership of the Condominium with any other person(s).

#### ARTICLE 14 MORTGAGEE PROTECTIONS

Section 14.1 Encumbrance. Any Owner may encumber his or her Condominium with a Mortgage or Mortgages.

Section 14.2 Subordination. Any lien created or claimed under the provisions of this Declaration is expressly made subject to and subordinate to the rights of any first Mortgage that encumbers all or any portion of the Development or any Condominium, made in good faith and for value. No such lien shall in any way defeat, invalidate or impair the obligation or priority of such first Mortgage unless the first Mortgagee expressly subordinates in writing its interest to such lien. If any Condominium is encumbered by a first Mortgage made in good faith and for value, the foreclosure of any lien created by any provision in the Declaration for Assessments, or installments of Assessments, cannot operate to effect or impair the lien of any first Mortgage. Upon the foreclosure of any prior-recorded first Mortgage, any lien for delinquent Assessment shall not operate to affect or impair the lien of the first Mortgage. On foreclosure of the first Mortgage, the lien for Assessments or the installments that have accrued up to the time of

foreclosure shall be subordinate to the lien of the first Mortgage, with the foreclosure-purchaser taking title to the Condominium free of the lien for Assessments or installments that have accrued up to the time of the foreclosure sale. On taking title to the Condominium, the foreclosure-purchaser shall be obligated to pay only Assessments or other charges levied or assessed by the Association that became due or payable on or after the foreclosure-purchaser acquired title to the Condominium. The subsequently levied Assessments or other charges may include previously unpaid Assessments, as long as all Owners, including the foreclosure-purchaser and his or her successors and assigns, are required to pay their proportionate share as provided in this Section.

Section 14.3 Breaches. No breach of any provision of this Declaration shall invalidate the lien of any Mortgage made in good faith or for value; but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through foreclosure sale, trustee sale or otherwise. Any Mortgagee who acquires title to a Condominium by foreclosure or by a deed in lieu of foreclosure or assignment in lieu of foreclosure shall not be obligated to cure any breach of this Declaration that is of a type that is not practical or feasible to cure.

Section 14.4 Mortgagee Consent to Amendment of Development Documents or Other Actions. In addition to the requirements of Article 15 and unless a greater percentage is expressly required by Section 14.5, this Declaration, the Articles, the Bylaws, or by law, the affirmative vote or written consent of Owners of at least sixty-seven percent (67%) of Condominiums then subject to Assessment and the prior written consent (or deemed consent as provided below in this Section) of institutional first Mortgagees of Condominiums that have at least fifty-one percent (51%) of the votes of all Condominiums encumbered by institutional first Mortgages shall be required to take the following actions or to add or amend provisions of the Declaration, the Articles, the Bylaws, the Condominium Plan, which govern any of the following:

- (a) Voting rights;
- (b) Increases in Assessments that raise the previously assessed amount by more than twenty-five percent (25%), Assessment liens, or the priority of Assessment liens;
- (c) Reductions in Reserves for maintenance, repair, or replacement of the Common Area improvements;
- (d) Responsibility for maintenance and repairs;
- (e) Reallocation of interests in the Common Area or rights to its use;
- (f) Redefinition of any Unit boundary;
- (g) Convertibility of Units into Common Area or Common Area into Units;
- (h) Expansion or contraction of the Development or the addition, annexation, or withdrawal of property to or from the Development.

- (i) Hazard or fidelity insurance requirements;
- (j) Imposition of restrictions on the leasing of Condominiums;
- (k) Imposition of restrictions on an Owner's right to sell or transfer his or her Condominium;
- (l) Restoration or repair of the Development (after damage or partial condemnation) in a manner other than that specified in this Declaration;
- (m) Provisions that expressly benefit Mortgage holders, insurers, or guarantors;
- (n) Actions to terminate the legal status of the Development after substantial destruction or condemnation occurs, or
- (o) A decision by the Association to establish self management when professional management has been required previously by a first Mortgagee.
- (p) In addition, any action to terminate the legal status of the Development for reasons other than substantial destruction or condemnation of the property shall require the prior written consent (or deemed consent as provided below in this Section) of institutional first Mortgagees of Condominiums that have at least sixty-seven percent (67%) of the votes of all Condominiums encumbered by institutional first Mortgages.

