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ATT: JEFFREY L. BROWN  
REF: 2251 MENDOCINO  
CONDOMINIUMS  
7777 ALVARADO RD STE 615  
LA MESA CA 91941-3649

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8/2/07*



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INDEX AS "CC&R's"

**RESTATED AND SUPERSEDING**

**DECLARATION**

**OF**

**COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR**

**"2251 MENDOCINO CONDOMINIUMS"**

*a Condominium Project*

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**THIS RESTATED AND SUPERSEDING DECLARATION** is made on the day and year hereinafter written by **ROBERT HICKMAN AND LANETTE HICKMAN, TRUSTEES OF THE HICKMAN FAMILY TRUST DATED NOVEMBER 30, 2005**, hereinafter called "**Declarant.**" The first-letter capitalized words used herein shall have the meanings given them in **Article 3** herein.

## **1. RECITALS**

### **1.1. OWNERSHIP OF PROPERTY.**

Declarant is the owner of that certain real property located in the City of San Diego, County of San Diego, State of California, more particularly described in Exhibit "A," attached hereto and by this reference made a part hereof (the "*Property*").

### **1.2. ESTABLISHMENT OF COMMON INTEREST DEVELOPMENT.**

The Property is a "*Common Interest Development*" established pursuant to the provisions of the *Davis-Stirling Common Interest Development Act*, more particularly described in California Civil Code Section 1351(f) as a "*Condominium Project*" (the "*Project*"). Declarant desires and intends to impose on the Property by this Declaration mutually beneficial restrictions, limitations, easements, assessments and liens under a comprehensive plan of improvement and development for the use and management of the Project as a residential Condominium Project and community called 2251 MENDOCINO CONDOMINIUMS (the "*Community*"); and for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property for the benefit of all Owners and occupants thereof.

### **1.3. DESCRIPTION OF PROJECT.**

#### **1.3.1. NUMBER OF UNITS.**

There are *four (4)* residential dwellings within the Property, which are intended to be developed and conveyed as *four (4)* "*Units*" or "*Living Units*" in a single phase.

#### **1.3.2. COMMON AREA.**

In addition to the Living Units, the Condominium Project will consist of "*Common Area*," which includes (but is not limited to): one (1) Condominium Building, fencing, lighting, walkways, garages and landscaping.

### **1.4. ORIGINAL CONDOMINIUM PLAN.**

A Condominium Plan, as defined in Section 1351(e) of the California Civil Code, was filed with the County Recorder on November 22, 1988 as File No. 88-601277 (the "*Original Plan*"). The Original Condominium Plan depicts each of the Dwellings as a "*Living Unit*" or "*Unit*" and its appurtenant *Balcony, Garage and Storage areas*.

### **1.5. ESTABLISHMENT OF ASSOCIATION.**

Declarant will cause or has caused the incorporation of the **2251 MENDOCINO CONDOMINIUMS HOMEOWNERS ASSOCIATION**, a California nonprofit mutual benefit corporation ("*Association*"), organized under the Nonprofit Mutual Benefit Corporation Law (California Corporations Code Sections 7110 et seq.), for the purpose of exercising the powers and functions set forth herein. The Association shall act as the management body for the Community, and shall be responsible for the operation, maintenance and control of the Common Area. By virtue of owning a Condominium in the Project, each Owner shall also have a membership in the Association, which membership shall be appurtenant to and pass with title to the Condominium.

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**1.6. CONDOMINIUM OWNERSHIP.**

Each Owner of a Condominium shall receive title to (a) a "Unit" Separate Interest in space, (b) an appurtenant undivided *one-fourth (1/4<sup>th</sup>)* fractional interest in the Common Area, (c) the exclusive right to use any "Exclusive Use Common Area" appurtenant to such Owner's Unit, and (d) a membership in the Association.

**2. DECLARATION**

**NOW, THEREFORE,** Declarant hereby certifies and declares that the Property, and each and every Condominium in it, is, and shall be, held, conveyed, transferred, hypothecated, encumbered, leased, rented, used and occupied subject to the limitations, reservations, covenants, conditions, restrictions, servitudes, easements, liens and charges herein set forth, all of which are declared and agreed to be in furtherance of and pursuant to a general plan for the development and ownership of the Property, and all of which are declared and agreed to be for the purpose of uniformly enhancing, maintaining and protecting the value, attractiveness and desirability of the Property. These provisions are imposed upon Declarant, the Owners and the Association, and shall bind the Owners and the Association. These provisions shall be a burden upon and a benefit to not only the original Owner of each Condominium and the Association, but also to their respective successors and assigns. All covenants are intended as and are declared to be covenants running with the land as well as equitable servitudes upon the land.

**3. DEFINITIONS.****3.1. ARTICLES.**

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

**3.2. ASSOCIATION; HOMEOWNERS ASSOCIATION.**

"Association" or "Homeowners Association" shall mean and refer to the **2251 MENDOCINO CONDOMINIUMS HOMEOWNERS ASSOCIATION**, a California non-profit mutual benefit corporation, incorporated under the Non-Profit Mutual Benefit Laws of the State of California, its successors and assigns.

**3.3. BOARD.**

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

**3.4. BYLAWS.**

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

**3.5. CITY.**

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

**3.6. COMMON AREA.**

"Common Area" shall mean and refer to all of the real property and all improvements thereon, except the separate interests in space called Living Units. The Common Area shall be owned by the Owners of Living Units as tenants-in-common in equal share, one (1) for each Living Unit.

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### 3.7. COMMON EXPENSE AREAS.

"Common Expense Areas" shall mean and refer to all portions of the Project of which the cost and expense of maintenance, repair and replacement is the responsibility of the Association, and shall include, but not be limited to, the following: (a) all Common Area except the Exclusive Use Common Area for which individual Owners are responsible, (b) those portions of a Unit that are designated by this Declaration as the responsibility of the Association, (c) such other improvements or property from time to time designated by the Board as a maintenance, repair or replacement responsibility of the Association.

### 3.8. COMMON EXPENSES.

"Common Expenses" shall mean and refer to the actual and estimated costs and expenses incurred or to be incurred by the Association, including, but not limited to:

(a) Maintenance, management, operation, repair and replacement of the Common Expense Areas;

(b) Costs and expenses not paid by the Owner responsible for payment, when such costs and expenses are paid by the Association;

(c) Maintenance by the Association of areas within the public right-of-way of public streets in the vicinity of the Community as provided in this Declaration or pursuant to agreements with the City or County, if any;

(d) Costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees;

(e) Costs and expense of leasing, owning, maintaining any vehicles for the use of the Members or employees, including insurance and reserves for replacement thereof;

(f) Costs of utilities, trash pickup and disposal, gardening and other services benefiting the Owners and their property to the extent such services are paid for by the Association;

(g) The costs of fire, casualty, liability, worker's compensation and other insurance covering the Common Area or other property owned by the Association;

(h) The costs of any other insurance obtained by the Association pursuant to the provisions of this Declaration;

(i) Reasonable reserves as deemed appropriate by the Board;

(j) The costs of bonding of the Members of the Board or its delegated committees, any professional managing agent or any other person handling the funds of the Association;

(k) Taxes paid by the Association;

(l) Amounts paid by the Association for the discharge of any lien or encumbrance levied against the Common Area or portions thereof;

(m) Costs incurred by the Board or any of its delegated committees;

(n) The costs of any other item or items designated by, or in accordance with other expenses incurred by the Association for any reason whatsoever in connection with the operation or maintenance of the Common Expense Areas, or in furtherance of the purposes or the discharge of any obligation imposed on the Association by this Declaration or other Project Documents.

### 3.9. COMMUNITY.

"Community" shall mean and refer to all of the Property which is, from time to time, subject to this Declaration.

**3.10. CONDOMINIUM.**

"Condominium" shall mean and refer to an estate in the Condominium Property, or portions thereof, as defined in California Civil Code Section 1351(f), and shall consist of an undivided interest as tenant-in-common in the portion of real property coupled with a separate interest in space called a Living Unit, together with any Exclusive Use Common Area appurtenant thereto.

**3.11. CONDOMINIUM BUILDING.**

"Condominium Building" shall mean any building structure located on the Property.

**3.12. CONDOMINIUM DOCUMENTS and/or PROJECT DOCUMENTS.**

"Condominium Documents and/or Project Documents" means and includes this Declaration and any Exhibits attached hereto, any Supplementary Declaration or Declaration of Annexation, the Condominium Plan, Articles of Incorporation, Bylaws, and any Rules and Regulations established from time to time by the Board or any Committee of the Board, including any amendments to the aforescribed documents as may from time to time be made.

**3.13. CONDOMINIUM PLAN.**

"Condominium Plan" or "Plan" shall mean and refer to a plan, as it may from time to time be amended, consisting of (a) a description or survey map of the Project, which shall refer to or show monumentation on the ground, (b) a three-dimensional description of the Project, as built or to be built, one or more dimensions of which may extend for an indefinite distance upwards or downwards, in sufficient detail to identify the common areas and each separate interest, and (c) a certificate consenting to the recordation of the condominium plan pursuant to California Civil Code Section 1351(e), signed and acknowledged by the record owner of fee title to the Property included in the Project.

**3.14. COUNTY.**

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

**3.15. COUNTY RECORDER.**

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

**3.16. DECLARANT.**

"Declarant" shall mean and refer to **ROBERT HICKMAN AND LANETTE HICKMAN, TRUSTEES OF THE HICKMAN FAMILY TRUST DATED NOVEMBER 30, 2005**, its successors and assigns, if such successors or assigns acquire any or all of the Declarant's interest in the Property for the purpose of development or sale. Declarant did not construct or otherwise develop the Property described herein. A successor Declarant shall also be deemed to include the beneficiary under any deed of trust securing an obligation from a then existing Declarant encumbering all or any portion of the Property, which beneficiary has acquired any such property by foreclosure, power of sale or deed in lieu of such foreclosure or sale.

**3.17. DECLARATION.**

"Declaration" shall mean and refer to this Declaration, recorded with the County Recorder, covering the Property, including such amendments thereto as may from time to time be recorded.

**3.18. DWELLING; RESIDENCE.**

"Dwelling" or "Residence" shall mean a single family residence located within the Property that is used exclusively by the Owner or Occupant thereof for residential purposes, including any areas of the Property immediately adjacent to such Dwelling to which an Owner or Occupant of such Dwelling has an exclusive right to use (e.g. a deck, patio, etc.).

**3.19. ELIGIBLE INSURER, GUARANTOR.**

"Eligible Insurer" and "Eligible Guarantor" shall mean and refer to an insurer or governmental guarantor who has provided a written request to the Homeowners Association, to be notified of those matters which such holder is entitled to notice of by reason of this Declaration or the Bylaws of the Association.

**3.20. ELIGIBLE MORTGAGE HOLDER.**

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

**3.21. EMERGENCY.**

"Emergency" is an unforeseen occurrence or condition calling for immediate action to avert imminent danger to life, health, or property.

**3.22. EXCLUSIVE USE COMMON AREA.**

"Exclusive Use Common Area," referred to as "Exclusive Use Area" on the Original Plan) shall mean and refer to those portions of the Common Area to which an exclusive right to use is granted to an Owner of a Separate Interest in space called a Living Unit and is appurtenant and assigned to that Living Unit, if any. Exclusive Use Common Areas are shown on the *Original Condominium Plan* by *alpha* designations as follows:

"B" denoting Balcony Exclusive Use Common Areas

"G" denoting Garage Exclusive Use Common Areas

"S" denoting Storage Exclusive Use Common Areas

"Exclusive Use Common Area" shall also mean and refer to internal and external: telephone electrical wiring, plumbing, lighting and other utilities; shutters, awnings, window boxes, doorsteps, stoops, porches, exterior doors, door and window frames and hardware incident thereto, screens and windows or other fixtures, if any of the foregoing are designed to exclusively serve a single Living Unit, but located outside the boundaries of such Living Unit.

**3.23. FHA.**

"FHA" shall mean and refer to the Federal Housing Administration of the United States Department of Housing and Urban Development, including any successors thereto.

**3.24. FHLMC.**

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

**3.25. FIRST MORTGAGE.**

"First Mortgage" shall mean and refer to a Mortgagee which has priority under the recording statutes of the State of California over all other Mortgages encumbering a specific Condominium in the Project.

**3.26. FIRST MORTGAGEE.**

"First Mortgagee" shall mean and refer to the Mortgagee of a First Mortgage.

**3.27. FNMA.**

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

**3.28. FIRST MORTGAGE.**

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

**3.29. IMPROVEMENT.**

"Improvement" shall mean and refer to all structures and appurtenances thereto of every type and kind, including, but not limited to, buildings, outbuildings, additions, patio covers, tent, umbrellas, screen, awnings, trellis, exterior wiring, paintings of any exterior surfaces of any structure, walkway, parking garage, driveways, fences, screening retaining walls, stairs, landscaping, sprinkler pipes heads, hedges, windbreaks, natural or artificial trees, shrubs and flowers, poles, masts, antennas, exterior air conditioning, water softener fixtures or equipment, street furniture, benches, signs, including entry monument signs and Community directional signs.

**3.30. INSTITUTIONAL MORTGAGEE.**

"Institutional Mortgagee" shall mean and refer to a First Mortgagee which is (a) a bank, savings and loan association, insurance or mortgage company or other entity or institution chartered under federal and/or state law; (b) an insurer or governmental guarantor of a First Mortgage; (c) any Federal or state agency; (d) the State of California as the vendor under an installment land sales contract covering a Condominium; or (e) any other institution specified by the Board in a recorded instrument, who is the Mortgagee of a Mortgage or the beneficiary of a Deed of Trust encumbering a Condominium.

**3.31. INVITEE.**

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

**3.32. LIVING UNIT, UNIT, CONDOMINIUM UNIT; LIVING AREA.**

"Living Unit, Unit, Condominium Unit or Living Area" shall mean and refer to the residential separate interests in space in the Condominium Project which are not owned in common with the other Owners of other separate interests in the Project. Living Units are shown and described on the Original Condominium Plan by the alpha designation "L" followed by the numerical designation of the Unit.

**3.33. MAP; SUBDIVISION MAP.**

"Map" or "Subdivision Map" shall mean and refer to that certain Subdivision Map filed with the County Recorder, as more particularly described in Exhibit "A."

**3.34. MEMBER.**

"Member" shall mean and refer to a person entitled to membership in the Association as provided herein.

**3.35. MORTGAGE.**

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

**3.36. MORTGAGEE.**

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

**3.37. MORTGAGOR.**

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

**3.38. ORIGINAL DECLARATION.**

A Declaration of Covenants, Conditions and Restrictions, as defined in Section 1351(h) of the California Civil Code, was filed with the County Recorder on November 22, 1988 as File No. 88-601278 (the "*Original Declaration*"). The Original Declaration is hereby superseded and replaced in its entirety by this Declaration of Covenants, Conditions and Restrictions.

**3.39. OWNER.**

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

**3.40. PERSON.**

"Person" shall mean a natural individual, a corporation or any other entity with the legal right to hold title to real property.

**3.41. PROJECT; CONDOMINIUM PROJECT.**

"Project" or "Condominium Project" shall mean and refer to that certain real property described in **Exhibit "A"** herein.

**3.42. PROPERTY.**

"Property" shall mean and refer to that certain real property located in San Diego County, California, more particularly described in **Exhibit "A"** hereto.

**3.43. RETAIL BUYER.**

"Retail Buyer" shall mean and refer to a Person who purchases a Condominium from Declarant for purposes of ownership and use thereof. A Retail Buyer shall not include a "person," "builder" or "developer" as described in either California Business and Professions Code Sections 11000.1(b)(2) or 11000.6, as may from time to time be amended.

**3.44. RULES.**

"Rules" shall mean and refer to any rules or regulations adopted by the Association or its Board pursuant to this Declaration.

**3.45. SEPARATE INTEREST.**

"Separate Interest" shall mean and refer to a "Unit" separate interest in space as defined in Civil Code Section 1351(l), which is herein also defined as a "Living Unit," "Condominium Unit" or "Living Area."

**3.46. SUBSIDY AGREEMENT.**

"Subsidy Agreement" shall mean and refer to any agreement between the Association and Declarant, in which Declarant agrees and is obligated to perform or cause to be performed maintenance of the Common Area for a certain period of time following the conveyance of the first Living Unit in the Project to a Retail Buyer.

**3.47. VA.**

"VA" shall mean and refer to the U.S. Department of Veterans Affairs, including any successors thereto

#### **4. OWNERSHIP**

##### **4.1. OWNERSHIP OF CONDOMINIUMS.**

Each Condominium in the Project shall be conveyed to an Owner. Ownership of a Condominium shall include: (1) fee simple title to a separate interest in space called a "Living Unit," (2) an appurtenant undivided *one-fourth (1/4<sup>th</sup>)* fractional interest as tenant-in-common in the "Common Area," (3) the exclusive right to use any "Exclusive Use Common Area" appurtenant to such Owner's Living Unit as described in this Declaration and the deed to the Condominium, and (4) a membership in the Association.

##### **4.2. NO SEPARATION OF INTERESTS.**

No Owner may sell, assign, lease or convey his undivided fractional interest as tenant in common in the Common Area separate and apart from his Living Unit, nor any portion of, or appurtenance to his Living Unit apart from the entire Living Unit. Anything in the Article herein entitled **AMENDMENTS** to the contrary notwithstanding, this Article shall not be amended, modified or rescinded until Declarant has conveyed title to the last Condominium in the Project to a Retail Buyer or other Person, without (a) the prior written consent of Declarant, and (b) the recording of said written consent with the County Recorder.

##### **4.3. PARTITION.**

Each of the Owners of a Condominium, whether such ownership is in fee simple or as a tenant-in-common, is hereby prohibited from partitioning or in any other way severing or separating such ownership from any of the other ownerships in the Condominium Property, except upon the showing that such partition is consistent with the requirements of California Civil Code Section 1359.

##### **4.4. POWER OF ATTORNEY.**

The Association is hereby granted an irrevocable power of attorney to sell the Condominium Property for the benefit of all the Owners thereof when partition of the Owners' interests in said Condominium Property may be had pursuant to the Article entitled "*Damage or Destruction; Condemnation*" or the Section entitled "*Partition*" hereinabove. The power of attorney herein granted may be exercised upon the vote or written consent of Owners holding an aggregate of sixty-seven percent (67%) of the interest in the Common Area by any two (2) Members of the Board who are hereby authorized on behalf of the Association to record a certificate of exercise with the County Recorder, which certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith.

#### **5. EASEMENTS**

The ownership interests in the Condominiums described in the Article above entitled "**OWNERSHIP**" are subject to the easements granted and reserved in this Declaration. Each of the easements reserved or granted herein shall be deemed to be established upon the recordation of this Declaration, unless otherwise provided, and shall thenceforth be deemed to be covenants running with the land for the use and benefit of the Owners and their Condominiums superior to all other encumbrances applied against or in favor of any portion of the Project. Individual grant deeds to Condominiums may, but shall not be required to set forth the easements specified in this Article.

##### **5.1. NON-EXCLUSIVE EASEMENTS FOR COMMON AREAS.**

Subject to the provisions of this Declaration, every Member of the Association shall have, for himself or herself, and such Member's Invitees, a non-exclusive easement of access, ingress, egress, use and enjoyment of, in, to and over the Common Area; and such easement shall be appurtenant to and

shall pass with title to every Condominium in the Project, subject to the rights and restrictions set forth below.

## **5.2. DECLARANT AND ASSOCIATION EASEMENTS.**

### **5.2.1. OPERATION AND MAINTENANCE.**

There is hereby reserved by Declarant for the benefit of Declarant, for so long as Declarant owns one or more Condominiums in the Project, and granted to the Association, such easements on, over, under, across and through the Property, as may be necessary to service and maintain the Property, or any portion thereof, and to perform the respective duties and obligations of Declarant and/or the Association, as the case may be, as set forth in, but not limited to, any contractual agreements and/or warranties with respect to any Improvements in the Property, this Declaration and the other Project Documents, including any Association Rules and/or Architectural Standards and their implementation.