For purposes of this Section, any addition or amendment shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. Any institutional first Mortgagee who receives a written request delivered by certified or registered mail, with a "return receipt" requested, to consent to or approve actions, additions, or amendments requiring consent or approval under this Section who does not submit a written negative response to the requesting party within sixty (60) days after such receipt shall be deemed to have consented to or approved such request.

**Section 14.5 Additional Mortgagee Consent to Amendment of Development Documents or Other Actions.** In addition to the requirements of Section 14.4 and except as provided by statute, in the event of condemnation or substantial loss to the Units, or Common Area, unless at least sixty-seven percent (67%) of the institutional first Mortgagees (based on one vote for each first Mortgage owned) or the Owners (other than Declarant) of the individual Condominiums have given their prior written approval, the Association shall not:

- (a) By act or omission to seek to abandon or terminate the Development;
- (b) By act or omission to seek to change the pro rata interest or obligations of any Condominium in order to levy Assessments or charges, allocate distribution of hazard



insurance proceeds or condemnation awards, or establish the prorata share of ownership of each Condominium in the Development;

(c) By act or omission to seek to partition or subdivide any Unit;

(d) By act or omission to seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Area by act or omission. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area by the Association or the Owners shall not be deemed to be a transfer within the meaning of this clause;

(e) By act or omission to seek to use hazard insurance proceeds for losses to the Development, or to any other Association-owned real property, for other than the repair, replacement, or reconstruction of such improvements or property;

(f) By act or omission to seek to change, waive, or abandon the provisions of this Declaration, or their enforcement, pertaining to architectural design or control of the exterior appearance of structures in the Development, the maintenance of the Development, walks, fences, and driveways, or the upkeep of lawns and plantings in the Development.

(g) Fail to maintain fire and extended coverage insurance on insurable Association property, including any Association-owned Common Area improvements, 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).

Section 14.6 Distribution of Insurance and Condemnation Proceeds. No Owner, or any other party, shall have priority over any right of any institutional Mortgagees pursuant to their Mortgages in case of distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of any Units or Common Area. Any provision to the contrary in this Declaration or in the Bylaws or other documents relating to the Development is to such extent void. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses acceptable to the affected institutions Mortgagees as their interest may appear.

Section 14.7 Mortgagee Notice. Upon written request to the Association, identifying the name and address of the Mortgagee and the Condominium address, such Mortgagee shall be entitled to written notice if any Owner is in default under any provision of this Declaration or under any provision of the Articles, Bylaws or the Association Rules and the default is not cured within sixty (60) days after written notice to that Owner.

In addition, the Association shall give to each first Mortgage holder, insurer or guarantor timely written notice of the following:

(a) any condemnation or casualty loss that affects either a material portion of the Development or the Condominium securing the Mortgage;

(b) any sixty (60) day delinquency in the payment of Assessments or charges owed by the Owner of any Condominium encumbered by the holder's, insurer's or guarantor's Mortgage;

(c) a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

(d) any proposed action that requires the consent of a specified percentage of institutional first Mortgagees.

**Section 14.8 Tax Payments.** Mortgagees of any Condominium may, jointly or severally, pay taxes or other charges which are in default and which may be or have become a charge against the Association Common Area and may pay any overdue premiums on property insurance policies or secure new property insurance on the lapse of a policy for the Association Common Area improvements or other insured property of the Association; and, by making such payments, such Mortgagees shall be owed immediate reimbursement from the Association. The provisions shall constitute an agreement by the Association for the express benefit of all Mortgagees; and, on request of any Mortgagee, the Association shall execute and deliver to such Mortgagee a separate written agreement embodying this provision.

**Section 14.9 Right of First Refusal.** No right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey the Owner's Condominium is imposed by this Declaration, the Articles, Bylaws or in any deed restriction of any deed from the Declarant to the first purchaser of the Condominium.

**Section 14.10 Audited Financial Statements.** If audited statements are not otherwise available for the Association, any Mortgagee upon written request, shall be entitled to have an audited financial statement for the immediately preceding fiscal year prepared at its expense.

**Section 14.11 Inspection of Governing Documents.** The Association shall have current copies of the Declaration, Articles, and Bylaws, Association Rules and the books, records and financial statements available for inspection during normal business hours for Mortgagees.

**Section 14.12 Right to Appear at Meetings.** Because of its financial interest in the Development, any Mortgagee may appear (but cannot vote) at meetings of Owners and the Board to draw attention to violations of this Declaration that have not been corrected or that have been made the subject of remedial proceedings or Assessments.

**Section 14.13 Status of Loan to Facilitate Resale.** Any first Mortgage given to secure a loan to facilitate the resale of a Condominium after acquisition by foreclosure or by a deed in lieu of foreclosure or by an assignment in lieu of foreclosure shall be deemed to be a loan made in good faith and for value and entitled to all rights and protections of Mortgages under this Declaration.

Section 14.14 Mortgagee Protections Control If Conflict With Other Provisions. In the event of any conflict between any of the provisions of this Article 14 and any other provisions of this Declaration, the provisions of Article 14 shall control.

Section 14.15 Right to Furnish Information. Any Mortgagee can furnish information to the Board concerning the status of any Mortgage.

## ARTICLE 15 AMENDMENTS

Section 15.1 Amendment Before Close of First Sale. Before the close of the first sale of a Condominium in the Development to a purchaser other than Declarant or an entity controlled by Declarant, this Declaration may be amended in any respect or rescinded by Declarant, by recording an instrument amending or rescinding the Declaration. The amending or rescinding instrument shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the County. Notwithstanding any other provisions of this section, Declarant (for so long as Declarant owns any portion of the Development) may unilaterally amend this Declaration by recording a written instrument signed by Declarant in order to (i) conform this Declaration to the rules, regulations or requirements of the California Department of Real Estate, VA, FHA, Fannie Mae, Ginnie Mae or Freddie Mac; (ii) amend, replace, or substitute any Exhibit for any purpose to the extent the Exhibit affects portions of the Development that have not yet been conveyed by Declarant; (iii) correct any typographical errors; (iv) include any Exhibit that was inadvertently omitted at the time the Declaration was recorded; (v) comply with applicable laws; (vi) supplement or amend this Declaration with provisions which pertain to rights and obligations of Declarant, the Association or Owners arising under Division 2, Part 2, Title 7 of the California Civil Code; and (vi) change any Exhibit to conform to the as-built conditions.

Section 15.2 Amendment After Close of First Sale. After the close of the first sale of a Condominium in the Development to a purchaser other than Declarant or an entity controlled by Declarant, this Declaration may be amended or revoked in any respect by the vote or written consent of the holders of not less than fifty-one percent (51%) of the voting rights of each class of Owners, or if a single class of Owners is then in effect, by the vote or written consent of not less than fifty-one percent (51%) of all the votes excluding Declarant. However, if any provision of this Declaration requires a greater or lesser percentage vote, the same percentage of such vote shall be required to amend or revoke such provision. Also, if the consent or approval of any governmental authority, Mortgagee or other Person is required under this Declaration with respect to any amendment or revocation of any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained. The amendment shall be effective when it has been approved by the appropriate percentage of Owners and governmental authorities, Mortgagees or other Persons as required herein; the approval has been certified in a writing executed and acknowledged by the officer designated in the Declaration or by the Association for that purpose (or, if no one has been designated, the President of the Association; and the amendment and certification have been recorded in the county in which the Development is located. Notwithstanding anything in this Declaration to the

contrary, any amendment to the Condominium Plan shall satisfy the requirements of California Civil Code Section 1351(c).