### **5.2.2. UTILITIES; THIRD PARTIES.**

Declarant and/or the Association shall have the power to grant and convey in the name of and as attorney-in-fact for any and all Owners -- and Declarant on behalf of the Association -- such easements and rights-of-way on, over, under, across and through the Property, as may be required or needed: (a) to establish an exclusive use easement in favor of one or more Persons; (b) for purposes of constructing, erecting, installing, operating or maintaining: (i) lines, cables, wire, conduits or other devices for electricity, cable or master antenna television, telephone, computer and other utility transmissions; and (ii) public and private sewers, storm water drains and pipes, water systems, interior and exterior sprinkler systems, heating and gas lines or pipes, and any other similar improvements or facilities, whether public, quasi-public or private. Each Retail Buyer, in accepting a deed to a Unit, expressly consents to such easements and rights of way and authorizes and appoints the Association and Declarant (as long as Declarant owns one or more Units) as attorney-in-fact of such Owner, to execute any and all instruments conveying or creating such easements or rights-of-way. The foregoing notwithstanding, no such easement or right-of-way can be granted if it would permanently interfere with the use, occupancy or enjoyment by any Owner of his or her Unit, unless approved in writing by any such "interfered" Owner(s), or, in cases of Common Area, unless approved in writing or by the vote of holders of not less than seventy-five percent (75%) of the voting rights of each class of membership.

### **5.2.3. ADDITIONAL DECLARANT EASEMENTS.**

Subject to a concomitant obligation to restore, Declarant and its sales agents, employees and independent contractors shall also have the easements described in the Article herein entitled "DEVELOPMENT RIGHTS."

## **5.3. OWNERS' RIGHTS, DUTIES AND EASEMENTS FOR UTILITIES.**

Whenever utility facilities (plumbing, heating, electrical and other utility systems) are installed within the Project, or any portion thereof, lie in, upon or over a Unit or Units owned by other than the Owner of the Unit served by said utility facilities, the Owner of any such Unit served by said utility facilities shall have the right of reasonable access for themselves, for utility repairmen, for utility companies or the City/County (as applicable) to repair, replace and generally maintain said utility facilities as and when the same may be necessary. A Unit Owner shall be entitled to reasonable access to the Common Area for the purpose of maintaining internal and external telephone and cable TV wiring servicing such Owner's Unit. The access shall be subject to the consent of the Board or its delegated committee, whose approval shall not be unreasonably withheld, and which may include such approval of telephone or cable TV wiring upon exterior Common Areas in the Project, and other conditions as the Board.

Whenever utility facilities are installed within the Project which serve more than one (1) Unit, the Owner of each Unit served by the utility facilities shall be entitled to the full use and enjoyment of

such portions of the utility facilities as service his Unit. In the event of a dispute between Owners with respect to the repair or rebuilding of the utility facilities, or with respect to the sharing of the cost thereof, then, upon written request to the Association by one (1) of such Owners, the matter shall be submitted to arbitration pursuant to the provisions therefor contained in Article 21 herein entitled "**ENFORCEMENT; DISPUTE RESOLUTION,**" and the decision of the Arbitrator(s) shall be final, conclusive and binding on the parties.

#### **5.4. ENCROACHMENT.**

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

#### **5.5. DECLARANT'S NON-EXCLUSIVE EASEMENTS.**

Subject to a concomitant obligation to restore, Declarant and its sales agents, employees and independent contractors shall have the easements described in the Article herein entitled "**DEVELOPMENT RIGHTS.**"

#### **5.6. DECLARATION SUBJECT TO EASEMENTS.**

Notwithstanding anything herein expressly or impliedly to the contrary, this Declaration shall be subject to all easements theretofore or hereafter granted by Declarant for the installation and maintenance of utilities and drainage facilities that are necessary for the Project.

### **6. DEVELOPMENT RIGHTS**

#### **6.1. LIMITATION OF RESTRICTIONS.**

Declarant is undertaking the work of developing Condominiums and other Improvements within the Project. The completion of that work and the marketing, sale, rental and other disposition of the Condominiums is essential to the establishment and welfare of the Property as a residential community. In order that said work may be completed and said Project Property be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be interpreted to deny Declarant the rights set forth in this Article.

#### **6.2. RIGHTS OF ACCESS AND COMPLETION OF IMPROVEMENTS.**

Until (a) all the Condominiums in the Project are sold and conveyed by Declarant to Retail Buyers or other Persons, or, (b) three (3) years following the date of conveyance of the first Condominium in the Project to a Retail Buyer, whichever shall first occurs, Declarant, its contractors and subcontractors shall have the rights set forth below.

##### **6.2.1. COMMON AREA ACCESS.**

Declarant, its contractors and subcontractors shall have the right to obtain reasonable access over and across the Common Area of the Project or do within any

Condominium owned by it whatever is reasonably necessary or advisable in connection with the completion of the Project and the marketing and maintenance thereof.

#### **6.2.2. TEMPORARY EXCLUSIVE EASEMENT(S) FOR COMPLETION OF IMPROVEMENTS.**

Declarant hereby reserves, for the benefit of Declarant and its agents, contractors and employees and other persons authorized by Declarant, the right to establish an exclusive easement over one or more portions of the Common Area in which construction activities have not been completed (the "Construction Area"). This may include, but not be limited to, completion of landscape installation and maintenance, painting of Condominium Building(s), and such other construction and development activities the completion of which either (a) may not fall under any formal evidence of completion such as the recordation of a Notice of Completion, or (b) may not be included or applicable under, or required by a performance bond pursuant to California Code of Regulations Section 2792.4. Notwithstanding anything to the contrary set forth in this Declaration, Declarant, and not the Association, shall be responsible for maintaining those areas where such construction activities take place. Such easement shall be an exclusive easement in favor of Declarant and shall include the right of ingress and egress over, under, upon and across such Construction Area, together with the right of Declarant to deny access to any Owner or any Owner's Invitees by fencing, restricting or any other reasonable method prior to completion of the construction activities within such Construction Area.

#### **6.2.3. CONSTRUCTION AND MARKETING IMPROVEMENTS.**

Declarant, its contractors and subcontractors shall have an easement and right to erect, construct and maintain on the Common Area of the Project or within any Condominium owned by it, such structures or improvements ("Construction and Marketing Improvements"), including, but not limited to, sales offices, flags, balloons, banners and signs, as may be reasonably necessary for the conduct of its business to complete the work, establish the Project as a residential community and dispose of the Condominiums by sale, lease or otherwise, as determined by Declarant in its sole discretion and to perform or complete any work to improvements required for Declarant to obtain a release of any bonds posted by Declarant with the City and/or County, as applicable.

#### **6.2.4. GRANT EASEMENTS.**

Declarant, its contractors and subcontractors shall have the right to establish and/or grant over and across the Common Area such easements and rights of way on, over, under or across all or any part thereof to or for the benefit of the State of California, the City/County (as applicable), or any other political subdivision or public organization, any public utility entity, cable or other television signal provider, or any online computer access provider, for the purpose of constructing, erecting, operating and maintaining facilities and improvements thereon, therein or thereunder at that time or at any time in the future, including: (a) poles, wires and conduits for transmission of electricity, providing telephone, television or online computer services and for the necessary attachments in connection therewith, and (b) public and private sewers, sewage disposal systems, storm water drains, land drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any and all equipment in connection therewith. The Common Area shall be subject to any dedication stated in the Subdivision Map for the Project of an easement for public use for installation, maintenance and operation of facilities for public utilities over all or any part of the Common Area. Said public utilities easement over the Common Area shall inure and run to all franchised utility companies and to the City/County (as applicable) and shall include the right of ingress and egress over the Common Area by vehicles of the City/County (as applicable) and such utility companies to properly install, maintain, repair, replace and otherwise service such utility facilities. The grant of said public utility easement shall not be interpreted to imply any obligation or responsibility of any such utility company or the City/County (as applicable) for maintenance or operation of any of the Common Area or the facilities located thereon or the repair, replacement or reconstruction thereof except as occasioned by such utility companies, the City/County (as applicable) of the utility facilities for which they are responsible. The Common Area shall also be subject to any easements granted by Declarant to any public or private entity for cellular, cable, computer or other similar transmission lines. Except for lawful and proper fences, structures and facilities

placed upon the Common Area by utility companies, the Common Area subject to the public utility easement shall be kept open and free from buildings and structures. The City and the County, furthermore, are granted an easement across the Common Area for ingress and egress for use by emergency vehicles of the City and County.

#### **6.2.5. SIZE AND APPEARANCE OF PROJECT.**

Declarant shall not be prevented from increasing or decreasing the number of Condominium Units that may, pursuant to the provisions of Article 25.3, be annexed to the Project or from changing the exterior appearance of the Condominium Buildings or any other Common Area structures, the landscaping or any other improvement or matter directly or indirectly connected with the Project in any manner deemed desirable by Declarant, if Declarant obtains such governmental consents therefor as may be required by law.

#### **6.3. MARKETING RIGHTS.**

##### **6.3.1. GENERAL RIGHTS.**

Subject to the limitations of this Declaration, Declarant shall have the right to:

- (a) Maintain model homes, sales offices, storage areas and related facilities in any unsold Condominium Unit or portion of the Common Area as are necessary or reasonable in the opinion of Declarant, for the sale or disposition of the Condominiums;
- (b) Make reasonable use of the Common Area and facilities for the sale of Condominiums;
- (c) Post signs, flags, balloon and banners in connection with its marketing of Condominiums; and
- (d) Conduct its business of disposing of Condominiums by sale, lease or otherwise.

##### **6.3.2. AGREEMENT FOR EXTENDED USE.**

If, following the third (3<sup>rd</sup>) anniversary of the conveyance of the first Condominium Unit in the Project to a Retail Buyer, Declarant requires exclusive use of any portion of the Common Area for marketing purposes, Declarant may use the Common Area only if an agreement is entered into between Declarant and the Association. The agreement must specifically provide for a limited duration for such use and must provide for a specific reasonable rate of compensation to the Association by Declarant. Compensation shall be commensurate with the nature, extent and duration of the use proposed by Declarant. In no event, however, shall Declarant be denied the right to use the Common Area, and/or any Condominium Unit owned by Declarant.

#### **6.4. DECLARANT RESTORATION OBLIGATION.**

(a) Notwithstanding anything herein to the contrary, Declarant, its sales agents, employees and independent contractors shall, in connection with the use of any Common Area for marketing and disposition of Condominiums, have a concomitant obligation to restore to its original condition any portion of the Common Area that may have been damaged as a result of the use thereof by Declarant and/or its related agents.

(b) Declarant shall effect any such restoration within thirty (30) days after the earlier to occur of the following: (i) Declarant's conveyance of the last Condominium in the Project to a Retail Buyer; or (ii) three (3) years following the date of conveyance of the first Condominium in the Project to a Retail Buyer, subject to any extension of Declarant's right to use the Common Area for marketing and disposition of Condominiums as provided in Section 6.3.2 above entitled **"AGREEMENT FOR EXTENDED USE."**

(c) In the event that Declarant fails to restore any damage sustained to the Common Area that pursuant to this Section, Declarant shall be liable to the Association to the extent such liability may be determined pursuant to the provisions therefor contained in Section 21 entitled **"ENFORCEMENT; DISPUTE RESOLUTION."**

#### **6.5. ASSIGNABILITY OF RIGHTS.**

The rights of Declarant under this Article 6, may be assigned to any successor(s) by an express assignment in a recorded instrument, including without limitation a deed, option or lease. In the event of any such assignment, Declarant's liability for restoration of Common Area described in the Section immediately above entitled **"DECLARANT RESTORATION OBLIGATION,"** Declarant shall be relieved of the performance of any further duty or obligation thereunder, and Declarant's successor shall be obligated to perform all such duties and obligations of Declarant. The foregoing notwithstanding, this Declaration shall not be construed to limit the right of Declarant at any time prior to such assignment to establish additional licenses, reservations and rights-of-way to itself, to utility companies or to others as may be reasonably necessary to the proper development and disposal of property owned by Declarant.

#### **6.6. AMENDMENT.**

The provisions of this Article may not be amended without the consent of Declarant (or its duly authorized successor in interests) until such time that all of the Condominium Units in the Project owned by Declarant have been conveyed to Retail Buyers.

### **7. THE ASSOCIATION**

#### **7.1. THE ORGANIZATION.**

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

#### **7.2. COMMENCEMENT OF ASSOCIATION.**

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

#### **7.3. INTERIM PERIOD.**

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

#### **7.4. POWERS AND DUTIES OF THE ASSOCIATION.**

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

## **8. MEMBERSHIP, VOTING, FIRST MEETING**

### **8.1. MEMBERSHIP IN GENERAL.**

Every Owner of a Condominium shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Condominium. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of the Condominium to which it is appurtenant, and then only to the purchaser. The transfer of title to a Condominium or the sale of a Condominium and transfer of possession thereof to the purchaser shall automatically transfer the membership appurtenant thereto to the transferee. As a Member of the Association, each Owner is obligated to promptly, fully and faithfully comply with and conform to the Articles, this Declaration, the Bylaws, the Architectural Standards, and the Rules adopted hereunder from time to time by the Board and officers of the Association.

### **8.2. CLASSES OF VOTING RIGHTS.**

The Association shall have two (2) classes of voting membership:

#### **8.2.1. CLASS A.**

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

#### **8.2.2. CLASS B.**

The Declarant is a Class B Member. Class B membership entitles the holder to three (3) votes for each Condominium of which the Declarant is record owner.

The Class B membership shall be irreversibly converted to Class A membership on the first to occur of the following:

- (a) When the total outstanding votes held by the Class A Members are equal to or greater than the total outstanding votes held by the Class B Member; or
- (b) Two (2) years following the conveyance by Declarant of the first Condominium to a Retail Buyer.

### **8.3. COMMENCEMENT OF VOTING RIGHTS.**

An Owner's right to vote, including Declarant, shall not vest until Assessments have been levied upon such Owner's separate interest as provided in this Declaration. All voting rights shall be subject to the restrictions and limitations provided for herein and in the Articles and Bylaws.

### **8.4. APPROVAL OF MEMBERS.**

Unless specifically provided for otherwise, any provision of the Project Documents requiring the vote or written assent of the Association voting power shall be deemed satisfied by the following:

#### **8.4.1. VOTE OF MAJORITY.**

The vote of the majority at a meeting duly called and noticed pursuant to the provisions of the Bylaws dealing with annual or special meetings of the Members, unless a provision of this Declaration requires a special meeting only; provided, however that such majority must include the specified number of all Members entitled to vote at such meeting and not such a majority of a quorum of those Members present;

**8.4.2. WRITING.**

A writing or writings signed by a majority of the voting power; or

**8.4.3. COMBINATION OF VOTES AND WRITING.**

A combination of votes and written assent, provided that Members shall not change their vote or written assent after it is cast or delivered and provided further that only those written assents executed within sixty (60) days before or thirty (30) days after a meeting may be combined with votes cast at such meeting to constitute a majority.

**8.5. FIRST MEETING OF THE ASSOCIATION.**

The first regular meeting of the Association shall be held no later than:

(a) Forty-five (45) days after the conveyance to a Retail Buyer of the Condominium which represents the fifty-first percentile interest (51%) of the Project; or

(b) No later than six (6) months after the conveyance of the first Condominium in the Project to a Retail Buyer, whichever occurs first. Thereafter, regular meetings of the Association shall be held in accordance with provisions of the Bylaws. At the first meeting, the Members shall elect the Board of Directors. Election to and removal from the Board shall be by secret written ballot with cumulative voting, as more particularly described in the Bylaws.

**8.6. CLASS A MEMBERS' SELECTION OF ASSOCIATION DIRECTORS.**

In any election of Directors, commencing on the first regular annual meeting scheduled after the first Condominium is sold to an Owner, other than Declarant, so long as a majority of the voting power of the Association resides in the Declarant, or so long as there are two (2) outstanding classes of membership in the Association, not less than twenty percent (20%) of the Directors shall have been elected solely by the votes of Class A Members, other than the Declarant. Such Class A elected representative may be removed prior to the expiration of his or her term of office only by a vote of at least a simple majority of the Members, excluding the Declarant.

**8.7. NO PERSONAL LIABILITY OF BOARD MEMBERS.**

No member of the Board, or of any committee of the Association, or any officer of the Association, or any manager, or Declarant, or any agent of Declarant, shall be personally liable to any Owner, or to any other party, including the Association, for any error or omission of the Association, the Board, its authorized agents or employees or its delegated committee, if such person or entity has, on the basis of such information as may be possess by him or it, acted in good faith without willful or intentional misconduct. In addition to the foregoing, as more particularly specified in California Civil Code Section 1365.7, or any successor statute or law, any person who suffers bodily injury, including, but not limited to, emotional distress or wrongful death as a result of the tortious act or omission of a member of the Board who resides in the Project either as a tenant or as an Owner of no more than two (2) Condominiums, and who, at the time of the act or omission, was a "volunteer" as defined in California Civil Code Section 1365.7, or any successor statute or law, shall not recover damages from such Board member, if such Board member committed the act or omission within the scope of his or her Association duties, while acting in good faith and without acting in a willful, wanton or grossly negligent manner, provided that all of the requirements of California Civil Code Section 1365.7, or any successor statute or law, have been satisfied.

**9. RIGHTS, POWER AND DUTIES OF ASSOCIATION AND BOARD**

The Association and its Board shall have all the powers of a nonprofit corporation organized under the Nonprofit Mutual Benefit Corporation Law of California subject only to such limitations on the exercise of such powers as are set forth in the Articles, the Bylaws and this Declaration. It shall have the power to do any lawful thing that may be authorized, required, or

permitted to be done by the Association under 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, the powers set forth below.

**9.1. SUSPEND RIGHTS OF MEMBERS.**

The Board shall have the right, after Notice and Hearing, to temporarily suspend an Owner's rights as a Member pursuant to the terms of this Declaration.

**9.2. DEDICATE OR GRANT EASEMENTS.**

The Association shall have the right to dedicate and/or grant easements over all or any portion of the Common Area.

**9.3. BORROW FUNDS.**

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

**9.4. ASSESSMENTS.**

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

**9.5. RIGHT OF ENFORCEMENT; PENALTIES; NOTICE AND HEARING.**

**9.5.1. ENFORCEMENT ACTIONS.**

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

**9.5.2. PENALTIES AGAINST MEMBERS.**

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

(a) Suspension of the membership rights and privileges, together with the voting rights of any Member of the Association, for any period of time during which the assessment on a Member's Condominium remains unpaid;

(b) Suspension of the membership rights and privileges, together with the voting rights of any Member of the Association, for any period not to exceed thirty (30) days for any infraction of the Association's Rules;

(c) Levying of monetary penalties against an individual Member as a disciplinary measure for failure of a Member to comply with provisions of the Project Documents or Board resolutions, or as a means of causing the Member to reimburse the Association for costs and expenses incurred by the Association in the repair of damage to the Common Area and facilities for which the Member was allegedly responsible, or in bringing the Member and his or her Condominium to compliance with the Project Documents or Board resolutions; provided, however, no such monetary penalty may be

characterized or treated as an assessment which may become a lien against the Owner's subdivision interest enforceable by a sale of the interest in accordance with the provisions of Sections 2924, 2924(b) and 2924(c) of the California Civil Code.

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

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

(f) A Member shall have the right to Notice and Hearing prior to the Board's decisions to impose any suspension or monetary penalty, as more fully described in Section 10.4 hereafter entitled "**Notice and Hearing.**"

#### **9.6. RULES AND REGULATIONS.**

The Board of the Association shall have the power to adopt, amend and repeal uniform rules and regulations ("**Association Rules**" and/or "**Rules**") as it deems reasonable. The Association Rules shall govern the use of the Common Area and portions of the Condominiums by all Owners or their Invitees, and the conduct of Owners and Invitees with respect to automobile parking, outside storage of bicycles and other objects, disposal of waste materials, drying of laundry, control of pets and other activities which, if not so regulated, might detract from the appearance of the Community or offend or cause inconvenience or danger to persons residing or visiting therein. Such Rules may provide that the Owner of a Unit whose Invitee leaves property on the Common Area in violation of the Rules may be assessed after Notice and Hearing an amount to cover the expense incurred by the Association in removing such property and storing or disposing thereof.

#### **9.7. ENTRY BY ASSOCIATION.**

The Association and the Association's agents or employees shall have the right to enter (a) into any Living Unit and/or its appurtenant Exclusive Use Common Area in the event of an emergency that requires such entry, (b) into any Living Unit and/or its appurtenant Exclusive Use Common Area to perform certain maintenance or other Association obligations that require entry into a Living Unit, at reasonable hours, (c) upon the Common Area to perform maintenance or other Association obligations. All of the foregoing entries shall be conducted in accordance with the provisions therefor described more fully in this Declaration.