Section 15.3 Compliance With Bus & P.C. §11018.7. All amendments or revocations of this Declaration shall comply with all applicable provisions of California Business and Professions Code §11018.7.

Section 15.4 Amendments to Conform With Mortgagee Requirements. It is the intent of Declarant that this Declaration and the Articles and Bylaws of the Association, and the Development in general, shall now and in the future meet all requirements necessary to purchase, guarantee, insure, or subsidize any Mortgage of a Condominium in the Development by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Federal Housing Administration, and the Veterans Administration. The Association and each Owner shall take any action or shall adopt any resolutions required by Declarant or any Mortgagee to conform this Declaration, the Articles, and Bylaws of the Association or the Development to the requirements of any of these entities or agencies.

## ARTICLE 16 GENERAL PROVISIONS

Section 16.1 Remedies Cumulative. Except as to matters covered by the provisions of Article 17 which provides for an exclusive remedy, each remedy provided for in this Declaration shall be cumulative and not exclusive. Failure to exercise any remedy provided for in this Declaration shall not under any circumstances, be construed as a waiver of the remedy.

Section 16.2 Severability. Should any provision or portion hereof be declared invalid or in conflict with any law of this jurisdiction where the Development is situated, the validity of all other provisions and portion thereof shall remain unaffected and in full force and effect.

Section 16.3 Term. The easements, covenants, and restrictions of this Declaration shall run with and bind the Development, and shall bind and inure to the benefit of the Owner, their respective legal representatives, successors and assigns, for a term of fifty-five (55) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless the Owners act as then authorized by law to terminate them upon expiration of such a term or period.

Section 16.4 Indemnification. Each Owner ("Indemnifying Party") shall protect, defend, indemnify and save the other Owners ("Indemnified Party") harmless from any and all claims of third parties, and damages (except consequential damages), costs and losses owing to third parties or suffered by Indemnified Party, including court costs, reasonable attorneys' fees and consultants' fees, arising during or after the Indemnifying Party's use of the Development or part thereof and reasonably incurred or suffered by the Indemnified Party as a result of any default or breach of this Declaration. It is a condition of this indemnification and hold harmless that the Indemnifying Party shall receive notice of any such claim against the Indemnified Party promptly after Indemnified Party first has knowledge thereof. This indemnification and hold

harmless includes the obligation to defend the Indemnified Party with counsel reasonably satisfactory to the Indemnified Party and the immediate payment to the Indemnified Party of the amount of any and all costs reasonably incurred by the Indemnified Party after notice to Indemnifying Party for cleanup, removal or restoration and all other work mandated by any public official acting lawfully if the Indemnifying Party shall not timely perform such work.

Section 16.5 Headings. The headings used in this Declaration are for convenience only and are not to be used to interpret the meaning of any of the provisions of this Declaration.

Section 16.6 Use of Words. Unless the context otherwise requires, singular nouns and pronouns used in this Declaration should be construed as including the plural thereof. For convenience and brevity, masculine pronouns may have been used herein in their generic sense as a reference to all persons, without regard to sex.

Section 16.7 Statutory References. All references in this Declaration to particular statutes of the State of California should be deemed to include the same statute as hereafter amended or, if repealed, to such other statutes as may thereafter govern the same subject as the statute to which specific reference was made.