#### **9.8. POWER OF BOARD TO DEFINE AND INTERPRET.**

Notwithstanding anything contained in this Declaration or any other Project Document, the Board shall have the power and the authority to define, interpret and/or construe certain words and terminologies contained in this Declaration and the Project Documents *which may otherwise be unclear, vague and/or ambiguous*, and, which, if not so defined, interpreted or construed, would be detrimental to the Board's ability to conduct, manage and control the affairs and business of the Association, including the enforcement of the covenants, conditions, restrictions and other provisions of the Project Documents, as well as any rules and regulations promulgated by the Board and not (a) inconsistent with law and/or (b) not in contravention to the general plan for the subdivision, protection, maintenance, improvement, sale and lease of the Project, or any portion thereof. Such words and terminology shall include, but not be limited to: "*nuisance*," "*annoyance*," "*obnoxious*," "*quiet enjoyment*," "*excessive*," "*disturb*," "*obstruct*," "*interfere*," "*minor repair*," "*hazard*," "*offensive*."

## **10. RIGHTS OF OWNERS**

### **10.1. RIGHTS OF OWNERS.**

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

### **10.2. RIGHT OF ACCESS AND USE OF DWELLING.**

The right of access over the Association Property for ingress to and egress from such Owner's Condominium and Dwelling thereon, and of enjoyment and full use of such Condominium and Dwelling, which right shall be appurtenant to and shall pass with title to the Owner's Condominium, subject to the limitations contained herein. This right cannot be forfeited or abridged by the failure by an Owner to comply with provisions of the Project Documents or duly-enacted Rules, except by judgment of a court or a decision arising out of arbitration or on account of a foreclosure or sale under a power of sale for failure of the Owner to pay assessments levied by the Association.

### **10.3. RIGHT TO THE USE OF COMMON AREA.**

The right of ingress and egress and of enjoyment in, to and over the Common Area. Such right of ingress and egress and enjoyment shall be appurtenant to and shall pass with title to the Condominium, subject to the limitations and restrictions of the Project Documents.

### **10.4. NOTICE AND HEARING.**

The right to receive at least fifteen (15) days' written notice prior to a decision by the Board to impose monetary penalties, a temporary suspension of an Owner's rights as a Member of the Association (e.g. voting), or other appropriate discipline for failure of the Member to comply with the Project Documents as described more fully in the Section entitled "*Penalties Against Members*" hereinabove, or any such longer period as may be required under Section 7341 of the California Corporations Code (or any successor statute or law). Additionally, before the Board decides to impose a suspension of privileges or impose a monetary penalty, the aggrieved Owner shall be provided with an opportunity to be heard by the Board, orally or in writing, not less than five (5) days before the date of the suspension of privileges or imposition of a monetary penalty is to take effect. For purposes of this Section, notice shall be given by any method reasonably calculated to provide actual notice. Notice may be hand-delivered to the Owner, or sent by first class registered or certified mail, return receipt requested, or overnight delivery and addressed to the Owner at the last address of the Owner shown on the Association's records, or any other method deemed reasonable by the Board for delivering notices. Each suspended or fined Owner or other person can appeal a suspension or monetary penalty imposed by the Board, including any claim alleging defective notice, within one (1) year of the date of action taken by the Board, by filing written notice of his or her intention to appeal with the Board. The action imposing the fine or suspension shall then become ineffective until the fine or suspension is unanimously approved by all directors of the Board at a regular or special meeting of the Board at which all directors are present. The Owner or any other person to be fined or suspended can appear, be represented by legal counsel and be heard at the meeting before the Board, either orally or in writing.

### **10.5. DELEGATION OF USE.**

Any Owner may delegate his or her right of enjoyment to the Common Area to his or her tenants or contract purchasers who reside on his or her Condominium; provided, however, that if any Owner delegates such right of enjoyment to tenants, neither the Owner nor his or her family shall be entitled to use the Common Area by reason of ownership of the Condominium during the period of delegation. Invitees of any Owner may use the Common Area only in accordance with this Declaration or any Rules adopted by the Board.

## **11. ASSESSMENTS**

### **11.1. COVENANT FOR ASSESSMENTS.**

Subsequent to the conveyance of the first Condominium in the Property to a Retail Buyer, the Declarant, for each Condominium owned within the Property in which either a Condominium has been sold to a Retail Buyer, or leased, as more fully described, respectively, in the Sections herein entitled "Commencement of Assessments" and "Assessments On Condominiums Not Conveyed to Retail Buyers," hereby covenants, and each Owner of a Condominium by acceptance of a deed therefor, whether or not it shall be so expressed in such Deed, is deemed to covenant and agree to pay to the Association all assessments levied pursuant to the provisions of this Declaration. All assessments, together with interest, costs, late charges and reasonable attorneys' fees, shall be a charge on and a continuing lien upon the Condominium against which each such assessment is made, the lien to become effective upon recordation of a Notice of Delinquent Assessment, as provided in this Article. Each such assessment, together with interest, costs, late charges and reasonable attorneys' fees, shall also be the personal obligation of the Person who was the Owner of such Condominium at the time when the assessment fell due and shall bind his or her heirs, devisees, personal representatives and assigns. Unlike the lien for delinquent assessments, the personal obligation for non-delinquent assessments shall not pass to successive Owners, unless expressly assumed by each such successive Owner. No such assumption of personal liability by a successive Owner (including a contract purchaser under an installment land contract) shall relieve any Owner from personal liability for delinquent assessments. If more than one person or entity was the Owner of a Condominium, the personal obligation to pay such assessment or installment respecting such Condominium shall be both joint and several.

### **11.2. FUNDS HELD IN TRUST.**

The assessments collected by the Association shall be held by the Association for and on behalf of each Owner and shall be used solely for the operation, care and maintenance of the Project as provided in this Declaration. Upon the sale or transfer of a Condominium, the Owner's interest in the funds shall be deemed automatically transferred to the successor in interest of such Owner.

### **11.3. PURPOSE OF ASSESSMENTS.**

The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of all the residents in the Project and for the improvement and maintenance of the Common Area and for any other maintenance responsibilities of the Association, and to reimburse the Association for costs incurred in bringing an Owner into compliance with the Project Documents. The Association shall not use any assessments or Association funds, or otherwise participate, in any attempt to abate any annoyance or nuisance emanating from outside the physical boundaries of the Project, or in support of federal, state or local political activities intended to influence governmental action affecting areas outside of the boundaries of the Project (e.g. endorsement or support of political candidates, legislative or administrative actions by any governmental agency, or ballot proposals).

### **11.4. REGULAR ASSESSMENTS.**

#### **11.4.1. PAYMENT OF REGULAR ASSESSMENTS.**

Regular Assessments for each fiscal year of the Association shall be established when the Board approves the Budget for that fiscal year, which Budget shall be prepared in accordance with the provisions of this Declaration. Regular Assessments shall be levied on a fiscal year basis. Unless otherwise specified by the Board, Regular Assessments shall be due and payable in monthly installments on the first day of each month during the term of this Declaration.

#### **11.4.2. BUDGETING.**

Regardless of the number of Members or the amount of assets of the Association, each year the Board shall prepare, approve and make available to each Member a Budget

as described in the Bylaws. Increases in Regular Assessments shall be subject to the limitations set forth in Section 11.16 below. For the first fiscal year, the Budget upon which Regular Assessments shall be based shall be the Budget accepted by the DRE and shall be approved by the Board no later than the date on which Regular Assessments are scheduled to commence. Thereafter, the Board shall annually prepare and approve the Budget and distribute a copy thereof to each Member (or a summary thereof as provided in the Bylaws), together with written notice of the amount of the Regular Assessment to be levied against the Owner's Condominium, not less than forty-five (45) days nor more than sixty (60) days prior to the beginning of the fiscal year.

#### **11.5. RESTRICTIONS OF TAX EXEMPTION.**

As long as the Association seeks to qualify and be considered as an organization exempt from federal and state income taxes pursuant to Internal Revenue Code Section 528 and California Revenue and Taxation Code Section 23701t and any amendments thereto, then the Board shall prepare its annual budget and otherwise conduct the business of the Association in such manner consistent with federal and state requirements to qualify for such status.

#### **11.6. NON-WAIVER OF ASSESSMENTS.**

If before the expiration of any fiscal year the Association fails to fix Regular Assessments for the next fiscal year, the Regular Assessment established for the preceding year shall continue until a new Regular Assessment is fixed.

#### **11.7. SPECIAL ASSESSMENTS.**

If the Board determines that the estimated total amount of funds necessary to defray the Common Expenses of the Association for a given fiscal year is or will become inadequate to meet expenses for any reason, including, but not limited to, unanticipated delinquencies, costs of construction, unexpected repairs, replacement of or new capital improvements on, damage and destruction or condemnation of the Common Area, 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 and does not exceed five percent (5%) of the budgeted gross expenses of the Association, it shall become a Special Assessment; provided, however that such limitation shall not apply to Special Assessments levied by the Board to replenish the Association's reserve account as provided in the Bylaws Section entitled "USE OF RESERVE FUNDS." Except for a Special Assessment levied pursuant to the Bylaws Section entitled "USE OF RESERVE FUNDS," any Special Assessment in excess of five percent (5%) of the budgeted gross expenses of the Association shall be subject to the limitation set forth in the Section below entitled "Limitations on Assessments." The Board may, in its discretion, prorate such Special Assessment over the remaining months of the fiscal year or levy the assessment immediately against each Condominium. Unless exempt from federal or state income taxation, all proceeds from any Special Assessment shall be segregated and deposited into a Financial Account and shall be used solely for the purpose or purposes of which it was levied or it 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, its taxation as income of the Association.

#### **11.8. CAPITAL IMPROVEMENT ASSESSMENT**

In addition to any other assessments provided for hereunder, the Association may levy a Capital Improvement Assessment for the purpose of defraying, in whole or in part, the cost of any construction or replacement of a capital improvement in accordance with the provisions of the Bylaws Section entitled "Capital Improvements." Capital Improvement Assessments shall be due and payable by all Owners in such installments and during such period or periods as the Board shall designate. Increase in Capital Improvement Assessments shall be subject to the limitations set forth in the Section below entitled "Limitations on Assessments."

**11.9. SINGLE BENEFIT ASSESSMENT.**

(a) The Board may establish a Single Benefit Assessment for reconstruction, capital improvements, extraordinary maintenance, or any other cost or expense not otherwise provided for in this Declaration which will benefit less than all of the Owners, and which will be assessed only against the Condominiums of those Owners so benefiting.

(b) Except as provided in the paragraph immediately below, such Single Benefit Assessments may be imposed only by a vote of at least fifty-one percent (51%) of the Owners of the Condominiums benefited by the Single Benefit Assessment.

(c) Whenever the Association performs any service or accomplishes any item of repair or maintenance which is the duty of an Owner to accomplish, but which has not been accomplished by such Owner, or whenever the Association determines to preempt the performance of a specific Owner of a given act of maintenance or repair, the Association shall specifically charge the cost thereof, together with any financing costs and administrative costs incurred by the Association, to the Owner for whom such work was done, and shall include such additional cost as a Single Benefit Assessment for such Owner(s).

(d) Each Single Benefit Assessment shall be segregated in the Financial Accounts solely to the Condominiums which derive the benefit therefrom. In the event that the Association obtains income directly related to an item which has been assessed as a Single Benefit Assessment, such income shall be allocated so as to reduce or offset such Single Benefit Assessment.

**11.10. ENFORCEMENT ASSESSMENTS.**

The Association may levy an Enforcement Assessment against any Owner who causes damage to the Common Area or for bringing an Owner or his or her Condominium into compliance with the provisions of the Project Documents or any other charge designated an Enforcement Assessment in the Project Documents, together with attorneys' fees, interest and other charges related thereto as provided in this Declaration. The Board shall have the authority to adopt a reasonable schedule of Enforcement Assessments for any violation of the Project Documents. If, after Notice and Hearing as required by this Declaration and which satisfies Section 7341 of the California Corporations Code, the Owner fails to cure or continues such violation, the Association may impose an additional fine each time the violation is repeated, and may assess such Owner and enforce the Enforcement Assessment as herein provided for nonpayment of an assessment. A hearing committee may be established by the Board to administer the foregoing. Notwithstanding any other provision in this Declaration to the contrary, Enforcement Assessments are assessments, but they may not become a lien against the Owner's Condominium that is enforceable by a power of sale under Civil Code Sections 2924, 2924b and 2924c or any successor statute or laws. This restriction on enforcement is not applicable to late payment penalties for delinquent assessments or charges imposed to reimburse the Association for loss of interest or for collection costs, including reasonable attorneys' fees, for delinquent assessments.

**11.11. UNIFORM RATE OF ASSESSMENT.**

Regular Assessments, Special Assessments and Capital Improvement Assessments shall be levied at a uniform rate for all Condominiums and may be collected on a monthly basis, or otherwise, as determined by the Board. Enforcement Assessments and Single Benefit Assessments shall be levied directly to the individual Condominiums and/or their respective Owners, depending upon whether the assessment may become a lien against the Condominium, as provided in this Declaration.

**11.12. EXCESSIVE ASSESSMENTS OR FEES.**

The Board may not impose or collect an assessment or fee that exceeds the amount necessary to defray the costs for which it is levied.

**11.13. COMMENCEMENT OF ASSESSMENTS; DUE DATES.**

The monthly installments for Regular Assessments provided for herein shall commence as to all Condominiums in the Project on the first day of the month following the conveyance of the first

Condominium to a Retail Buyer. The first annual assessment shall be adjusted according to the number of months remaining in the fiscal year.

#### **11.14. NOTICE AND ASSESSMENT INSTALLMENT DUE DATES.**

A single ten (10) day prior written notice of each Special Assessment and Capital Improvement Assessment shall be given to each Owner. The first fiscal year's Regular Assessment shall be equal to the amount shown in the Budget provided by Declarant. Written notice of the amount of the Regular Assessment for each fiscal year after the first fiscal year shall be distributed to each Owner not less than forty-five (45) days nor more than sixty (60) days prior to the beginning of the fiscal year, together with a copy of the approved Budget for that fiscal year, as more fully described in Section 11.4.2 entitled "**BUDGETING.**" The foregoing notwithstanding, the failure of the Board to comply with the foregoing notice provisions shall not affect the validity of any assessment levied by the Board.

The due dates for the payment of assessments shall normally be established as monthly installments due on the first day of each month unless some other due date and/or payment schedule is established by the Board.

#### **11.15. FAILURE TO FIX ASSESSMENTS.**

The omission by the Board to fix the assessments hereunder before the expiration of any fiscal year, for that or the next year, shall not be deemed either a waiver or modification in any respect of the provisions of this Declaration or a release of the Owner from the obligation to pay the assessments or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed.

#### **11.16. LIMITATIONS ON ASSESSMENTS.**

(a) The Board of Directors of the Association shall not impose or collect an assessment, penalty, or fee that exceeds the amount necessary for the purpose or purposes for which it is levied. Annual increases in Regular Assessments for any fiscal year, as authorized by subsection (b) immediately hereinafter, shall not be imposed unless the Board has prepared and distributed the budget described in Section 11.4.2 entitled "**BUDGETING,**" and in the "Financial" Section of the Bylaws, in accordance with the provisions of Civil Code Section 1365(a) as it may from time to time be amended, with respect to that fiscal year, or has obtained the approval of Owners constituting a quorum, casting a majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code, or any successor statute.

(b) From and after January 1<sup>st</sup> of the year immediately following the conveyance of the first Condominium to an Owner, the Board of Directors of the Association may not impose, except as provided herein, a Regular Assessment that is more than twenty percent (20%) greater than the Regular Assessment for the Association's preceding fiscal year or impose special assessments which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without the approval of Owners constituting a quorum casting a majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code. These provisions, however, shall not limit assessment increases necessary for the following "emergency situations:"

- (1) An extraordinary expense required by an order of a court;
- (2) An extraordinary expense necessary to repair or maintain those portions of the Project or the Common Area for which the Association is responsible where a threat to personal safety is discovered;

- (3) An extraordinary expense necessary to repair or maintain those portions of the Project or the Common Area for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the budget under this Declaration and the Bylaws, in accordance with Civil Code Section 1365, or any amendment thereto; provided, however, that prior to the imposition or collection of an assessment under this paragraph, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Members with the "Notice of Regular Assessment";
- (4) An extraordinary expense in making the first payment of the earthquake insurance surcharge pursuant to Section 5003 of the California Insurance Code.

(c) Any increases authorized under this Section shall not be imposed unless the Board has complied with the budgetary requirements set forth in the Bylaws with respect to the fiscal year for which an assessment is levied. For the purpose of calculating whether an increase to Regular Assessments exceeds twenty percent (20%), the term "Regular Assessments" shall be deemed to include the amount assessed against each Condominium by the Association as a Regular Assessment plus any amount paid by Declarant as a subsidy pursuant to any subsidy agreements, to the extent such subsidy payments offset any amount which would otherwise be paid by Owners as Regular Assessments.

(d) For purposes of this Section, "quorum" is defined as more than fifty percent (50%) of the Owners (including the Declarant) of the Association.

(e) Any action authorized under this Section shall be taken at a meeting called for that purpose, written notice of which shall be sent to all Members not less than ten (10) days nor more than ninety (90) days in advance of the meeting.

#### **11.17. NOTICE OF ASSESSMENT INCREASE.**

The Board shall provide notice by first-class mail to the Owners of any increase in the Regular Assessment or Special Assessments or Capital Improvement Assessments of the Association, not less than thirty (30) nor more than sixty (60) days prior to the increased assessment becoming due and payable.

#### **11.18. REDUCTION OR ABATEMENT OF REGULAR ASSESSMENTS.**

In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Board in its discretion may either reduce the amount of the Regular Assessments or may abate collection of Regular Assessments as it deems appropriate. Nothing in this Section shall require the Board either to abate or reduce the Regular Assessments. The foregoing notwithstanding, neither an abatement nor a reduction in Regular Assessments shall be permitted so long as Declarant is possessed with or controls a majority of the total voting power of the Association or the Board.

#### **11.19. NO OFFSETS.**

All assessments shall be payable in the amount specified by the Board and no offsets against such amount shall be permitted for any reason, including, without limitation (a) a claim that the Association is not properly exercising its duties and powers as provided in this Declaration; (b) a Member has made or elects to make no use of the Common Area or any Improvements located therein; or, (c) any construction or maintenance performed pursuant to Section 14.9 entitled "Assumption of Maintenance

**Obligations"** below, shall in any way postpone assessments or entitle a Member to claim any such offset or reduction.

**11.20. DELINQUENCIES; LATE PENALTIES; INTEREST ON ASSESSMENTS.**

Any assessment not paid within fifteen (15) days after the due date shall be delinquent and shall be subject to a reasonable late penalty not exceeding ten percent (10%) of the delinquent assessment or ten dollars (\$10.00), whichever is greater, and shall bear interest on all sums including the delinquent assessment, reasonable costs for collection and late penalties at an annual percentage not exceeding twelve percent (12%) commencing thirty (30) days after the assessment becomes due, or at the maximum legal rate as defined in the California Civil Code Section 1366, or any successor statute or law.

**11.21. DEBT OF THE OWNER.**

Any assessment made in accordance with this Declaration and any late charges, reasonable costs of collection and interest, shall be a debt of the Owner of a Condominium from the time the assessment and other sums are levied.

**11.22. ASSOCIATION POLICIES AND PRACTICES RE: DEFAULTS.**

**11.22.1. ASSESSMENT DEFAULTS.**

The Board shall annually distribute during the sixty (60) day period immediately preceding the beginning of the Association's fiscal year, a statement of the Association's policies and practices in enforcing its remedies against Members for defaults in the payment of Regular and Special Assessments, including the recording and foreclosing of liens against Members' Condominiums.

**11.22.2. MONETARY PENALTIES AND FEES.**

If the Association adopts or has adopted a policy imposing any monetary penalty, including any fee, on any Member for a violation of the Project Documents, including any monetary penalty relating to the activities of an Invitee, the Board shall adopt and distribute to each Member, 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 for Member discipline contained in Section 9.5.1 above entitled "**ENFORCEMENT ACTIONS.**" and Section 10.4 above entitled "**NOTICE AND HEARING.**"; provided, however, no such monetary penalty may be characterized or treated as an assessment which may become a lien against the Owner's subdivision interest enforceable by a sale of the interest in accordance with the provisions of Sections 2024, 2024(b) and 2024(c) of the California Civil Code. The Board, however, shall not be required to distribute any additional schedules of monetary penalties unless there are changes from the schedule that was previously adopted and distributed to the Members.