Section 16.8 Notices. Any notice permitted or required by this Declaration shall be effective only if in writing and delivered either by a reputable overnight courier with delivery receipt, personal delivery with delivery receipt, or United States first class, certified mail, postage prepaid and addressed to the recipient at the address that the recipient has provided the Association for receipt of notice, or if no such address was provided at the recipient's address in the Development. Any notice sent via overnight courier or personal delivery shall be deemed to have been given on the date of the delivery receipt, the date that delivery is refused by the addressee or the date shown on the delivery receipt as the date delivery was attempted if undeliverable, as shown on the delivery receipt. Any notice sent via mail shall be deemed delivered forty-eight (48) hours after the notice is deposited in the United States mail.

Section 16.9 Violations as Nuisance. Every act or omission in violation of the provisions of this Declaration shall constitute a nuisance and, in addition to all other remedies set forth, may be abated or enjoined by any Owner, any member of the Board, the manager, or the Association.

Section 16.10 No Discriminatory Restrictions. No Owner shall execute or cause to be recorded any instrument that restricts the sale, lease, or occupancy of the Owner's Condominium on the basis of race, sex, marital status, national ancestry, color, or religion.

Section 16.11 Power of Attorney. By acceptance of a deed to a Condominium each Owner shall be deemed to have irrevocably appointed the Association as such Owner's attorney-in-fact with full power and authority to act in the name and stead of such Owner whenever the Association is expressly authorized to do so under this Declaration. Said power of attorney shall (i) be binding on all Owners, whether they assume the obligations under this Declaration or not; (ii) be exercisable by a majority of the Board acting on behalf of the Association, subject to obtaining the prior approval by vote or written consent of two-thirds of the Owners and two-

thirds of all institutional first Mortgagees; and (ii) be exercisable only after recordation with the County Recorder of a certificate executed by those who have power to exercise that power of attorney that said power of attorney is properly exercisable under this Declaration, which certificate shall be conclusive evidence of proper exercise in favor of any person relying on it in good faith.

Section 16.12 Notification of Sale; Notices. Concurrently with the consummation of the sale of any Condominium under circumstances whereby the transferee becomes an Owner of the Condominium or within five (5) business days thereafter, the transferee shall notify the Association in writing of such sale. Such notification shall set forth the name of the transferor, the name and mailing address of the transferee, the name and mailing address of the transferee's Mortgagee, the common address of the Condominium purchased by the transferee, and the date of sale. Before the receipt of such notification, any and all communications required or permitted to be given by the Association, the Board, or the managing agent shall be deemed to be duly made and given to that transferee's transferor.

Section 16.13 Incorporation of Exhibits. All exhibits referred to are attached to this incorporated by reference.

Section 16.14 Easements Reserved and Granted. Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in a deed to any Condominium. If a legally sufficient easement for any purpose described in this Declaration cannot or has not been created, the reference to "easement" shall be construed to be a right or a benefit in favor of the party for whom the benefit of the easement was intended to be conferred and a duty, obligation, or equitable servitude, if applicable, of the party against whom the right or benefit is stated or intended to be exercisable or enforceable.

Section 16.15 Binding Effect. This Declaration shall inure to the benefit of and be binding on the successors and assigns of the Declarant, and the heirs, personal representatives, grantees, tenants, successors and assigns of the Owners.

Section 16.16 Liberal Construction. The provisions of this Declaration shall be liberally construed to effect its purpose. Failure to enforce any provisions of the Declaration shall not constitute a waiver of the right to enforce the provision thereof.

Section 16.17 Documents Provided by Declarant. The Declarant shall deliver to the Association, at the office of the Association or at such other place as the Board prescribes, copies of the documents listed below as soon as readily obtainable, but commencing no later than ninety (90) days after the close of escrow of the first Condominium. The obligation to deliver the documents listed below shall apply to any documents obtained by Declarant no matter when obtained; provided, however, that such obligation shall terminate on the earlier of (i) the conveyance of the last Condominium covered by a subdivision public report or (ii) three (3) years after expiration of the most recent Final Subdivision Public Report issued for the Development by the California Commissioner of Real Estate:

- (a) The recorded Condominium Plan.

- (b) The Reciprocal Easement and Maintenance Agreement.
- (c) The deeds, including easement deeds, if any, executed by Declarant conveying the Common Area or other interest to the Association; to the extent applicable.
- (d) The recorded Declaration, including all amendments and supplements thereto.
- (e) The recorded Environmental Restriction.
- (f) The Articles and Bylaws and all amendments thereto.
- (g) The Association Rules and any maintenance standards, architectural guidelines regulating the use of an Owner's Unit or the use of the Common Area, which have been promulgated by the Association including but not limited to the Maintenance Manual.
- (h) The plans approved by the County for the construction or improvement of facilities that the Association is obligated to maintain or repair; provided, however, that the plans need not be as-built plans and that the plans may bear appropriate restrictions on their commercial exploitation or use and may contain appropriate disclaimers regarding their accuracy.
- (i) All notice of completion certificates issued for Common Area improvements.
- (j) Any bond or other security device under which the Association is the beneficiary.
- (k) Any written warranties being transferred to the Association for Common Area equipment, fixtures, or improvements.
- (l) Any insurance policy procured for the benefit of the Association, the Board, the Common Area, or the Owners.
- (m) Any lease or contract to which the Association is a party.
- (n) The membership register, including mailing addresses and telephone numbers, books of accounts, and minutes of the meetings of the Owners, of the Board, and of any committees of the Board.
- (o) Any instrument referred to in Business and Professions Code §11018.6(d) but not described above that establishes or defines the common, mutual, or reciprocal rights or responsibilities of the Members.

Section 16.18 Reserved Rights of Declarant. Declarant is recording this Declaration as part of the construction of a residential Condominium development. No covenant or restriction contained herein shall be applied in any manner that would unreasonably interfere with Declarant's rights to complete construction of, repair, or sell the improvements. The rights retained by Declarant and its contractors, representatives, agents, employees, or designees during the construction and sales period include, but are not limited to, the right to:

(a) enter on the Development to conduct sales activities, complete construction of improvements, and to make repairs and remedy any construction defects;

(b) maintain personnel and materials on the Development and erect, construct or maintain such structures as may be reasonable and necessary for the completion of construction and sale of the Units;

(c) use such portions of the Development as may be necessary or advisable to complete construction of the Development and the sales of the Units;

(d) maintain sale signs or other appropriate advertisements on the Development;

(e) provide prospective purchasers access to the Development to inspect any Common Area or any model homes.

These entry rights shall not interfere with the use or occupancy of any occupied Unit unless authorized by the Unit Owner, which authorization shall not be unreasonably withheld, conditioned or delayed. These entry rights shall terminate upon the sale of Declarant's entire interest in the Development, provided, however, Declarant's entry rights with respect to construction defects shall continue as set forth in the Title 7 Master Declaration.

Section 16.19 Conflicting Provisions. In the case of any conflict between any applicable statutes, ordinances and/or regulations of any governmental entity, and this Declaration, the statute, ordinance and/or regulation shall control. In the case of any conflict between the Reciprocal Easement and Maintenance Agreement and this Declaration, the Reciprocal Easement and Maintenance Agreement shall control. In the case of any conflict between the Articles and/or Bylaws and this Declaration, this Declaration shall control.

## ARTICLE 17

### DISPUTE RESOLUTION WHEN DECLARANT IS A PARTY

Section 17.1 Notice to Members of Legal Proceeding Against Declarant. In accordance with Civil Code Section 1368.5, at least thirty (30) days prior to filing any civil action, including arbitration, against Declarant or other developer of the Development for alleged damage to (i) the Common Area, (ii) all or portions of Units which the Association is required to maintain, or (iii) the Units which arises from or is integrally related to alleged damage to the Common Area or all or portions of the Units which the Association is required to maintain, the Board shall



provide written notice to each member specifying each of the following: (a) That a meeting will take place to discuss problems that may lead to the filing of civil action; (b) the options, including civil actions, that are available to address the problems; and (c) the time and place of the meeting. If the Association has reason to believe that the applicable statute of limitations will expire before the Association is able to give notice, hold the meeting and file the civil action, the Association may file the civil action first and then give the notice within thirty (30) days after filing of the action.