**11.23. COLLECTION OF ASSESSMENTS; LIENS.**

**11.23.1. RIGHT TO ENFORCE ASSESSMENTS.**

The right to collect and enforce assessments is vested in the Board acting for and on behalf of the Association. The Board or its authorized representative, can enforce the obligations of the Owners to pay assessments provided for in this Declaration by commencement and maintenance of a suit at law or in equity, or the Board may foreclose by judicial proceedings or through the exercise of the power of sale pursuant to Section 11.23.7 below, enforce the lien rights created. Suit to recover a money judgment for unpaid assessments together with all other additional charges described in Section 11.24 hereafter shall be maintainable without foreclosing or waiving the lien rights. Notwithstanding anything else to the contrary herein, monetary penalties imposed by the Association: (a) to reimburse the Association for costs incurred by the Association in the repair of damage to Common Area or Property for which the Member or the Member's Invitees were allegedly responsible, (b) as a disciplinary measure for failure of a Member to comply with the Project Documents, or (c) as a disciplinary

measure in bringing the Member and his or her Condominium into compliance with the governing instruments of the Association, may not be characterized nor treated as an assessment which may become a lien against the Member's Condominium enforceable by a sale thereof conducted in accordance with the provisions of *Civil Code Sections 2924, 2924(b), 2924(c) and 1367*, or any successor statute or law. The limitation in the preceding sentence however, does not apply to any additional charges.

#### 11.23.2. NOTICE TO OWNER PRIOR TO LIEN OF ASSESSMENT.

Pursuant to Civil Code §1367.1, before the Association may place a lien upon an Owner's Unit to collect any Assessment which is past due, the Association shall provide written notice ("*Itemized Debt Notice*") to the Owner by certified mail. The precise form and content of the notice is set forth in Civil Code §1367.1, but includes without limitation the following:

(a) Fee and penalty procedures of the Association as described in Section above;

(b) An itemized statement of the charges owed by the Owner, including items on the statement which indicate (i) the principal owed, (ii) any late charges and the method of calculation, (iii) any attorney's fees, and (iv) the collection practices used by the Association, including the right of the Association to the reasonable costs of collection;

(c) A statement that the Owner has the right to inspect Association records pursuant to Corporations Code §8333;

(d) The following statement in 14-point boldface type if printed, or in capital letters, if typed:

(e) "IMPORTANT NOTICE: IF YOUR RESIDENTIAL UNIT IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION"

(f) A statement that the Owner shall not be liable to pay the charges, interest, and costs of collection, if it is determined the assessment was paid on time to the Association; and

(g) A statement that the Owner has the right to request a meeting with the Board as provided in Code §1367.1(c).

#### 11.23.3. LIEN OF ASSESSMENT.

At any time after (a) any assessments levied by the Association affecting any Condominium have become delinquent, and (b) the Itemized Debt Notice thereof has been mailed to the Owner of such Condominium, the Board may file for recording with the County Recorder, a "**Notice of Delinquent Assessment**" as to such Condominium, which notice shall state all amounts which have become delinquent with respect to such Condominium and the costs (including attorneys' fees), late penalties and interest which have accrued thereon, the amount of any assessments relating to such Condominium which is due and payable although not delinquent, a legal description of the Condominium with the name of the record or reputed record Owner of such Condominium, and the name and address of the trustee authorized by the Association to enforce the lien, if by nonjudicial foreclosure as provided below. Such notice shall be signed by the President, Vice President, Secretary, or Chief Financial Officer of the Association, or by an authorized agent (as designated by resolution of the Board) of the Association. Immediately upon recording of any Notice of Delinquent Assessment pursuant to the foregoing provisions of this Section, the amounts delinquent, as set forth in such Notice, together with the costs (including attorneys' fees), late penalties and interest accruing thereon, shall be and become a lien upon the Condominium described therein, which lien shall also secure all costs (including attorney's fees), late penalties and interest accruing thereon. The lien may be enforced as provided in Section 11.23.7 below, entitled "**LIEN ENFORCEMENT; FORECLOSURE PROCEEDINGS.**"

**11.23.4. NOTICE TO OWNER AFTER LIEN OF ASSESSMENT.**

Not later than ten (10) calendar days after recordation of the Notice of Delinquent Assessment with the County Recorder, a copy of the Notice of Delinquent Assessment and the recording date thereof shall be mailed to all record Owners of the Condominium by certified or registered mailed, in accordance with the manner set forth in Civil Code Section 2924b, or any successor statute or law.

**11.23.5. PAYMENTS UNDER PROTEST.**

An Owner who disputes an assessment imposed by the Association against such Owner and/or such Owner's Condominium shall have the right to resolve such dispute through (i) alternative dispute resolution as set forth in Civil Code Section 1354, (ii) civil action, and (iii) any other dispute resolution procedure that may be available through the Association, as provided in Civil Code Section 1366.3, or any successor statutes or laws.

**11.23.6. RELEASE OF LIEN.**

In the event the delinquent assessments and all other assessments which have become due and payable with respect to the same Condominium together with all costs (including attorneys' fees), late charges and interest which have accrued on such amounts are fully paid or otherwise satisfied prior to the completion of any sale held to foreclose the lien provided for in this Article, the Board shall record a further notice, similarly signed, stating the satisfaction and release of such lien.

**11.23.7. LIEN ENFORCEMENT; FORECLOSURE PROCEEDINGS.**

After the expiration of thirty (30) days following the recording of the Notice of Delinquent Assessment with the County Recorder, the lien created by such recording may be foreclosed in any manner permitted by law, including sale by the court, sale by the trustee designated in the Notice of Delinquent Assessment, or sale by a trustee substituted pursuant to Civil Code Section 2934a. Any sale by the trustee shall be conducted in accordance with the provisions of Civil Code Sections 2924, 2924(b), 2924(c) and 1367, or any successor statute or law. The Association, acting on behalf of the Owners, shall have the power to bid for the Condominium at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid assessments, costs, late penalties and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same.

**11.24. ADDITIONAL CHARGES.**

In addition to any other amounts due or any other relief or remedy obtained against an Owner who is delinquent in the payment of any assessments, each Owner agrees to pay Additional Charges incurred or levied by the Board including such additional costs, fees, charges and expenditures as the Association may incur or levy in the process of collecting from that Owner monies due and delinquent. Additional Charges shall include, but not be limited to, the following:

**11.24.1. ATTORNEY'S FEES.**

Reasonable attorneys' fees and costs incurred in the event an attorney(s) is employed to collect any assessment or sum due, whether by suit or otherwise;

**11.24.2. LATE CHARGES.**

A late charge in an amount to be fixed by the Board in accordance with Civil Code Section 1366, or any successor statute or law, to compensate the Association for additional collection costs incurred in the event any assessment or other sum is not paid when due or within any "grace" period established by law;

**11.24.3. COSTS OF SUIT.**

Costs of suit and court costs incurred as are allowed by the court;

**11.24.4. INTEREST.**

Interest to the extent permitted by law; and

**11.24.5. OTHER.**

Any such other additional costs that the Association may incur in the process of collecting delinquent assessments or sums.

**11.25. PRIORITY OF THE LIEN.**

The lien of assessment herein shall be subordinate to the lien of any First Mortgage now or hereafter placed upon any Condominium subject to assessment, and the sale or transfer of any Condominium pursuant to judicial or nonjudicial foreclosure transfer (excluding a transfer by deed in lieu of foreclosure) of a First Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Condominium from lien rights for any assessments thereafter becoming due nor from the lien of any subsequent assessment. Where the First Mortgagee or other purchaser of a Condominium obtains title to the same as a result of foreclosure (excluding a transfer by deed in lieu of foreclosure), such acquiror of title, his or her successors and assigns, shall not be liable for the share of common expenses or assessments by the Association chargeable to such Condominium which became due prior to the acquisition of title to such Condominium by such acquiror, exempt except for a share of such charges or assessments resulting from a reallocation of such charges or assessments which are made against all Condominiums.

**11.26. WAIVER OF EXEMPTIONS.**

Each Owner, to the extent permitted by law, waives, to the extent any liens created pursuant to this Article, the benefit of any homestead or exemption laws of California in effect at the time any assessment or installment thereof becomes delinquent, or any lien is imposed.

**11.27. TAXATION AGAINST THE COMMON AREA.**

In the event that any taxes are assessed against the Common Area or the personal property of the Association, rather than against the individual Condominiums, said taxes shall be added to the Regular Assessments, and, if necessary, a Special Assessment may be levied against the Condominium in an amount equal to said taxes, to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment, or as otherwise may be established by the Board.

**11.28. PERSONAL LIABILITY OF OWNER.**

No Owner may exempt himself from personal liability for assessments levied by the Association, nor release the Condominium owned by him from the liens and charges hereof by waiver of the use or enjoyment of any of the Common Area or by abandonment of his or her Condominium.

**11.29. TRANSFER OF CONDOMINIUM.**

After transfer or sale of a Condominium within the Project, the selling Owner or Owners shall not be liable for any assessment levied on such Owner or Owner's Condominium after the date of such transfer of ownership and written notice of such transfer is delivered to the Association. The selling Owner shall still be personally responsible for all assessments and charges levied on his or her Condominium prior to any such transfer.

**11.30. CAPITALIZATION REQUIREMENT.**

As additional contingency to meet the initial expenses of the Association, including those operating expenses and reserve requirements unforeseen or not fully contemplated in the Budget reviewed and accepted by the DRE, upon acquisition of record title to a Condominium from Declarant, such Purchaser shall contribute to the capital of the Association an amount equal to one-sixth (1/6) the amount of the then Annual Regular Assessment for the Condominium as determined by the Board. This amount shall be deposited by the Purchaser into the purchase and sale escrow and disbursed therefrom

to the Association. Escrow shall remit these funds to the Association. The capitalization funds set forth herein are not to be considered paid in lieu of Annual Regular Assessments or any other Assessment levied by the Association.

#### **11.31. FINANCIAL ACCOUNTS.**

The Board shall establish financial accounts ("*Financial Accounts*"), into which shall be deposited all monies paid to the Association and from which disbursements shall be made, as provided herein, in the performance of functions by the Association under this Declaration and the Bylaws. The Financial Accounts shall be established in accounts at any banking, savings, brokerage or similar institution ("*Institution*"), provided such funds are fully insured (i) by the Federal Deposit Insurance Corporation or similar Federal insuring agency, or (ii) by a comparable account insurer. Aggregate deposits held in any single Institution shall not exceed the limit of deposit insurance coverage available. The Financial Accounts shall include:

- (a) An Operating Account for current Common Expenses of the Association;
- (b) A Reserve Account for capital improvements, replacements, painting and repairs of the Common Area; and
- (c) Any Other Accounts that the Board may establish to the extent necessary under the provisions of this Declaration.
- (d) Except for purposes of transfer of funds upon receipt or disbursement thereof, the Board shall not commingle any amounts deposited into any of the Financial Accounts with one another. Nothing contained herein shall limit, preclude or impair the establishment of additional Financial Accounts by the Declarant so long as the amounts assessed to, deposited into, and disbursed from any such Account are earmarked for specified purposes authorized by this Declaration or the Bylaws.

#### **11.32. USE OF RESERVE FUNDS.**

Any reserve fund accounts maintained by the Association (including any capital accounts maintained pursuant to the above Section entitled "*Financial Accounts*") shall be used for the purposes and in the manner described in California Civil Code Section 1365.5, as it may from time to time be amended.

### **12. USE RESTRICTIONS**

#### **12.1. USE OF CONDOMINIUMS.**

No Condominium shall be occupied and used except for residential purposes by the Owners and their Invitees, and no trade or business shall be conducted therein, except that Units may be used as a combined residence and executive or professional office by the Owner thereof, so long as such use (a) does not interfere with the quiet enjoyment by other Owners, (b) does not include unreasonable visitations by clients, (c) is in compliance with the Zoning Codes of the City/County (as applicable), and (d) is otherwise authorized by such California statutory or common law that may take precedence over City/County (as applicable) requirements and/or this Declaration. No health care facilities operating as a business or charity and serving the sick, elderly, disabled, handicapped or retarded shall be permitted in the Project. The foregoing notwithstanding, Declarant may use any of the Units owned or leased by Declarant as model homes and sales offices during that time period described in the Section entitled "*Declarant Exemption*" in the Article herein entitled "**GENERAL PROVISIONS.**"

#### **12.2. LEASE OF DWELLING.**

##### **12.2.1. REQUIREMENTS OF ALL LEASES.**

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

- (a) All leases must be in writing;
- (b) Unless the Owner remains in occupancy, the lease must be for the entire Condominium, and not merely parts thereof, and shall include the Unit and its appurtenant Exclusive Use Common Area(s), if any, and no such lease shall allow the tenant to forfeit the use of such Exclusive Use Common Area;
- (c) No lease shall be for a period of less than thirty (30) days;
- (d) All leases shall be subject in all respects to the provisions of this Declaration and the other Project Documents;
- (e) All Owners who lease their Condominiums shall promptly (not later than 10 days after entering into such lease) notify the Secretary of the Association in writing of the names of all tenants and members of tenants' family occupying such Condominium(s) and shall provide the Secretary of the Association with a complete copy of the lease. In addition, all Owners leasing their Condominium shall promptly notify the Secretary of the Association of the address and telephone number where such Owner can be reached.

#### **12.2.2. FAILURE OF TENANT TO COMPLY WITH PROJECT DOCUMENTS.**

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

#### **12.3. INSURABILITY.**

No Unit, Exclusive Use Common Area or improvements situated thereon shall be occupied or used for any purpose or in any manner which shall cause such improvements to be uninsurable against loss by fire or the perils of the extended coverage endorsement to the California Standard Fire Policy form, or cause the rate of insurance to increase, or cause any such policy or policies representing such insurance to be canceled or suspended, or the company issuing the same to refuse renewal thereof.

**12.4. PETS.**

The following provision shall apply to Owners and to all Residents and Invitees of the respective Owners, provided, however, an Owner may impose more stringent requirements on such Owner's Residents and/or Invitees as such Owner may deem appropriate, notwithstanding the provisions of this Section.

(a) Except as otherwise provided more stringently in the zoning ordinances of the City/County (as applicable), an Owner may keep and maintain in such Owner's Unit domesticated pets such as dogs, cats or other usual and ordinary household pets as may be allowed by the **Association Rules**; provided, however, any pet which may have already been a part of an Owner's or such Owner's tenant's Dwelling prior to the adoption of a Rule that would preclude such pet, shall be exempt from such Rule for the lifetime of such pet or pets; further provided, however, that any pet may not be kept, maintained or bred for any commercial purposes. An Owner may keep and maintain any number of aquarium-type fish; provided, however, an Owner shall review and consider the structural load limits and internal drainage pertaining to such Owner's Unit and the proposed site of installation of an aquarium prior to filling such aquarium(s) with water.

(b) The foregoing notwithstanding, in accordance with Civil Code §1360.5, no portion of the CC&Rs shall prohibit an Owner from keeping at least one (1) pet within the Project, subject to reasonable rules and regulations of the Association, including those provisions herein contained.

(c) The foregoing notwithstanding, no pets may be kept on the Property which result in an annoyance or are obnoxious to other Owners or occupants; provided, however, that the Association Rules may further limit or restrict the keeping of such pets. No pets shall be permitted in any area designated in the Association Rules as being restricted to pets. No dog shall enter the Common Area except while on a leash which is held by a person capable of controlling it. The Association or any Owner (including Declarant) may cause any unleashed or tethered dog found within the Common Area to be removed to a pound or animal shelter under the appropriate governmental jurisdiction by calling the appropriate authorities, whereupon the Owner may, upon payment of all expenses connected therewith, repossess the dog. No dog whose prolonged barking (or other prolonged noise-producing pet) unreasonably disturbs other Owners or occupants shall be permitted to remain in the Project. Persons bringing or keeping a pet within the Project shall prevent their pets from soiling all portions of the Project where other persons customarily walk or otherwise occupy from time to time and shall promptly clean up any mess left by their pets. Each person bringing or keeping a pet within the Project shall be absolutely liable to the Association and other Owners and their Residents/Invitees for any damage to persons or property caused by any pet brought upon or kept upon the Project by such person or such Owner's Residents/and Invitees. Any Owner or Invitee who maintains any animal, insect or reptile within the Project, whether in compliance with or in violation of the CC&R's, shall indemnify and hold harmless the Association, its officers, directors, other Owners, Residents and their respective Invitees, from any claim brought by any person against them or any one or more of them, for personal injuries or property damage caused by such animal, insect or reptile.

**12.5. INTERFERENCE OF OTHER OCCUPANTS.**

No Unit or Exclusive Use Common Area shall be used in such manner as to obstruct or interfere with the enjoyment of occupants of other such areas or annoy them by unreasonable noise or otherwise, nor shall any nuisance be committed or permitted to occur in any Condominium nor on the Common Area.

**12.6. SIGNS.**

No signs, placards, decals or other similar objects, visible from the Private Street, neighboring property or streets, shall be erected or displayed on any Condominium or the Common Area, without the prior written permission of the Board; provided however, the following signs shall be permitted, all of the foregoing of which shall conform with applicable local governmental ordinances:

(a) Such signs as may be required by legal proceedings;

(b) One or more signs displayed by an Owner or the Owner's agent, on such Owner's Condominium or on real property owned by another with that Owner's consent, which is reasonably located, in plain view of the public, and is of reasonable dimensions and design, advertising the following: (i) that the Condominium is for sale, lease or exchange by the Owner or the Owner's agent (ii) directions to the Condominium, (iii) the Owner's or agent's name, and (iv) the Owner's or agent's address and telephone number;

(c) Two (2) signs not to exceed 1' x 1' in size, advertising or noticing the existence of a security system on which such sign is located, and any number of security system window signs not to exceeding sixty-four inches (64") square in size. No such security signs shall be attached to the exterior of a Condominium Building;

(d) Customary window dressings placed in observance of national or religious holidays;

(e) During the time of construction of the Project or any portion thereof, job identification signs having a maximum face area of six (6) square feet per sign and of the type usually employed by architects, contractors, subcontractors, tradesmen and lenders.

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

Anything contained in this Declaration to the contrary notwithstanding, Declarant and its authorized agents, shall have the right, during the time period described in the Article 6 entitled "**Development Rights,**" to install and maintain such Construction and Marketing Improvements as provided in such Article.

#### **12.7. EXTERIOR LIGHTING.**

Any exterior lighting installed on the Common Area (including Exclusive Use Common Areas) shall either be indirect, shielded or of such controlled focus and intensity as to prevent glare on surrounding properties and unreasonable disturbance to occupants of other Dwellings in the neighborhood.

#### **12.8. ANTENNAS, SATELLITE DISHES.**

No alteration to or modification of a central radio and/or television antenna system or cable television system, whichever is applicable, if developed by Declarant, a cable television franchisee or third party utility service, and is maintained by the Association or said franchisee or utility service, shall be permitted. No Owner or Invitee may be permitted to construct and/or use and operate his own external radio and/or television antenna, "Citizens Band" (C.B.), amateur radio, microwave transmission, satellite dishes, DBS dishes or other similar electronic receiving or broadcasting devices, except in accordance with the Association Rules and/or Architectural Standards promulgated therefor and in compliance with all local, state and federal laws and regulations, as they may from time to time be amended. Nothing herein stated is intended to obligate Declarant or the Board to install a master antenna system. All fees for the use of any cable television system shall be borne by the respective Owners, and not by the Association or Declarant.

#### **12.9. REMODELING THE COMMON AREA.**

Except as otherwise specifically provided herein, nothing herein contained shall give the Owner the right to paint, decorate, remodel, landscape, adorn, alter, construct in or remove from any part or parcel of the Common Area without the written consent of the Architectural Committee.

**12.10. OFFENSIVE ACTIVITIES AND CONDITIONS.**

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

**12.11. GARBAGE AND REFUSE DISPOSAL.**

(a) All rubbish, trash and garbage shall be regularly removed from Property, and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall not be kept except in sanitary containers designed for such purpose.

(b) All equipment for storage or disposal of such materials shall be kept in a clean and sanitary condition. All equipment, trash bins or cans shall be kept screened and concealed from view of other Dwellings and the Common Area.

**12.12. WOOD OR STORAGE PILES.**

All wood or storage piles shall be kept screened and concealed in such manner as to not be visible from neighboring property and the Common Area.

**12.13. FENCES; WALLS.**

No fences or walls shall be erected or maintained upon the Property except such as are installed in accordance with the initial construction of improvements on the Property or as approved by the Board.

**12.14. CLOTHES LINES.**

No exterior clothes lines shall be erected or maintained, and there shall be no outside drying or laundering of clothes anywhere in the Project, except in such areas which may be approved by the Board.