#### Section 17.2 Initiation of Association Action.

(a) The Association shall not commence a legal proceeding or action under this Article without the approval of at least two-thirds of the voting power of the Association; provided, however, this Section shall not apply to (i) actions brought by the Association to enforce the Governing Documents; (ii) the imposition and collection of Assessments; (iii) proceedings involving challenges to ad valorem taxation; or (iv) counterclaims brought by the Association in proceedings instituted against it.

(b) Notwithstanding the provisions of Subsection (a) above to the contrary, upon the earlier of (i) the substantial completion of the Common Area, or (ii) the close of escrow for fifty percent (50%) of the Units within the Development, the directors of the Board elected solely by votes of Members other than Declarant shall be empowered to initiate a claim under Title 7 of Part 2 of Division 2 of the California Civil Code (or any successor statute), in the name of the Association and at the Association's expense, including but not limited to arbitration proceedings as more particularly provided below, provided that the initiation of such claim is approved by at least two-thirds of the voting power of the Members other than Declarant.

#### Section 17.3 Alternate Dispute Resolution Procedure.

(a) Any claim, dispute, or other controversy ("Claim") between the Association or any Owner (collectively, a "Claimant") and the Declarant or any contractor, subcontractor, design professional, engineer, material supplier, product manufacturer, or any other person that provided labor, materials or services to the Development on behalf of Declarant, and who is bound or has agreed to be bound by dispute notification and resolution procedures with Declarant (collectively, "Declarant Parties") arising out of or in any way relating to the Development, any real property or improvements in the Development, or this Declaration, or arising out of the use, condition, design or construction of any improvements in the Development, including without limitation construction defects, surveys, soils conditions, grading, specifications, installation of improvements, or disputes which allege strict liability, negligence or breach of implied or express warranties as to the condition of the Development, shall be resolved in accordance with the alternate dispute resolution procedure set forth in DECLARATION FOR TITLE 7 AND DISPUTE RESOLUTION FOR MOSAICA 601 (the "Title 7 Master Declaration") to be recorded against the Development, and Civil Code Sections 1375 and 1375.05 as to actions initiated by the Association. The procedures set forth in the Title 7 Master Declaration do not apply to any action taken by the Association to enforce delinquent assessments against the Declarant.

DECLARANT AND EACH OWNER AGREE TO USE THE PROCEDURES ESTABLISHED IN THE TITLE 7 MASTER DECLARATION TO RESOLVE ALL DISPUTES AND WAIVE THEIR RIGHTS TO RESOLVE DISPUTES IN ANY OTHER MANNER. DECLARANT AND EACH OWNER ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THE TITLE 7 MASTER DECLARATION THEY ARE GIVING UP THEIR RIGHT TO HAVE DISPUTES TRIED BEFORE A JURY PURSUANT TO THE FEDERAL ARBITRATION ACT.

(b) For any Claim that is subject to the pre-litigation procedures in California Civil Code Sections 910-938. ("Title 7 Claim"), each Owner and the Association, prior to filing any legal proceedings regarding a Title 7 Claim, shall first comply with the non-adversarial pre-litigation procedures set forth in California Civil Code Sections 910-938. If the Title 7 Claim is not resolved by and pursuant to these non-adversarial pre-litigation procedures, subject to the provisions of Civil Code Section 1375 and 1375.05, then the Title 7 Claim shall be resolved by the alternate dispute resolution procedures in accordance with the Title 7 Master Declaration.

(c) The Title 7 Master Declaration is incorporated into this Declaration by this reference. To the extent there are any inconsistencies or conflicts between the Title 7 Master Declaration and this Declaration, the provisions of the Title 7 Master Declaration shall supersede the inconsistent or conflicting provisions of this Declaration with respect to the real property subject to both documents. To the extent there are inconsistencies or conflicts between this Declaration and a Title 7 Individual Declaration, the provisions of the Title 7 Individual Declaration shall supersede the inconsistent or conflicting provisions of this Declaration with respect to the real property described in the Individual Title 7 Individual Declaration. To the extent there are conflicts or inconsistencies between the Maintenance Manual and this Declaration, the provision which requires the highest standard of maintenance shall prevail.

CALIFORNIA HOMESTEAD ASSOCIATION,  
a California nonprofit public benefit corporation

By: J. W. Buckley

Its: VICE-PRESIDENT

JAMES M. BUCKLEY

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of SAN FRANCISCO }

On 1-12-2009 before me, Molly Jean Barrons, Notary Public  
Date Here Insert Name and Title of the Officer

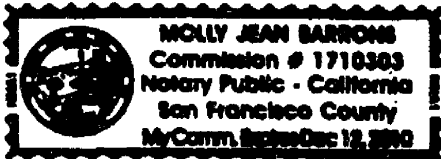
personally appeared JAMES M. BUCKLEY  
Name(s) of Signer(s)

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.

Signature Molly Jean Barrons  
Signature of Notary Public



Place Notary Seal Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

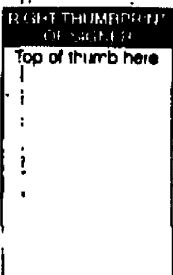
Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

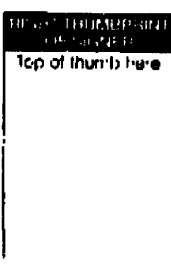
- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

# **ILLEGIBLE NOTARY SEAL DECLARATION**

## **GOVERNMENT CODE 27361.7**

I declare under penalty of perjury that the Notary Seal on the document to which this statement is attached, reads as follows:

Name of Notary Public: Molly Jean Barrons

Commission number: 1710303

Notary Public State: California

Notary Public County: San Francisco

My commission expires: December 12, 2010

Signature of Declarant: \_\_\_\_\_



Print Name of Declarant: Ross Kennedy

City and State of Execution: Pleasanton, California

Date Signed: January 13, 2009

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

All that real property situated in the City and County of San Francisco, State of California, described as follows:

**Parcel A:**

Lot A (Lot No. 5) of Final Map 4139, filed August 1, 2008 in Book 107 of Condominium Maps, Pages 67 through 77, inclusive, Official Records.

**Parcel B:**

Easements for courtyards, access, ingress and egress, garage and parking, utility facilities, emergency exit facilities, garbage, structural and support, and encroachments, as defined in the First Amended and Restated Declaration of Covenants, Conditions and Restrictions Providing for Reciprocal Easements, Joint Use and Maintenance for Alabama Street Housing, executed by Alabama Street Housing Associates, a California Limited Partnership, Alabama Street Senior Housing Associates, a California Limited Partnership, Alabama Street Commercial, LLC, a California limited liability company, and California Homestead Association, a California nonprofit public benefit corporation, recorded November 13, 2006, Series No. 2006-I282119, Official Records.

Lot 5 Block 4021

EXHIBIT B  
Common Interests

Unit	Percentage Share
101	2.48
102	2.97
103	2.91
104	2.86
105	2.86
106	2.50
107	2.78
108	2.69
109	2.69
201	2.87
202	2.97
204	2.86
205	2.86
206	2.50
207	3.34
208	3.24
209	3.37
301	2.87
302	2.97
303	3.07
304	2.86
305	2.86
306	2.50
307	3.36
308	3.27
309	3.40
401	2.87
402	2.97
404	2.86
405	2.86
406	2.50
407	3.36
408	3.27
409	3.40