**12.15. BALCONY areas.**

Balcony Exclusive Use Common Areas may be used for placement of lawn/patio style furniture, barbecues, potted plants, and other usual patio equipment and furniture; provided, however, no potted plants may be placed upon or over any Balcony railing above an area where someone or something may be injured or damaged in the event such potted plants or other objects should fall down. An Owner shall not allow any water to run off any Balcony onto the Common Area. Owners shall place trays under all potted plants. *Fireplace wood may also be stored, provided it shall be kept in a container which may be sealed so to mitigate the infestation of termites and other pests, screened and concealed from view of other Condominiums, the Common Area, public and private streets.* Balcony areas may not be used for storage purposes. No draping of towels, carpets, laundry or other articles over railings or walls shall be allowed. The foregoing notwithstanding, the Board, shall, in accordance with the Rules and Article 13.11 herein entitled "ARCHITECTURAL AND DESIGN CONTROL," have the ultimate authority to establish, determine, approve and/or disapprove such rules and regulations affecting the placement, storage and nature of items permitted in the Balcony areas.

**12.16. WINDOW COVERINGS.**

All drapes, curtains, window coverings, shutters or blinds visible from the Common Area or public areas shall be beige or white or neutral-toned in color or so lined. Other colors, materials and

patterns may be used, provided they are approved by the Board or its delegated committee. No window shall ever be covered with paint or aluminum foil; provided, however, non-reflective solar films shall be permitted.

## **12.17. CAR MAINTENANCE AND POWER EQUIPMENT.**

### **12.17.1. CAR MAINTENANCE.**

No car maintenance, servicing, repairing, assembling, disassembling, modifying, restoring, other than emergency work, shall be permitted in a Condominium or the Project, except with prior written approval of the Board for minor repairs only. The foregoing shall not be deemed to prevent the washing or polishing of motor vehicles together with those activities normally incident to such activity. The length of time allowed for emergency or approved minor repair work shall be determined by the Board through the Rules. The foregoing notwithstanding, no emergency or repair work shall be permitted in any continuous period of twenty-four (24) hours.

### **12.17.2. POWER EQUIPMENT.**

No power equipment (other than "hand-held" power tools) or other similar apparatus may be used in the Community, except with the prior written permission of the Board or its delegated committee; in deciding whether to grant approval, consideration shall be given to the effect of noise, air pollution, dirt or grease, fire hazard, interference with radio, television reception and similar objections. The foregoing notwithstanding, the use of power equipment in connection with any construction activity authorized by the Declarant, the Board or its delegated committee shall be permitted, provided the same is conducted exclusively between the hours of 7 a.m. and 6 p.m., except in the case of an Emergency.

## **12.18. USE OF COMMON AREA.**

Except as otherwise provided herein, the Common Area shall be improved and used only for the following purposes:

- (a) Affording vehicular passage, temporary and emergency parking, and pedestrian movement within the Project, including access to the Dwellings;
- (b) Recreational use by the Owners and occupants of a Dwelling and their Invitees, subject to the Rules;
- (c) Beautification of the Common Area and providing privacy to the residents of the Project through landscaping and such other means as the Board or its delegated committee shall deem appropriate;
- (d) Parking of automotive passenger vehicles in areas provided therefor as may be designated and approved by the Board by such persons, upon such terms and conditions and for such fees as may from time to time be determined by the Board;
- (e) As Exclusive Use Common Areas to be used in the manner hereinafter described. Nothing herein contained shall be deemed to allow persons other than the Owner of a Unit to which an Exclusive Use Common Area is appurtenant (or his Invitees) to the enjoyment and use thereof;
- (f) No part of the Common Area shall be obstructed so as to interfere with its use for the purposes hereinabove permitted, nor shall any part of the Common Area be used for storage purposes (except as incidental to one of such permitted uses, or for storage of maintenance equipment used exclusively to maintain the Common Area or in storage areas designated by the Board), nor in any manner which shall increase the rate of which insurance against loss by fire, or the perils of the extended coverage endorsement to the California Standard Fire Policy form, or bodily injury, or property damage liability insurance covering the Common Area and improvements situated thereon may be obtained, or cause such premises to be uninsurable against such risks or any policy or policies representing such insurance to be canceled or suspended or the company issuing the same to refuse renewal thereof.

**12.19. EXCLUSIVE USE LICENSES.**

The Board shall have the right to allow one or more Owners to exclusively use portions of the otherwise nonexclusive Common Area, provided that such portions of the Common Area are nominal in area and adjacent to the Owner's Unit, and provided further, that such use does not unreasonably interfere with any other Owner's use or enjoyment of the Project.

**12.20. INTERIOR OF CONDOMINIUMS; MODIFICATIONS; HANDICAPPED ACCESS.**

Subject to the provisions of this Declaration, applicable provisions of law and Civil Code Section 1360, as it may from time to time be amended, each Owner shall have the right, at his sole cost and expense:

(a) To make any improvement or alteration within the boundaries of his Living Unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Common Area;

(b) To maintain, repair, repaint, paper, panel, plaster, tile and finish the interior surfaces of the ceiling, floors, window frames, trim, door frames and perimeter walls of the Unit and the surfaces of the bearing walls and partitions located within the Unit and to substitute new finished surfaces in place of those existing on said ceiling, floors, walls, and doors of said Unit;

(c) To modify his Living Unit to facilitate access for persons who are blind, visually handicapped, deaf, or physically disabled, or to alter conditions which could be hazardous to these persons. These modifications may also include modifications of the route from the public way to the door of the Living Unit for the purposes of this Section if the Unit is on the ground floor or already accessible by an existing ramp or elevator. The right granted herein is subject to the following conditions:

- (1) The modifications shall be consistent with applicable building code requirements;
- (2) The modifications shall be consistent with the intent of otherwise applicable provisions of this Declaration pertaining to safety or aesthetics;
- (3) Modifications external to the Living Unit shall not prevent reasonable passage by other residents, and shall be removed by the Owner when the Condominium is no longer occupied by persons requiring those modifications who are blind, visually handicapped, deaf, or physically disabled.

Any Owner who wishes to modify his Living Unit pursuant to this Section, shall comply with the provisions of the "**Architectural And Design Control**" Article hereafter regarding the review and approval by the Board or its delegated committee of such modifications, which approval shall not be unreasonably withheld.

**12.21. MERGING UNITS.**

The Owner of two or more contiguous Living Units may, with the consent of the Board or its delegated Committee (which consent shall not be unreasonably withheld), at his expense, and in accordance with detailed plans approved by the Board or its delegated committee, merge such Units into one living area. The Owner who has connected the Units in such manner shall have an easement for ingress, egress and passage through that portion of the Common Area which has been pierced in the process of constructing said merger. Said easement shall exist only for so long as the Units are merged into one Unit. Such easement shall automatically be terminated and the Units completely reconstructed to their original as-built condition at such time that the Owner of such Units sells, transfers or conveys any one (1) of the Units comprising such merged Unit, in which case, reconstruction of the Common Area

shall be accomplished, at such Owner's expense, prior to the recordation of the deed or instrument of transfer.

No bearing walls shall be removed, altered or damaged in the course of such construction. No modifications to any portion of the Common Area shall be made which affect the structural integrity of the Project or impair any other Owner's reasonable use of such Common Area, or the utilities that may be located therein, or the value of the Project. All costs and expenses of such modifications, and subsequent restoration of said modifications shall be borne by the Owner of the Units so merged. At the request of the Board, after approval of the proposed modifications by the Board and prior to commencement of work, the Owner making such modifications shall post a bond or bonds in an amount acceptable to the Board to protect the Association and the Project against liens and to insure completion of the work. In merging Units, an Owner shall have such reasonable access to other Units that he does not own as may be required to accomplish the modifications approved by the Board or its delegated committee. Such modifications shall not, however, change the status of Units which shall continue to be treated legally as separate Units, each required to pay its separate assessment.

#### **12.22. EXCLUSIVE USE COMMON AREAS.**

Each Exclusive Use Common Area shall be (a) appurtenant to the Unit with which the Exclusive Use Common Area is conveyed, and (b) used only for the purposes set forth in this Declaration. The right to so use an Exclusive Use Common Area shall be exercisable only by the Owner of the Condominium appurtenant thereto and/or said Owner's tenants and licensees. Conveyance of a Condominium shall effect conveyance of Exclusive Use Common Areas appurtenant thereto and transfer all rights thereto to the vested Owner of the Condominium. Any license thereto shall be terminated upon such conveyance. No Exclusive Use Common Area nor any rights thereto (other than said revocable licenses) shall be transferred or conveyed apart from the Condominium to which it is appurtenant. Each Exclusive Use Common Area shall be deemed to be Common Area for all those purposes set forth in this Declaration which are not inconsistent with this Article or the "ARCHITECTURAL AND DESIGN CONTROL" Article hereafter. Except as provided in this Section and in the "*Interior of Condominiums; Modifications; Handicapped Access*" Section above, nothing contained herein shall give any Owner the right to paint, decorate, remodel or alter said Exclusive Use Common Area or any other part of the Common Area without the prior written consent of the Board or its delegated committee in accordance with the provisions of the "ARCHITECTURAL AND DESIGN CONTROL" Article herein.

#### **12.23. VEHICLE RESTRICTIONS.**

##### **12.23.1. PROHIBITED VEHICLES.**

No trailer, recreational vehicle, camper, camper shell alone or when on a vehicle and it is higher than the cab or longer than the factory bed of that vehicle, bus, truck over ¾ ton, all-terrain vehicle (ATV), boat trailers, commercial vehicles (except as described in "*Permitted Vehicles*" below), permanent tent or similar equipment shall be permitted to remain upon any area within the Community other than temporarily for purposes of loading, unloading. "*Temporary parking*" shall mean parking of vehicles belonging to Invitees or Owners, delivery trucks, service vehicles and other commercial vehicles being used in the furnishing of services to the Association or the Owner and parking of vehicles belonging to or being used by Owners for loading and unloading purposes only. No noisy or smoky vehicles shall be operated in the Community.

##### **12.23.2. RESTRICTED VEHICLES.**

No inoperable or unlicensed vehicle shall be permitted to remain upon any area within the Community in such a manner that it is visible from the Common Area, neighboring property and public roads. Motorcycles and motorbikes shall be permitted, provided they are operated at noise levels not exceeding 45 decibels. The storing, placing or parking of any vehicle, or any part thereof, which is disabled, unlicensed, unregistered, inoperative, or from which an essential or legally required operating part is removed, shall be prohibited unless conducted within a garage.

**12.23.3. PERMITTED VEHICLES.**

Automobiles, standard-sized vans, boats on trailers and pickup trucks shall be permitted vehicles within the Community. Permitted commercial vehicles shall include automobiles or standard sized vans and pickup trucks which are used both for business and personal use, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board.

**12.23.4. CONSTRUCTION AND SALES VEHICLES.**

Trailers or temporary structures for use incidental to the actual construction or reconstruction of Improvements in the Project may be erected with the approval of the Board or its delegated committee, but no such temporary structure shall remain in the Project for a longer period of time than is customarily required to construct like or similar Dwellings. The foregoing notwithstanding, Declarant or Declarant's successor in interest may maintain trailers or temporary structures within the Project which are incidental to the completion of the Project or for initial construction on property owned by Declarant and situated in the vicinity of the Project.

**12.24. parking spaces AND/OR GARAGES.**

Parking Space and/or Garage areas shall be used to park automobiles, standard sized pickup trucks, boats on trailers or standard sized vans; provided that such vehicles may be fully enclosed or contained therein and not interfere with the reasonable access to adjacent vehicles, and such vehicles to the contrary shall not be permitted in the Project. No owners or their tenants shall park more vehicles in the Community at any one time than the number of vehicles that their Parking Space and/or Garage area, as applicable, was designed to accommodate. No Owner shall block or impede access of fire fighting equipment to private streets and fire hydrants within the Common Area. The Board may, from time to time, establish rules and regulations for the operation and parking of vehicles in the Common Areas and such activities related thereto. Any permission from the Board for use of an unassigned parking space, if any, will create only a license to use such parking space, revocable at any time by the Board with three (3) days' written notice.

**12.25. STORAGE AREAS.**

Storage areas shall be used to store non-hazardous materials.

**12.26. TOWING.**

Any vehicle within the Community parked in violation of this Declaration or the Rules and Regulations of the Board may be removed as provided for in accordance with the provisions of California Vehicle Code Section 22658.2 and any amendments thereto, or in accordance with City/County (as applicable) ordinances.

Notwithstanding the foregoing, the Association may cause the removal, without notice, of any vehicle parked in a marked fire lane, within fifteen (15) feet of a fire hydrant, or in a manner which interferes with any entrance to or exit from the Project or any Condominium Unit, parking space, garage or driveway located thereon.

The Association shall not be liable for any damages incurred by the vehicle owner because of the removal in compliance with this Section or for any damage to the vehicle caused by the removal, unless such damage resulted from the intentional or negligent act of the Association or any person causing the removal of or removing the vehicle. If requested by the owner of the vehicle, the Association shall state the grounds for the removal of the vehicle.

**12.27. LIABILITY FOR DAMAGE TO COMMON AREA.**

Each Owner shall be legally liable to the Association for any damages to the Common Area or to any Improvements therein that may be sustained by reasons of the negligence of that Owner and/or such Owner's Invitees, as such liability may be determined under California law. Each Owner, by acceptance of deed to such Owner's Condominium, agrees: (a) to be responsible for compliance with the

provisions of this Declaration, the Articles, Bylaws and Rules of the Board or any Architectural Standards, and for compliance by such Owner's Invitees, (b) to hold each other Owner harmless from, and to defend each other Owner against, any claim of any person for personal injury or property damage occurring within such Owner's Unit and/or Exclusive Use Common Area appurtenant thereto, unless the injury or damage occurred by reason of the negligence of any other Owner; and (c) after written notice and an opportunity for a hearing as provided in Section 9.5.2 herein entitled "*Penalties Against Members*," to pay any fines and penalties assessed pursuant hereto, the Bylaws or the Rules or Architectural Standards, for any violation by such Owner or such Owner's Invitees.

### **13. ARCHITECTURAL AND DESIGN CONTROL**

#### **13.1. GENERAL.**

The powers and duties set forth in this Article shall be vested in, and exercised by the Board of Directors of the Association; provided, however, the Board may, upon unanimous approval thereof, delegate its powers and duties to an Architectural Committee consisting of *not less than three (3) nor more than five (5) members* (in the event the Board elects to delegate such powers to an Architectural Committee, prior to conversion of the Class B membership in the Association to Class A membership, Declarant may appoint all of the original members of the Committee and all replacements until the first anniversary of the initial conveyance to a Retail Buyer in the Project; additionally, Declarant reserves to itself the power to appoint a majority of the members to the Committee until *ninety percent (90%)* of all the Condominiums in the Project have been sold or until the fifth anniversary of the initial conveyance to a Retail Buyer in the Project, whichever first occurs. After one (1) year from the date of the initial conveyance in the Project, the Board shall have the power to appoint one (1) member to the Architectural Committee until ninety percent (90%) of all of the Condominiums in the development have been sold or until the fifth anniversary date of the initial conveyance to a Retail Buyer in the Project, whichever first occurs. Thereafter, the Board shall have the power to appoint and remove all of the members of the Architectural Committee. Members appointed to the Architectural Committee by the Board shall be from the membership of the Association. Members appointed to the Architectural Committee by the Declarant need not be members of the Association. A majority of the Architectural Committee may designate a representative to act for it. In the event of death or resignation of any member of the Architectural Committee, the successor shall be appointed by the person, entity or group which appointed such member until Declarant no longer has the right to appoint any members to the Architectural Committee, and thereafter the Board shall appoint such a successor).

#### **13.2. RESTRICTED ACTIVITY.**

No building, fence, wall, obstruction, outside or exterior wiring, patio, patio cover, tent, awning, carport, carport cover, trellis or other similar type of above ground improvement or structure of any kind, or exterior alteration shall be commenced, erected, placed, painted or maintained upon the Project, nor shall any alteration or improvement of any kind be made thereto, nor shall any *outdoor umbrellas* be erected, *extensive landscaping* of patio area, if any, visible from the street or from the Common Area be undertaken, until the same has been approved in writing by the Board.

#### **13.3. PLAN SUBMISSION; REVIEW.**

Complete preliminary plans and specifications showing the nature, kind, shape, color, size, height, materials to be used and location of any proposed improvements or alterations shall be submitted to the Board for approval as to quality of workmanship, design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation. In the event the Board fails to approve or disapprove the preliminary plans and specifications within thirty (30) days after the same have been duly submitted to it in accordance with any Architectural Standards regarding such submission adopted by the Board, such preliminary plans and specifications shall be deemed to have been approved by the Board. Thereafter, the Owner of the Unit for which such preliminary plans and specifications have been approved may proceed with the preparation of final plans and specifications, and upon completion thereof, submit such final plans and

specifications to the Board for conformance review to the preliminary plans and specifications. In the event the Board fails to approve or disapprove the final plans and specifications within forty-five (45) days after the same have been duly submitted to it in accordance with any Architectural Standards regarding such submission adopted by the Board, such final plans and specifications shall be deemed to have been approved by the Board and the related covenants shall be deemed to have been fully complied.

#### **13.4. BOARD APPROVAL.**

The Board shall approve proposals or plans and specifications submitted for its approval only if it deems that the construction, alteration, addition or other construction activity contemplated thereby in the locations indicated will not be detrimental to the appearance of the Project and surrounding real property as a whole, and that the appearance of any structure or other improvement will be in harmony with the surrounding structures and improvements.

#### **13.5. APPROVED CONDITIONS.**

The Board may condition its approval of proposals or plans and specifications on such changes thereto as it deems appropriate, and may require submission of additional plans and specifications or other information prior to approving or disapproving materials submitted. The Board may adopt, amend or supplement its Architectural Standards (a) concerning design and materials standards, rules and guidelines for construction activities, (b) setting forth procedures for the submission of plans for approval, and (c) specifying additional factors which it will take into consideration in reviewing submissions. The Board may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, drainage plans, elevation drawings and description or samples of plantings, exterior materials and colors. Until receipt by the Board of all plans, specifications or other materials deemed necessary by the Board, the Board may postpone review of any plans submitted for approval.

#### **13.6. EXEMPTED FROM REVIEW.**

No permission or approval shall be required to repaint or rebuild any Improvement in accordance with Declarant's original color scheme or plans and specifications, or as previously approved by the Board. Nothing contained herein shall be construed to limit the right of an Owner to paint the interior of his Living Unit any color desired, or to improve or alter any improvements within the interior boundaries of the Owner's Living Unit, provided such improvement or alteration does not impair the structural integrity of any Common Area, the utilities, or other systems servicing the Common Area or other Condominiums, and does not involve altering any Common Area (including bearing walls). The provisions of this Article shall not apply to the initial construction by Declarant of any improvements in the Project, and the Board shall have no authority or right to approve or disapprove thereof.

#### **13.7. DUTIES.**

It shall be the duty of the Board to consider and act upon any and all proposals or plans submitted to it pursuant to this Declaration and any Architectural Standards adopted by the Board, to insure that any improvements constructed on the Condominium by anyone other than Declarant conform herewith, to perform other duties delegated to it by Association within the time periods set forth herein, and to carry out all other duties which may be imposed upon it by this Declaration. The Board, in its own name or on behalf of the Association, may exercise all available legal and equitable remedies to prevent or remove any unauthorized and unapproved construction or improvements on the Property or any portion thereof. The Board shall have the right, upon reasonable notice, to inspect any and all improvements made by an Owner. The Board shall have a duty to keep and maintain a record of all action from time to time taken by the Board at all meetings or otherwise.

#### **13.8. COMPENSATION.**

Board members shall receive no compensation for services rendered, other than reimbursement by the Association for expenses incurred by them in the performance of their duties

hereunder. Provided, however, any Board member may receive compensation in the event he or she renders services in a professional capacity.

### **13.9. FEE FOR REVIEW.**

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

### **13.10. ARCHITECTURAL STANDARDS.**

The Board may, from time to time and in its sole discretion, adopt, amend and repeal, by unanimous vote, rules and regulations to be known as "*Architectural Standards or Standards*" Said Standards shall interpret and implement the provisions of this Article by setting forth the standards and procedures for Board review and guidelines for architectural design, landscaping, color schemes, exterior finishes and materials and similar features which are recommended for use in the Project; provided, however, that said Architectural Standards shall not be in derogation of the standards required by this Declaration. The Architectural Standards may provide for the preapproval or exemption from approval of certain specified types or categories of improvements, provided that such preapproved or exempted construction activities are implemented by the affected Owner in conformance with the standards for design, materials and other criteria established in the Architectural Standards for such preapproved or exempted construction activities. The Board may from time to time adopt, supplement or amend the Architectural Standards to establish, expand, limit or otherwise modify the categories and criteria for any preapproved or exempted construction activities.

### **13.11. DESIGN CRITERIA.**

The Board shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration, addition or other construction activity on the basis of satisfaction of the Board with any of the following, as may be appropriate: grading plan, location of the improvements on the Property, finished ground elevation, color scheme, finish, design, proportions, architecture, shape, height, style, appropriateness of proposed improvements, affect on adjoining Units, Condominium Buildings and/or other Improvements within the Property, the materials to be used, the kinds, pitch or type of roof proposed, the planting, landscaping, size, height or location of vegetation, and on the basis of aesthetic considerations and the overall benefit or detriment to the Project and surrounding real property generally which would result from such improvement, alteration, addition or other construction activity. Although the Board shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color, schemes, exterior finishes and materials, and similar features, it shall not be responsible for reviewing, nor shall its approval of any plans or design be deemed approval of any plan or design from the standpoint of adequacy of drainage, structural safety or conformance with building or other codes. The Board approval of any particular construction activity shall expire and the plans and specifications therefor shall be resubmitted for Committee approval if substantial work pursuant to the approved plans and specifications is not commenced within one (1) year after the Boards approval of such construction activity. All construction activity shall be performed as promptly and as diligently as possible and shall be completed within such reasonable period of time specified by the Board.

### **13.12. VARIANCES.**

The Board may authorize variances from compliance with any of the architectural provisions of this Declaration when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require, which variances shall not be unreasonably withheld by the Board. Such variances must be in writing, and must be signed and acknowledged by at least a majority of the members of the Board. The granting of a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provision covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all laws and regulations of all appropriate governmental jurisdictions.

**13.13. ESTOPPEL CERTIFICATE.**

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

**13.14. LIABILITY.**

The Board shall not be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (c) the development of any property within the neighborhood; or (d) the execution and filing of an estoppel certificate whether or not the facts therein are correct; provided, however, that such Board member has acted in good faith on the basis of such information as may be possessed by him.

**13.15. ENFORCEMENT.**

In the event of a violation of any of the provisions of this Article, by any Owner including, without limitation, failure of any Owner to comply with the written directive or order from the Board, the Board shall have the right and authority to enforce, pursuant to the "Enforcement" Article hereinafter, the performance of the subject matter of such directive, including, if necessary, the right to enter onto the Condominium where a violation of these restrictions exists and perform remedial work, and the cost of such performance shall be charged to the Owner of the Condominium in question. Such costs shall be due within five (5) days after receipt of written demand therefor, and shall bear interest at the maximum rate allowed by law. Said costs may be recovered by the Board together with such interest and reasonable attorney's fees and costs in an action at law against such Owner.

**13.16. NON-COMPLIANCE WITH LAWS.**

Neither the Association, the Board, its delegated committee nor any member thereof shall be responsible for any non-compliance with any governmental law, rule or regulation of any building or other structure erected, constructed, installed, placed, altered or maintained in accordance with or pursuant to any plans and specifications approved by the Board or any defect in any conditions or requirements they may have imposed with respect thereto.

**13.17. APPROVAL BY GOVERNMENTAL JURISDICTION.**

Prior to commencing any alteration or improvements approved by the Board, the Owner shall comply with all appropriate governmental jurisdiction laws and regulations. Approval by the Board shall not be considered to satisfy the appropriate approvals that may be required by any governmental entity with appropriate jurisdiction. The Association shall not be obligated to enforce the provisions of this Section. An Owner's failure to obtain such governmental approval may subject such Owner to certain penalties imposed by the governmental entity, notwithstanding the approval of Board, which penalties shall be the responsibility of such Owner.

## **14. RESPONSIBILITIES OF MAINTENANCE**

### **14.1. GENERAL.**

The Association and all Owners are hereby required to maintain the areas described in this Article. For purposes of this Article "maintenance" shall include, without limitation, the painting, weatherproofing and cleaning of the items set forth below to keep a clean, safe and sanitary condition necessary to preserve the attractive appearance of each Condominium and the Project and to protect the values thereof. The Board shall have the power to determine the standards of such maintenance, which shall be, at a minimum, in conformance with maintenance standards for similar projects in the area.

### **14.2. OWNER RESPONSIBILITY.**

Except for those portions of the Project that the Association is required to maintain and repair, each Owner shall, at his sole cost and expense, maintain and repair the following in a safe, attractive and neat manner consistent with the highest standards of the surrounding properties:

(a) All doors, attached to the Unit, whether interior or exterior, glass or otherwise, and windows, including the metal frames and tracks of such doors and windows, and hardware attached thereto, door bells, screen doors and all other screens enclosing openings to the Unit; provided that painting or replacement of exterior doors and windows shall require the prior approval of the Board;

(b) The interior of such Owner's Living Unit, including the interior surfaces;

(c) All appliances whether "built-in" or "free-standing" within the Living Unit;

(d) Except for the utility facilities to be maintained by the Association, as described in Section 14.6 herein entitled "**RESPONSIBILITY OF ASSOCIATION**," each Owner shall also be responsible for the maintenance, repair and replacement of the plumbing, heating, ventilating and air-conditioning systems, which service such Owner's Condominium (including air-conditioning compressors), including television and cable equipment, wires and connections, telephone wiring and all appliances, equipment and fixtures, lighting fixtures (including lightbulbs), provided such systems are used or operated exclusively by such Owner and not in common;

(e) Chimney flues (including the periodic seasonal inspection(s) thereof for the build-up of creosote and any necessary cleaning), which are used or operated exclusively by such Owner and not in common.

### **14.3. OWNER RESPONSIBILITY OF EXCLUSIVE USE COMMON AREAS.**

Each Owner shall be responsible for (a) general maintenance and cleaning of the *interior (or inside-facing) surfaces* of any Exclusive Use Common Areas that may be appurtenant to such Owner's Unit, including any interior facing wood or stucco railings, fences, walls and flooring, if any; and (b) maintenance, repair and replacement of the *lighting fixtures (and lightbulbs)* and other fixtures, including lighting fixtures located at the front, rear or side entrances to a Living Unit, provided such fixtures and appliances are not used in common with other Owners, in which case the Association shall be responsible. Except in emergency situations, the replacement of exterior fixtures, appliances, doors and equipment shall require the prior approval of the Board, or its delegated committee. In the case of emergency replacement of the items specified above, such Owner shall take reasonable measures to conform with the overall scheme of the Project, and subsequently replace such item if directed by the Board or Committee. Each Owner shall also be responsible to see that his or her assigned appurtenant Parking Space area, if any, is kept clean and free of excessive grease and oil spills.

### **14.4. DAMAGE FROM WITHIN A UNIT.**

Except to the extent covered by insurance carried by the Association, in the event the Board shall determine that the walls, ceilings, floors, doors, or windows or any other portion of the Common Area forming the boundaries of a Unit have been damaged from within a Unit, notwithstanding that such damage may be to the Common Area, the Owner of the Unit shall be responsible for repairing

such damage in a timely manner in accordance with such rules as the Board or its delegated committee shall from time to time adopt.

#### 14.5. OWNER'S FAILURE TO MAINTAIN; WILLFUL OR NEGLIGENT ACT.

In the event an Owner fails to maintain the areas described herein pursuant to the standards set by the Board or its delegated committee, or if an Owner, or his invitees or pets, cause the willful or negligent act or neglect of the same or any other area within the Project, the Board may notify the Owner of the work required and request that the same be done within a reasonable time under the specific circumstances, provided, however, that the Board shall have the right to approve the person or company who shall perform the maintenance or repairs and the method of repair. In the event the Owner fails to carry out such maintenance or repair within said time period, the Board may, following notice and a hearing as provided in the Section 10.4 entitled "NOTICE AND HEARING," cause such work to be done and the cost thereof shall immediately be paid by such Owner to the Association and until paid shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate authorized by law).

#### 14.6. RESPONSIBILITY OF ASSOCIATION.

The Association shall provide for adequate and reasonable replacement, maintenance and repair of the following:

(a) The maintenance, repair and replacement of all facilities, including utility facilities as described below and in Section 14.8 herein entitled "**ASSOCIATION DUTIES REGARDING CERTAIN UTILITIES**," the Common Area including, but not limited to, recreation areas (if any), private driveway, walkways, lighting, doors of utility closets, mailboxes (excluding mailbox locks, if any, and replacement of any keys thereto, which shall be the responsibility of the individual Owners), trash enclosures, landscaped and open space areas, irrigation equipment in Non-Exclusive Use Common Areas, the exteriors, bearing walls, foundations, roofs, metal flashings between roofing and chimneys and roofing vents, gutters and downspouts of all Condominium Buildings and other structures on the Property and all property that may be acquired or leased by the Association. The utility facilities that the Association shall maintain shall include all gas, water and water pipes, all sewer, all ducts, flues, chutes, conduits, wires and other utility installations within the Project wherever located (except the Outlets thereof when located within a Condominium Unit). By way of example, and not limitation, an "Outlet" shall mean any portion of a utility facility which is located in an electrical or wiring box or panel and any pipe or other utility facility from the point at which it is reasonably accessible from within an Owner's Condominium Unit. More specifically, the term "Outlet" shall mean the point at which any utility facility can be serviced without the need for destructive entry into the walls, floors, ceilings or any portion of the Common Area.

(b) The periodic inspection, but not less than annually, of: (i) all electrical, gas, water and cable utility controls and meters; (ii) all roofs and metal flashings for evidence of cracking, damage or exposure of underlying structures to the elements;

(c) The maintenance, repair and replacement of any fixtures (lighting or otherwise) located within the Common Area, including those located in Exclusive Use Common Areas, which are not used exclusively by one Owner;

(d) The maintenance, repair and replacement of all Common Area fences, walls and railings and any of the same which are within or delineate Exclusive Use Common Areas, but to the extent such maintenance, repair and replace is due to normal wear and tear;

(e) The maintenance and repair of all Parking Spaces, if any, except for excessive grease and oil spills that is the responsibility of the respective Owner as described in above Section 14.3 entitled "OWNER RESPONSIBILITY OF EXCLUSIVE USE COMMON AREAS";

(f) The periodic inspection, but not less than annually, of all Exclusive Use Common Areas for surface wear and tear and drainage conditions, as applicable, for purposes of ascertaining the necessity for remedial or long-term maintenance and repair to assure the integrity of such surface, and for the repair thereof when required;

(g) The maintenance and repair of the Common Area as required to control the presence of or damage caused by wood-destroying pests or organisms; provided, however, the costs of temporary relocation during such maintenance or repair shall be paid by the Unit owner affected. The Association is hereby given the power to temporarily remove any Unit owner or occupant for such periods and at such times as may be necessary for prompt, effective treatment of such pests or organisms. The Association shall give notice of the need to temporarily vacate a Unit to the record owners and occupants not less than fifteen (15) days nor more than thirty (30) days prior to the date of the temporary relocation. The notice shall state the reason for the relocation, the date and time of the beginning of treatment, the anticipated date and time of termination of treatment and that the occupants will be responsible for all necessary accommodations during the relocation. Any such notice shall be given in accordance with Section 25.5 herein entitled "NOTICE," provided that an additional notice shall also be given to any occupant of the Condominium if such occupant is not the Owner;

(h) All utility, sewer or drainage systems not maintained by a public entity, utility company, or improvement district, where such systems are used to provide services to Common Area facilities;

(i) Such other areas, facilities, equipment, services or esthetic components of whatsoever nature as may from time to time be requested by the vote or written consent of at least two-thirds (2/3) (i) of the Members of the Association, and (ii) of the Members of the Association other than the Declarant.

(j) All of the foregoing Association responsibilities are intended to be applicable only in circumstances due to normal wear and tear, the need for replacement or the willful or negligent act or neglect of the Board or its agents, and not when due to any negligent act of an Owner or his Invitee(s).

#### **14.7. UTILITY FACILITIES: OWNER'S RIGHTS AND DUTIES.**

(a) The rights and duties of an Owner of a Condominium within the Project with respect to sanitary sewer, water, drainage, electric, gas, television receiving and telephone equipment, cables and lines, exhaust flues, and heating and air conditioning facilities, including air conditioning compressors and condensers (hereinafter referred to, collectively, as "utility facilities") that are located in or on Condominiums owned by other than the Owner of a Condominium served by said utility facilities, shall be as follows:

(b) Such Owner shall have the right of reasonable access for themselves or for utility companies to repair, replace, and generally maintain said utility facilities as and when necessary. Notification of such entry shall be given at least twenty-four (24) hours in advance. Such entry shall be made with as little inconvenience to the affected Owner as possible and any damage caused thereby shall be repaired by the entering Owner at his own expense. In the case of any emergency, the right of entry shall be immediate. For the purpose herein, "emergency" is defined as an unforeseen occurrence or condition calling for immediate action to avert imminent danger to life, health, or property.

(c) An Owner shall be entitled to reasonable access to the Common Areas for the purpose of maintaining the utility facilities appurtenant to such Owner's Unit and/or which serve such Unit in accordance with the provisions of this Declaration. The access shall be subject to the consent of the Board, whose approval shall not be unreasonably withheld, and which may include reasonable conditions of approval for any portion of such utility facilities that are located on the exterior of the Common Areas, and other conditions as the Board determines reasonable.

(d) Whenever utility facilities are installed within the Project, which utility facilities serve more than one (1) Condominium, the Owner of each Condominium served by said utility facilities shall be entitled to the full use and enjoyment of such portions of said utility facilities as service his Condominium.

(e) In the event of a dispute between Owners with respect to the repair or rebuilding of said utility facilities, or with respect to the sharing of the cost thereof, then, upon written request of one (1) of such Owners addressed to the Association, the matter shall be submitted to arbitration pursuant to

the rules of the American Arbitration Association, and the decision of the arbitrator(s) shall be final and conclusive on the parties.

#### **14.8. ASSOCIATION'S DUTIES REGARDING CERTAIN UTILITY FACILITIES.**

The Association shall maintain all utility facilities located in the Common Area except for those facilities maintained by utility companies, public, private, or municipal, and those maintained by the Owners as described elsewhere in this Article. The Association shall pay all charges for utilities supplied to the Common Area except those metered or charged separately to the individual Condominiums.

#### **14.9. ASSUMPTION OF MAINTENANCE OBLIGATIONS.**

Declarant and its subcontractors, and the agents and employees of the same, shall have the right to come upon the Common Area to complete the construction, refurbishment or installation of any landscaping or other improvements to be installed thereupon. In the event that any of Declarant's subcontractors are contractually obligated to maintain the landscaping and/or other improvements on any portion of the Common Area, such maintenance shall not be assumed by the Association until the termination of such contractual obligation. If there is any excess of assessments collected over actual Common Expenses incurred by the Association, caused by reason of this Section, or otherwise, such excess shall be placed in reserve to offset the future expenses of the Association in any manner designated by the Board.

#### **14.10. PROPERTY MANAGEMENT.**

The Board of Directors of the Association may employ a professional management company ("Managing Agent") to handle the day to day management and operation of the Project.

#### **14.11. PROSPECTIVE MANAGING AGENTS.**

Pursuant to California Civil Code Section 1363.1, or any succeeding statute, prior to entering into a management agreement, but in no event more than 90 days, the Board shall obtain from a prospective Managing Agent a written statement to the Board which shall contain all of the following information concerning the managing agent:

(a) The names and business addresses of the owners or general partners of the Managing Agent. If the Managing Agent is a corporation, the written statement shall include the names and business addresses of the directors and officers and of shareholders holding greater than ten percent (10%) of the shares of the corporation.

(b) Whether or not any relevant licenses, such as architectural design, construction, engineering, real estate or accounting have been issued by the State of California and are currently held by the persons specified in the above paragraph. If a license is currently held by any of those persons, the statement shall contain the following information: (i) what license is held, (ii) the status of that license, (iii) the name of the licensee appearing on that license, and (iv) whether or not there have been any violations or fines relating to such license within the previous five (5) years and whether or not any are existing or pending.

(c) Whether or not any relevant professional certifications or designations such as architectural design, construction, engineering, real property management or accounting are currently held by any of the persons specified above, including, but not limited to, certified property manager or professional association manager. If any certification or designation is held, the statement shall include the following information: (i) what the certification or designation is and what entity issued it, (ii) the status of that certification or designation, (iii) the names which the certification or designation is held and, (iv) whether or not there have been any violations or fines relating to such certification or designation within the previous five (5) years and whether or not any are existing or pending.

(d) Whether or not there have been any judgments, satisfied or not, against such Managing Agent within the previous five (5) years and whether or not there are any existing legal actions.

(e) As used in this section, a "Managing Agent" is a person or entity, who for compensation or, in expectation of compensation, exercises or may exercise control over the assets of the Association or the Property. A "Managing Agent" shall not include any regulated financial institution operating within the normal course of its regulated business practice.

#### 14.12. LANDSCAPE MANAGEMENT.

The Board of Directors of the Association shall employ a professional landscape contractor ("Landscape Contractor"), appropriately licensed by the State of California, to provide for the landscape management and maintenance of the Project, as hereinafter described, and to serve as a consultant to the Board and the Property Manager in the administration of the landscape maintenance duties of the Association.

#### 14.13. USE OF LICENSED CONTRACTORS; WORKFORCE; PERMITS.

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

### 15. INSURANCE

#### 15.1. MASTER INSURANCE POLICY.

The Association shall obtain and continue in effect the following insurance:

##### 15.1.1. FIRE HAZARD INSURANCE.

A master policy of fire insurance with extended coverage endorsement for the full replacement value (i.e. one hundred percent (100%)) of current "replacement cost," exclusive of land, foundation, excavation and other items normally excluded from coverage of all of the improvements within the Common Area, without deduction for depreciation, with an "agreed amount endorsement" or its equivalent, and, if necessary, an "increased cost of construction endorsement" or "contingent liability from operation of building laws endorsement", if available; such insurance shall afford protection against loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by sprinkler leakage, debris removal, costs of demolition, vandalism, malicious mischief, windstorm, water damage and such other risks as shall customarily be covered with respect to similar Common Interest Developments in the area of the Project. The form and content of such policy must be satisfactory to all institutional first trust deed lenders and shall meet the maximum standards of the various institutional first trust deed lenders whose loans encumber any of the Condominium Units.

##### 15.1.2. PUBLIC LIABILITY INSURANCE.

A general, comprehensive public liability and property damage insurance policy with cross liability endorsement, if available, in an amount not less than **Two million dollars (\$2,000,000)**, insuring the Association, its agents, the Declarant and the Owners and occupants of the Condominium Units and their respective family members, guests, invitees and agents against any liability incident to ownership or use of the Common Area or any other Association owned or maintained real or personal property, arising out of any single occurrence. Such coverage shall include liability for non-owned and hired automobiles and liability for property of others, and such other risks as are customarily covered with respect to similar real estate developments in the area of the Project. The general liability policy shall also include such provisions as may be required by the provisions of California Civil Code Section 1365.7, or any successor statute, to limit the monetary liability of volunteer directors and officers of the Association. The policy shall, in any event, contain a "severability of interest" endorsement or the equivalent which shall preclude the insurer from denying the claim of an Owner because of wanton or grossly negligent acts or omissions of the Association or other Owners.

**15.1.3. DISHONEST ACTS; FIDELITY BOND.**

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

**15.1.4. WORKERS COMPENSATION INSURANCE.**

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

**15.1.5. OTHER INSURANCE.**

Such other insurance as the Board in its discretion considers necessary or advisable.

**15.1.6. COVERAGE, AMOUNT AND TERM OF INSURANCE.**

(a) The amount, term and coverage of any policy required hereunder (including the type of endorsements, the amount of the deductible, the named insureds, the loss payees, standard mortgage clauses, and notices of changes or cancellations) shall satisfy the minimum requirements imposed for this type of project by the FNMA and the FHLMC or any successor thereto. If the FNMA or FHLMC requirements conflict, the more stringent requirement shall be met. If FNMA and FHLMC do not impose requirements on any policy required hereunder, the term, amount and coverage of such policy shall be no less than that which is reasonable for the nature of the Project and its insurable assets.

(b) Any insurance maintained by the Association shall contain a "waiver of subrogation" as to the Association and its officers, directors and Members, the Owners and occupants of the Condominiums and mortgagees, and, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The Association shall periodically (and not less than once every three (3) years) review all insurance policies maintained by the Association to determine the adequacy of the coverage and to adjust the policies accordingly.

(c) All insurance policies shall provide that they shall not be cancelable by the insurer without first giving at least ten (10) days' prior notice in writing to the Association. Each Owner appoints the Association or any insurance trustee designated by the Association to act on behalf of the Owners in connection with all insurance matters arising from any insurance policy maintained by the Association, including without limitation, representing the Owners in any proceeding, negotiation, settlement or agreement.

**15.1.7. OWNER'S INSURANCE.**

No Owner shall separately insure the Improvements on his Condominium against loss by fire or other casualty covered by any insurance carried by the Association. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable under the Association's policies that results from the existence of such other insurance will be chargeable to the Owner who acquired other insurance. Any Owner can, however, insure his personal property against loss and obtain any personal liability insurance that he desires; in addition, any improvements made by an Owner within his Living Unit may be separately insured by the Owner. The insurance for the foregoing shall be limited to the type and nature of coverage generally known in the insurance industry as an "HO 00 06," or the equivalent. All individually owned insurance shall contain a waiver of subrogation as to the Association and its officers, directors and Members, of the Owners and occupants of the Condominiums (including Declarant), and of Mortgagees. It is not intended with respect to the individual Living Units that

the Association carry (a) liability insurance covering any acts or occurrences, nor (b) any casualty insurance covering Owners' personalty or betterments.

**WARNING TO ALL OWNERS:** The Association is required by this Article to maintain a general, comprehensive public liability insurance policy in an amount not less than **\$2,000,000**, insuring the Association, its agents, the Declarant and the Owners of the Condominium Units and their Invitees and agents against any liability incident to ownership or use of the Common Area or any other Association owned or maintained real or personal property, arising out of any single occurrence. In the event that a third party sustains injuries, the nature of which results in liability or damages in excess of the Association's insurance policy limits, the Owners of Condominium Units in the Project may be held jointly and severally liable for the excess amount. Each Owner should consult with his or her insurance representative and or legal counsel to consider the merits of obtaining alternative liability insurance coverage.

#### **15.1.8. FAILURE TO ACQUIRE.**

The Association, and its directors and officers, shall have no liability to any Owner or mortgagee if, after a good faith effort, it is unable to obtain the liability insurance required hereunder, because the insurance is no longer available or, if available, can be obtained only at a cost that the Board in its sole discretion determines is unreasonable under the circumstances, or the Members fail to approve any assessment increase needed to fund the insurance premiums. In such event, the Board immediately shall notify each Member and any mortgagee entitled to notice that the liability insurance will not be obtained or renewed.

#### **15.1.9. INSPECTION OF POLICIES.**

Copies of all Association insurance policies (or certificates thereof showing the premiums thereon to have been paid) shall be retained by the Association and be open for inspection by Owners at any reasonable times.

### **15.2. INSURANCE INFORMATION TO MEMBERS.**

The Board shall annually prepare and distribute or caused to be prepared and distributed a summary of the following:

#### **15.2.1. GENERAL LIABILITY POLICY.**

The Association's general liability policy covering the Common Area that states all of the following:

- (a) The name of insurer;
- (b) The policy limits of the insurance;
- (c) If an insurance agent, as defined in Section 1621 of the Insurance Code, or any successor statute, or an agent of an insurance agent or insurance broker has assisted the Association in the development of the general liability policy limits and if the recommendations of the insurance agent or insurance broker were followed;
- (d) The insurance deductibles;
- (e) The person or entity that is responsible for paying the insurance deductible in the event of a loss;
- (f) Whether or not the insurance coverage extends to the Improvements located within a Unit;
- (g) A summary of the Association's earthquake and flood insurance policy, if one has been issued, that states all of the following: (1) name of the insured, (2) the policy limits of the insurance, (3) the insurance deductibles and (4) the person or entity that is responsible for paying the insurance deductible in the event of a loss.

**15.2.2. DIRECTOR AND OFFICER LIABILITY COVERAGE.**

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

- (a) The name of the insurer;
- (b) The limits of the insurance.
- (c) The foregoing notwithstanding, the Board shall, as soon as reasonably practical, notify the Members by first-class mail if any of the insurance policies have been canceled and not immediately replaced. If the Board renews any of the policies a new policy is issued to replace an insurance policy of the Association, and where there is no lapse in coverage, the Board shall notify the Members of that fact in the next available mailing to all Members pursuant to Section 5016 of the Corporation Code, or any successor statute thereto.
- (d) To the extent that the information to be disclosed pursuant to this Section is specified in the insurance policy declaration page, the Board may meet the requirements of this Section by making copies of that page and distributing it to all Members.

**16. DAMAGE AND DESTRUCTION.****16.1. RESTORATION DEFINED.**

As defined in this Article, the term "restore" shall mean repairing, rebuilding or reconstructing damaged Common Area and/or other portions of the improvements located within the Condominium Property for which the Association is responsible pursuant to this Declaration (collectively, "Covered Property," to substantially the same condition and appearance in which it existed prior to fire or other casualty damage.

**16.2. INSURED CASUALTY.**

If the Covered Property is damaged or destroyed from a risk covered by the insurance required to be maintained by the Association, then the Association shall, to the extent permitted under existing laws, restore the Covered Property to the same condition as it was in immediately prior to the destruction. If such damage or destruction occurs prior to the date of completion of construction the Project by Declarant, then, such construction shall be completed in coordination with any construction required or deemed necessary to be completed by Declarant. If fire or other casualty damage extends to any Covered Property which is so insured, the Association shall proceed with the filing and adjustment of all claims arising under the existing insurance policies. The insurance proceeds shall be paid to and held by the Association.

**16.3. SUFFICIENT PROCEEDS.**

The costs of restoration of damaged Covered Property shall be funded first by any insurance proceeds paid to the Association under existing insurance policies. If the insurance proceeds exceed the costs of restoration, the excess proceeds shall be paid to the reserve accounts of the Association and held for the benefit of the Association. If the insurance proceeds are insufficient to restore the damaged Covered Property, the Board shall then add to the insurance proceeds all reserve account funds designated for the repair or replacement of the Improvement(s) which have been damaged. If the total funds then available are sufficient to restore the damaged Covered Property, the damaged Covered Property shall be restored. If the aggregate amount of insurance proceeds and such reserve account funds are still insufficient to pay the total costs of restoration, a Special Assessment against all Owners shall be levied by the Board up to the maximum amount permitted without the approval of the Members in accordance with the limitation set forth in this Declaration. If the total funds then available are sufficient to restore the damaged Covered Property, the damaged Covered Property shall be restored.

**16.4. INSUFFICIENT PROCEEDS.**

If, after applying the proceeds pursuant to Section 16.3 above, the total funds available to the Association are still insufficient to restore the damaged Covered Property, then the Board shall attempt to first impose an additional Special Assessment pursuant to Section 16.4.1 below; secondly, use a plan of alternative reconstruction pursuant to Section 16.4.2 below; and lastly, purchase those Living Units of Owners affected by damage or destruction, pursuant to Section 16.4.3 below. If the Members do not approve actions under Sections 16.4.1, 16.4.2 or 16.4.3, then the entire Project shall be sold by the Board pursuant to Section 16.4.4 below.

**16.4.1. ADDITIONAL SPECIAL ASSESSMENT.**

If the total funds available to restore the damaged Covered Property as provided in the Section 16.4 above, are insufficient, then a meeting of the Members shall be called for the purpose of voting whether to impose an additional Special Assessment and deciding upon the amount thereof ("Additional Special Assessment"). If the amount of the Additional Special Assessment approved by each class of Members, together with the amounts available pursuant to Section 16.4 above, is sufficient to restore the damaged Covered Property, the damaged Covered Property shall be restored. If the amount of the Special Assessment approved by each class of Members, together with the amounts available pursuant to Section 16.4 above is insufficient to restore the damaged Covered Property, or if no Additional Special Assessment is approved, the Association shall consider a plan of alternative reconstruction in accordance with Section 16.4.2 below.

**16.4.2. ALTERNATIVE RECONSTRUCTION.**

The Board shall consider and propose plans to reconstruct the damaged Covered Property, making use of whatever funds are available to it pursuant to Section 16.4 above and whatever funds, if any, are available to it pursuant to Section 16.4.1 above. All proposals shall be presented to the Owners. If two-thirds (2/3rds) of the Owners whose Units were directly affected by the damage to the Covered Property, as determined by the Association ("Affected Owners") and a majority of the Members (including the Affected Owners) agree to any plan of Alternative Reconstruction, then the Board shall contract for the reconstruction of the damaged Covered Property in accordance with the plan of Alternative Reconstruction is agreed to, then the Association shall consider purchasing the Units of the Affected Owners pursuant to Section 16.4.3 below.

**16.4.3. PURCHASE OF UNITS OF AFFECTED OWNERS.**

If no plan of Alternative Reconstruction is agreed to within six (6) months of the date of the damage, then the Board shall seek to obtain the approval of the Owners, the Affected Owners, and their First Mortgagees of the Association's purchase of the Condominiums of the Affected Owners. The purchase price ("**Purchase Price**") each Condominium shall be the fair market value of the Condominium immediately prior to the damage as determined by an independent appraisal made by a qualified real estate appraiser with a Member of the Appraisal Institute certificate or the equivalent as selected by the Board. If two thirds (2/3rds) of the Members (including the Affected Owners) agree to the purchase, the Association shall purchase the Condominiums of those Affected Owners who together with all of their Mortgagees agreed to the purchase, then a Special Assessment shall be levied against all Owners. The aggregate amount of the Special Assessment shall be the amount needed to pay the difference between the aggregated amount of available funds (pursuant to Sections 16.4, 16.4.1 and 16.4.2) and the aggregate fair market value of the Condominiums of the Affected Owners who agreed to the purchase.

**16.4.4. SALE OF ENTIRE PROJECT.**

If the aggregate amount of funds available for restoration of the Covered Property is insufficient to restore the damaged Covered Property, Alternative Reconstruction (as defined in Section 16.4.2 above) cannot be agreed to, and the Owners did not approve a purchase pursuant to Section 16.4.3 above, then the Board shall be empowered, subject to the provisions set forth in Section 20.2, to

sell the entire Project, including all Living Units and the Common Area in their then present condition, on terms to be determined by the Board. If the entire Condominium Property is sold, the proceeds from the sale, together with the insurance proceeds received and any balance of funds held by the Association, shall be distributed among those Owners who then own Separate Interests and their respective Mortgagees, in proportion to the respective fair market values of the Separate Interests immediately prior to the destruction, as determined by an independent appraisal made by a qualified real estate appraiser with a Member of the Appraisal Institute certificate of the equivalent as selected by the Board.

For the purpose of effecting sale under this Section 16.4.4, each Owner grants to the Association an irrevocable power of attorney to sell his Living Unit and the entire Project for the benefit of the Owners, to terminate the Declaration and to dissolve the Association.

In the event the Association fails to take the necessary steps to sell the entire Condominium Property as provided in this Section 16.4.4 within sixty (60) days from the date that the Owners failed to approve the purchase described in Section 16.4.3 above, any Owner may file an action in a court of appropriate jurisdiction for an order requiring the sale of the Condominium Property and distribution of the proceeds in accordance with this Section 16.4.4.

Notwithstanding anything herein to the contrary, any Owner or group of Owners shall have a right of first refusal to match the terms and conditions of any offer made to the Association in the event of a sale of the Condominium Property under this Section 16.4.4, provided this right is exercised within ten (10) days of receipt by the Owners of a notice from the Association containing the terms and conditions of any offer it has received. If the Owner or group of Owners subsequently default on their offer to purchase, they shall be liable to the other Owners and their respective mortgagees for any damages resulting from the default. If more than one (1) Owner or group elects to exercise this right, the Board shall accept the offer that in its determination is in the best interests of the Members.

#### **16.5. REBUILDING CONTRACT.**

If there is a determination to restore, the Board of its authorized representative shall obtain bids from at least two licensed and reputable contractors and shall accept the repair and reconstruction work from whomever the Board determines to be in the best interests of the Members. The Board shall have the authority to enter into a written contract with the contractor for such repair and reconstruction, and the insurance proceeds held by the Trustee 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 assure the commencement and completion of authorized repair and reconstruction at the earliest possible date. Such construction shall be commenced no later than one-hundred-eighty (180) days after the event requiring reconstruction, and shall thereafter be diligently prosecuted to completion. Such construction shall return the Project to substantially the same condition it was in prior to such damage or destruction and shall be carried out pursuant to all applicable laws and ordinances.

#### **16.6. RIGHT TO PARTITION.**

No Owner shall have the right to partition of his interest in a Separate Interest and there shall be no judicial partition of the Project or any part thereof, except as provided in the Article entitled **SEPARATION OF INTERESTS; PARTITION; POWER OF ATTORNEY** hereafter.

#### **16.7. MINOR REPAIR AND RECONSTRUCTION.**

The Board shall have the duty to repair and reconstruct Improvements, without the consent of the Members and irrespective of the amount of available insurance proceeds, in all cases of partial destruction when the estimated cost of repair and reconstruction does not exceed One-Hundred-Thousand Dollars (\$100,000.00), which amount shall be increased three percent (3%) per annum on a compounded basis commencing on the anniversary date of the recordation of this Declaration and each anniversary date thereafter. The Board is expressly empowered to levy a Special Assessment for the cost of repairing and reconstructing such improvements to the extent insurance proceeds are unavailable (but without the consent or approval of Members, despite any contrary provisions in this Declaration or the other Project Documents).

**16.8. BOARD'S ACTION.**

The Board shall have the exclusive right to participate in and represent the interests of all Owners in any proceedings affecting the Project relating to the rebuilding or any portion of the Project, including, without limitation, proceedings with any governmental or quasi-governmental agency to obtain permits or approvals for any rebuilding, and no Owner shall have the right to directly participate therein, except that, prior to the conversion of the Class B membership in the Association to Class A membership, Declarant shall have the right to directly participate therein.

**17. CONDEMNATION**

If at any time all or any portion of the Project, or any interest therein, shall be taken through any public or quasi-public taking by exercise of eminent domain or by private purchase in lieu of eminent domain ("**Condemnation**"), the award in Condemnation allocable to the Project shall be paid to the Association. The Board shall have the exclusive right to participate in and represent the interests of all Owners in the Condemnation proceedings affecting the Project and no Owner shall have the right to directly participate therein, except that, prior to the conversion of the Class B membership in the Association to Class A membership, Declarant shall have the right to directly participate therein. The Board shall promptly notify all Owners (and all insurers, and guarantors who have requested written notice), as soon as the Board becomes aware of any taking or threatened taking of any portion of the Project by Condemnation.

**17.1. ASSOCIATION AS ATTORNEY IN FACT.**

The Association, acting through the Board, is hereby appointed and shall be attorney-in-fact to represent the interests of all the Owners in any actual or threatened condemnation action affecting any portion of the Common Area and with respect to any Condemnation proceeds payable relative to the Project, and any such Condemnation proceeds shall be so payable to the Board, as trustee, or any to any trustee appointed by the Board. The Board shall have full power to receive and to receipt for the proceeds and to deal therewith as provided hereafter.

**17.2. CONDEMNATION OF A SEPARATE INTEREST.**

In the event of any taking of a Unit, the Owner (and his Mortgagee(s) as their interests may appear) of the Separate Interest shall be entitled to receive the award for such taking and after acceptance thereof such Owner and the Owner's Mortgagee(s) shall be divested of all further interest in the Condominium Property or any portion thereof and membership in the Association. In such event, said Owner shall grant his remaining interest in the Common Areas that may be appurtenant to his Unit to the other Owners owning a fractional interest in the same Common Areas, such grant to be in proportion to the fractional interest in the Common Areas then owned by each.

**17.3. INTERIOR DAMAGE OF A UNIT.**

With the exception of any casualty or damage insured against by the Association pursuant to Section 15.1.1 of this Declaration, restoration and repair of any damage to the interior of any individual Unit, including without limitation all fixtures, cabinets and improvements therein, together with restoration and repair of all interior paint, wall coverings and floor coverings, shall be made by and at the individual expense of the Owner of the Unit so damaged. In the event of a determination to rebuild the Project after partial or total destruction, as provided in this Article, such interior repair and restoration shall be completed as promptly as practical and in a lawful and workmanlike manner, in accordance with plans approved by the Board or its delegated committee as provided herein.

**17.4. CONDEMNATION AND INSURANCE PROCEEDS.**

(a) Condemnation proceeds shall be used by the Association to (i) pay for the Association's reasonable costs related to the Condemnation action, (ii) return the Project to as near its previous form, condition and use as it was in prior to the time of the taking. Any proceeds remaining after such repair or rebuilding shall be retained or distributed in accordance with any of the following:

(b) The Association shall retain the remaining proceeds as a capital contribution, unless objected to by a majority of all of the Owners, and in the event that:

- (1) The costs of distribution of the remaining proceeds would exceed one-half of their amount, or
- (2) After deducting costs of distribution, the pro-rata amount of the distribution would be less than \$1,000 per Unit;
- (3) Pursuant to a court order;
- (4) Pursuant to an agreement between the condemning authority and the Association, which has been approved by the majority of the Owners.

(c) Among the affected Owners and their respective First Mortgagees according to the relative values of the Units affected by the condemnation as determined by independent appraisal by a qualified independent appraiser selected by the Board. In the event of a failure by the Board to agree on the selection of an appraiser, an appraiser shall be appointed by the, then, President of the San Diego County Bar Association.

**17.5. DISPUTE RESOLUTION IN RE: INSURANCE, DAMAGE, DESTRUCTION, CONDEMNATION.**

In the event of any dispute under this Article, with the exception of any such dispute that may be at issue specifically against the Declarant relating to matters of the construction of Improvements in the Project, such dispute shall be determined by in accordance with the alternative dispute resolution procedures described Article 21 herein entitled "ENFORCEMENT; DISPUTE RESOLUTION."

**18. RIGHTS OF LENDERS****18.1. GENERAL.**

No breach of any of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provisions herein, shall render invalid the lien of any First Mortgage on any Condominium made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise. Any provision within the Project Documents to the contrary notwithstanding, First Mortgagees shall have the rights expressly provided in this Article.

**18.2. NO RIGHT OF FIRST REFUSAL.**

This Declaration neither contains nor shall be amended to contain any provision creating a "right of first refusal" to the Association before a Condominium can be sold. Should any such rights nevertheless be created in the future, such rights shall not impair the rights of any first mortgagee to: (a) foreclose or take title to a Condominium pursuant to the remedies provided in the mortgage, (b) accept a deed (or assignment) in lieu of foreclosure in the event of a default by a mortgagor, or (c) sell or lease a Condominium acquired by the Mortgagee.

**18.3. UNPAID DUES OR CHARGES.**

Where the Mortgagee of a First Mortgage of record or other purchaser of a Condominium obtains title to the same pursuant to the remedies in the Mortgage or as a result of foreclosure, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments made by the Association chargeable to such Condominium which became due prior to the acquisition of title to such Condominium by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Condominiums including such acquirer, his successors and assigns. Should such acquirer fail to pay its share of common expenses, assessments or other charges when due, the Board may file for a Notice of Delinquent Assessment in accordance with the provisions therefor contained in the Section entitled "Effect of Non-Payment of Assessments" herein.

**18.4. ACTION REQUIRING MORTGAGEE APPROVAL.**

Provided that the mortgagee informs the Association in writing of its appropriate address and requests in writing to be notified, except as provided by statute in case of condemnation or substantial loss to the Common Area of the Project, unless at least sixty-seven percent (67%) of the First Mortgagees (based upon one (1) vote for each mortgage owned), or sixty-seven percent (67%) of the Owners (other than Declarant) of the individual Condominiums in the Project have given their prior written approval, the Association and/or the Owners shall not be entitled to:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area, or any property owned, directly or indirectly, by the Association (the granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area by the Association is not a transfer in the meaning of this clause);

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner; or

(c) By act or omission, change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance or exterior maintenance of Condominiums, the maintenance of the Common Area walks or fences and driveways, or the upkeep of landscaping in the Common Area; or

(d) Fail to maintain fire and extended coverage on insurable Association 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 costs); or

(e) Use hazard insurance proceeds for losses to Association common property for other than the repair, replacement or reconstruction of such Common Area property.

**18.5. PAYMENT OF TAXES AND INSURANCE.**

First Mortgagees may, jointly, singly or severally: (i) pay taxes or other charges which are in default and which may or have become a charge against the Common Area, unless the taxes or charges are separately assessed against the Owners, in which case, the rights of First Mortgagees shall be governed by the provisions of their Mortgages; (ii) pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Common Area. First Mortgagees making such payments shall be owed immediate reimbursement from the Association. This provision shall constitute an agreement by the Association for the express benefit of all First Mortgagees, and upon the request of any First Mortgagee, the Association shall execute and deliver to such Mortgagee a separate written agreement embodying this provision.

**18.6. PRIORITY OF PROCEED OR AWARD DISTRIBUTION.**

Any other provision herein contained to the contrary notwithstanding, no provision of this Declaration or any other Project Document shall give a Condominium Owner, or any other party, priority over any rights of the First Mortgagee of a Condominium pursuant to its mortgage in the case of a

distribution to such Condominium Owner of insurance proceeds or condemnation awards for losses to or a taking of the of Common Area property.

#### **18.7. NOTIFICATION TO ELIGIBLE MORTGAGEE HOLDER.**

Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Condominium number or address, any Eligible Mortgage Holder or Eligible Insurer or guarantor will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Project or the Condominium insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer;

(b) Any default in the performance by an Owner of any obligation under the Project Documents not cured within sixty (60) days;

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

(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders as required by the Project Documents.

#### **18.8. AGREEMENT FOR MANAGEMENT.**

Any management agreement of the Project, or any portion thereof, and any other contract providing for services by the Declarant, shall be terminable for cause upon thirty (30) days written notice, and without cause or payment of a termination fee upon ninety (90) days, written notice and shall have a term of not more than one (1) year, renewable with the consent of the Association and the management agent. The Board shall not terminate professional management of Project and assume self-management, when professional management had been required previously by an Eligible Mortgage Holder, without the prior written approval of Mortgagees holding seventy-five percent (75%) or more of the First Mortgages on Dwellings.

#### **18.9. INSPECTION OF PROJECT DOCUMENTS, BOOKS AND RECORDS.**

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

#### **18.10. NON-CURABLE BREACH.**

Any Mortgagee who acquires title to a Condominium by foreclosure or by deed-in-lieu of foreclosure or assignment-in-lieu of foreclosure shall not be obligated to cure any breach of this Declaration that is non-curable or of a type that is not practical or feasible to cure. A "breach", as used herein, shall not apply to any lien of or obligation for assessments owed to the Association which became due prior to the acquisition of title by deed or assignment in lieu of foreclosure.

#### **18.11. LOAN TO FACILITATE.**

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

#### **18.12. DOCUMENTS TO BE MADE AVAILABLE.**

The Association shall make available to First Mortgagees and to holders, insurers or guarantors of any First Mortgage, current copies of the Project Documents, and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances. Eligible Mortgage Holders who

represent at least fifty-one percent (51%) or more of the Condominiums subject to a Mortgage shall be entitled to have an audited statement for the immediately preceding fiscal year prepared at their own expense, if one is not otherwise available. Any financial statement so requested shall be furnished within a reasonable time following the request.

In the event that fifty (50) or more Condominiums have been made subject to this Declaration, then the Association shall make available to the holder, insurer or guarantor of any First Mortgage, an audited financial statement on submission of a written request for the same. The audited financial statement must be made available within one hundred twenty (120) days of the Association's fiscal year end.

In the event fewer than fifty (50) Condominiums have been made subject to this Declaration, then a First Mortgagee shall be entitled to have an audited financial statement, provided the same is prepared at the Mortgagee's sole expense.

#### **18.13. MORTGAGEES FURNISHING INFORMATION.**

Any Mortgagee can furnish information to the Board concerning the status of any Mortgage.

#### **18.14. FINANCIAL STATEMENT.**

Any First Mortgagee shall be entitled, on written request therefor, to have an audited financial statement for the immediately preceding fiscal year prepared at its own expense if one is not otherwise available. Such statement shall be furnished within a reasonable time following such request.

#### **18.15. TERMINATION WITHOUT SUBSTANTIAL DESTRUCTION.**

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

#### **18.16. LENDER APPROVAL DEEMED AFTER 60 DAYS NOTICE.**

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

### **19. CONDOMINIUM PLAN AMENDMENT**

#### **19.1. AMENDMENT BY ASSOCIATION.**

Subject to the restrictions and limitations set forth in this Article, Declarant reserves in favor of the Association the right to amend the Condominium Plan in order:

(a) To cause the Condominium Plan to comply with the Condominium Buildings and Units as actually built;

(b) To adjust the boundary or delineation lines of any Exclusive Use Common Area, so to conform with actual physical attributes or constraints of the land or buildings that were not contemplated originally; and/or

(c) To correct any errors in the original plan;

(d) Upon the conveyance of the first Condominium Unit in the Project to a Retail Buyer, the rights described in subsections (a), (b) and (c) above shall become operative and shall be controlled by the Board of Directors of the Association, together with the Power of Attorney described

hereinafter, and may be effected upon the majority vote of the Board, whereafter, such amendment shall be effective upon its recordation in the Office of the San Diego County Recorder, executed by the President and Secretary of the Association, acting as Attorney-In-Fact on behalf of the Owners and those Persons described in the Section entitled hereinafter "Power of Attorney."

## **19.2. RESTRICTIONS AND LIMITATIONS.**

The rights of the Association set forth in this Article are and shall be subject to the specific restriction and limitation that any amendment of the Condominium Plan that is made so to reflect a Condominium Building or Unit therein as actually built, where a Unit in such Condominium Building is the subject of an Agreement of Sale or is owned by an Owner or Owners other than Declarant, shall require the written consent of such Unit purchaser or Owner; and in the case of an Owner, the written consent of all beneficiaries of record whose interests are secured by such Unit or Units.

## **19.3. POWER OF ATTORNEY.**

Each Owner, by accepting a deed to a Condominium, shall be deemed to have constituted and irrevocably appointed for himself and each of his Mortgagees, optionees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, and thereby to have conveyed a Power of Attorney coupled with an interest to the Association by its President and Secretary, as his Attorney-In-Fact, to effect the amendment of the Condominium Plan or Plans for the Project in accordance with the limitations and requirements set forth in this Article, and in connection therewith, the following shall be operative:

(a) Such amendment or re-recordation shall be subject to the laws of the State of California in effect on the date of recordation of this Declaration and as thereafter enacted or amended and any ordinances, rules and regulations of any federal, state and local governmental entities and authorities having jurisdiction over the Project in effect on the date of recordation of this Declaration and as thereafter enacted or amended, or which may be required or permitted by any title insurer or the San Diego County Recorder, and in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state or local governmental entities and authorities; and to execute, acknowledge and deliver any improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations;

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

(c) The Association shall deliver any reports or property reports, or amendments thereto, obtain receipts and offer and administer rescission rights required by law;

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

things now or hereafter permitted or required by any such governmental body and any such laws and regulations;

(e) To prepare or cause to be prepared, execute, acknowledge and record or cause to be recorded any deeds, waivers, releases, reconveyance or other documentation that may be permitted or required to clear title to any Condominium, whether constructed or to be constructed, in the Project; and

(f) To do any and all things necessary or desirable under the circumstances to effect and accomplish the amendment of the Condominium Plan.

#### **19.4. INDEMNIFICATION OF OWNERS ON EXERCISE OF POWER OF ATTORNEY.**

The Association shall indemnify and hold each Owner harmless from all liabilities, including attorney's fees, which are incurred as a direct result of the execution by the Association of any improvement agreements or bonds, or both, in connection with the exercise by the Association of the Power of Attorney set forth in the Section herein entitled "Power of Attorney."

#### **19.5. ENCUMBRANCES TO TAKE SUBJECT TO POWER OF ATTORNEY.**

The acceptance or creation of any Mortgage, whether voluntary or involuntary, and whether or not created in good faith and whether or not given for value, shall be deemed to be accepted and/or created subject to each of the terms and conditions of the Power of Attorney described in the Section entitled "**Power of Attorney.**"

#### **19.6. EFFECT ON ASSESSMENTS LIENS.**

The amendment to the Condominium Plan in accordance with the provisions of this Article shall not alter or affect the amounts of any Regular or Special Assessments which were due from any Owner prior to such recording or liens thereof.

#### **19.7. AMENDMENT BY DECLARANT.**

Declarant may amend any Condominium Plan covering any Unannexed Phase in the Property in accordance with the provisions therefor contained in Civil Code Section 1351(e) and Government Code Section 66427.

### **20. AMENDMENTS**

#### **20.1. PRIOR TO FIRST LIVING UNIT CONVEYANCE.**

Prior to the close of escrow on the sale of the first Condominium Unit in the Property, Declarant may amend this Declaration.

#### **20.2. AFTER CONVEYANCE OF FIRST UNIT.**

Except as may be in accordance with the provisions of California Civil Code Sections 1355 and 1368 or any amendment or successor statute thereto, during the period of time after the sale of the first Condominium, and prior to conversion of the Class B membership in the Association to Class A membership, this Declaration may be amended at any time and from time to time by the vote or written assent of sixty-seven percent (67%) of the total voting power of each class of Members of the Association. After conversion of the Class B membership in the Association to Class A membership, this Declaration may be amended at any time and from time to time by the vote or written assent of (i) *sixty-seven percent (67%)* of the total voting power of the Association, and (ii) *sixty-seven percent (67%)* of the voting power of the members of the Association other than Declarant. However, the percentage of voting power necessary to amend a specific clause or provision shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any such amendment shall become effective upon the recording with the with the County Recorder of a Certificate of Amendment signed and acknowledged by the President or Vice President of the Association and the Secretary or Assistant

Secretary of the Association, or by the incorporator of the Association, in the event that no Board of Directors has yet been elected to establish officers of the Association, certifying that such votes or written consent have been obtained. For the purposes of recording such instrument, the President or Vice-President and Secretary or Assistant Secretary, or incorporator of the Association are hereby granted an irrevocable power of attorney to act for and on behalf of each and every Owner in certifying and executing and recording said amendment with the with the County Recorder. No material amendment may be made to this Declaration without the additional prior written consent of Eligible Mortgage Holders who represent at least fifty-one percent (51%) of the votes of Units which are subject to mortgages held by such Eligible Mortgage Holders. "Material amendment" shall mean any amendment to provisions of this Declaration that establish, provide for, govern or regulate any of the following:

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

### **20.3. AMENDMENTS FOR TECHNICAL ERRORS, CLARIFICATION AND CHANGES IN LAW.**

Each Owner by acceptance of conveyance of title to a Condominium and each Mortgagee by acceptance of a Mortgage or Deed of Trust secured by a Condominium, hereby agrees and consents to the amendment of this Declaration and the subordination of their respective interests in the Property for the purpose(s) of correcting technical errors or clarification and/or to effect compliance of one or more provisions of this Declaration with such amendments, repeals and/or additions made to statutory law, whereby the provisions contained in this Declaration are in conflict therewith. The foregoing

notwithstanding, to the extent that the provisions set forth in this Declaration are intended to comply with the provisions of the *Common Interest Development Act* as set forth at *Civil Code Section 1350 et seq.* ("*CID Act*"), and any other statutory law, upon any changes to the CID Act or other statutory law relating to such provisions of this Declaration, the Board shall comply with such provisions of the CID Act and statutory law and the Board shall have the right to amend this Declaration as a result of the changes to the CID Act and statutory without any vote of the Members. Any such amendment may be executed by the President or Vice-President and Secretary or Assistant Secretary, or the Incorporator of the Association, each of whom is hereby granted an irrevocable power of attorney to act for and on behalf of each and every Owner and Mortgagee in certifying and executing and recording any such correctional, clarification addition or statutory law compliance amendment instrument with the County Recorder, each of which such amendments shall become effective upon its recordation.

#### **20.4. RELIANCE ON AMENDMENTS.**

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

### **21. ENFORCEMENT; ASSOCIATION AND OWNER DISPUTE RESOLUTION**

Except as provided in Section 21.2.2(a) or Article 22 below, any claim, controversy, dispute, or cause of action which arises out of, or relates to this Declaration and/or the Property, or any tort cause of action related thereto, including any breach, interpretation, or enforcement thereof (collectively or individually referred to herein as a "*Dispute*"), as between:

- (a) the Association, or
  - (b) a Purchaser/Owner
- (individually, a "*Party*"; collectively, the "*Parties*")

which Dispute cannot be settled through direct informal discussions between the Parties, shall be subject to the Dispute Resolution procedures and protocols described in Section 21.2 below.

#### **21.2. DISPUTE RESOLUTION.**

Disputes shall be submitted first to mediation as described in Section 21.2.1 below. If any such Dispute(s) remains unresolved through mediation, then, second, through submission of such unresolved Dispute(s) to general judicial reference as described in Section 21.2.2 below.

##### **21.2.1. MEDIATION.**

The Party(ies) who desire(s) to initiate resolution of a Dispute (the "*Claiming Party*") shall give written notice to the other Party(ies) (the "*Responding Party*") pursuant to the Section entitled "*Service of Notice*" herein, of the claim of Dispute, which writing shall describe the nature of the claim, the facts giving rise to the claim, the proposed remedy of the claim and the Claiming Party's desire to mediate (the "*Mediation Notice*"). Both the Claiming Party and the Responding Party (collectively, the "*Parties*") must make a good faith attempt to mediate the Dispute pursuant to this Section as follows:

(a) The Mediation Notice shall name a mediator. The Claiming Party shall be obligated to pay any fee to initiate mediation, but the cost and expense of the mediation, including any required traveling and other expenses of the mediator, and the expenses of any witnesses or the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the Parties unless they agree otherwise. The cost and expense of witnesses for the respective Parties shall be paid by the Party producing such witnesses.

(b) The Responding Party shall have ten (10) days from the date that Notice is deemed served to object to the Claiming Party's choice of a mediator; such objection shall

be made in writing and given to the Claiming Party pursuant to the Section entitled "*Service of Notice*" herein, whereupon the Parties shall request that either the American Arbitration Association or the then President of the San Diego County Bar Association pick a mediator from its panel within ten (10) days from the date of the Claiming Party's receipt of the Responding Party's objection.

(c) No person shall serve as a mediator in any Dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all Parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or prevent a prompt commencement of the mediation process.

(d) Within ten (10) days after the selection of the mediator, any Party who has not already done so, shall submit a brief memorandum setting forth its position with regard to the issues that need to be resolved. The mediator shall have the right to schedule a pre-mediation conference, and all Parties shall attend unless otherwise agreed. The mediation shall be commenced within ten (10) to thirty (30) days following the submittal of the memoranda and shall be concluded within fifteen (15) days from the commencement of the mediation unless the Parties mutually agree to extend the mediation period. The mediation shall be held in San Diego County or such other place as is mutually acceptable by the Parties.

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

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

(g) If there are any unresolved Disputes between the Parties through mediation, or if there are certain portions of a Dispute that remain unresolved, such unresolved Dispute or portion thereof, as the case may be, shall be submitted to and conclusively determined by general judicial reference described in Section 21.2.2 below.

#### **21.2.2. JUDICIAL REFERENCE.**

Any unresolved disputes under Section 21.2.1 above, shall be submitted to general judicial reference pursuant to CODE OF CIVIL PROCEDURE §§ 638(1) and 641-645.1 or any successor statutes thereto. The general referee shall have the authority to try all issues, whether of fact or law, and to report a statement of decision to the court. The parties shall use the procedures adopted by Judicial Arbitration and Mediation Services ("JAMS") for judicial reference and selection of a referee (or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the Parties), provided that the following rules and procedures shall apply in all cases unless the parties agree otherwise:

(a) **Participation By Parties.** The Parties to the Dispute shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. A Party in a particular judicial reference proceeding shall not be required to participate in the judicial reference proceeding if (i) all parties against whom the applicable Party would have cross-claims or counterclaims necessary to afford complete relief to such Party cannot be joined in the judicial reference proceeding (a "*Necessary Party*"), or (ii) the enforcement of the provisions of this Section 21.2.2 would impair the insurance coverage of a Party for any claim arising out of the Dispute that would otherwise provide coverage for such claim. If a Party determines that it cannot join all Necessary

Parties or that its insurance coverage would be impaired with respect to the Dispute, such Party may elect not to participate in the judicial reference proceeding. If a Party so elects not to participate in the judicial reference proceeding, such Party will provide notice to Claimant(s) and the other Parties to the judicial reference proceeding that the Dispute will not be resolved by judicial reference. In such circumstances, the other Parties may seek determination of the Party's right not to participate by way of a motion under **CODE OF CIVIL PROCEDURE §§ 638 and 641 through 645.1**, or any successor statutes thereto. If a determination is made as a result of such a motion that a Party is not required to participate in the judicial reference proceeding, unless the remaining Parties agree otherwise, the Dispute shall not be resolved by judicial reference and the Claimant(s) may proceed with an action with respect to the subject Dispute in an appropriate court of law. In the event that Claimant(s) are permitted to pursue legal proceedings as provided herein, **Subsections through (b) through (o)** of this Section 21.2.2 will not apply in such legal proceeding, provided that the legal proceeding shall be tried by a judge and not a jury and Claimant(s) and all parties shall waive their rights to a jury (unless all Parties to such proceeding mutually consent otherwise).

(b) **Venue.** The proceedings shall be heard in the County in which the Project is located.

(c) **Referee.** The referee shall be an attorney or retired judge with at least ten (10) years experience in common interest development real estate matters. The referee shall not have any relationship to the Parties to the Dispute or interest in the Project. The parties to the Dispute participating in the judicial reference proceeding shall meet to select the referee within ten (10) days after service of the initial complaint on all defendants named therein. Any dispute regarding the selection of the referee shall be promptly resolved by the judge to whom the matter is assigned, or if there is none, to the presiding judge of the Superior Court of the County in which the Project is located, who shall select the referee.

(d) **Commencement and Timing of Proceeding.** The referee shall promptly commence the proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay.

(e) **Pre-Hearing Conferences.** The referee may require one or more pre-hearing conferences.

(f) **Discovery.** The Parties shall be entitled to discovery, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

(g) **Motions.** The referee shall have the power to hear and dispose of motions, including motions relating to provisional remedies, demurrers, motions to dismiss, motions for judgment on the pleadings and summary adjudication motions, in the same manner as a trial court judge, except the referee shall also have the power to adjudicate summarily issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense. Notwithstanding the foregoing, if prior to the selection of the referee as provided herein, any provisional remedies are sought by the parties to the Dispute, such relief may be sought in the Superior Court of the County in which the Project is located.

(h) **Rules of Law.** The referee shall apply the laws of the State of California except as expressly provided herein including the rules of evidence, unless expressly waived by all Parties to the judicial reference proceeding.

(i) **Waiver of Jury Trial.** The Parties shall waive jury trial of the proceedings.

(j) **Record.** A stenographic record of the hearing shall be made, provided, that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals.

(k) **Statement of Decision.** The referee's statement of decision shall contain findings of fact and conclusions of law to the extent required by law if the case were tried by

a judge. The decision of the referee shall stand as the decision of the court, and upon filing of the statement of decision with the clerk of the court, judgment may be entered thereon in the same manner as if the Dispute had been tried by the court.

(l) -- **Post-hearing Motions.** The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.

(m) **Appeals.** The decision of the referee shall be subject to appeal in the same manner as if the Dispute had been tried by the court.

(n) **Expenses.** Except as otherwise agreed by the Parties or as required by Applicable Law or as the referee may order otherwise, the Parties shall share equally in the fees and costs of the referee. Each Party to the judicial reference proceeding shall bear its own attorneys' fees and costs in connection with such proceeding.

(o) **Severability.** In addition to and without limiting the effect of general severability provisions of this Declaration, if the referee or any court determines that any provision of this Section 21.2.2 is unenforceable for any reason, that provision shall be severed, and judicial reference shall be conducted under the remaining enforceable terms of this Section 21.2.2.

### 21.3. EXCEPTIONS TO SECTION 21.2 ALTERNATIVE DISPUTE RESOLUTION.

The resolution or determination of the following issues and matters are exempt from the requirements of Section 21.2 above or those described in Article 22 below:

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

(b) an unlawful detainer action.

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

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

(e) **Specific Procedure:** An alternative or required enforcement procedure described by a particular clause or Section within this Declaration.

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

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

#### 21.3.1. REMEDY OR RESOLUTION OF A NON-EMERGENCY EXIGENT MATTER.

A Party (the "*Claiming Party*") who seeks to make a claim with respect to any non-Emergency Exigent Matter shall – following not less than ten (10) days' prior written notice to the Party (the "*Responding Party*") against whom such Claiming Party alleges a breach or default constituting an Exigent Matter – have the right to:

- (1) Seek injunctive relief to require the Responding Party to perform a specific Exigent Matter (e.g. duty or obligation);
- (2) Seek compensation for damages arising or resulting from the failure of the Responding Party to perform an Exigent Matter;

### 21.3.2. REMEDY OR RESOLUTION OF AN EMERGENCY EXIGENT MATTER.

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

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

All rights and remedies shall be cumulative and not exclusive. In any legal or equitable proceeding for the enforcement of any of the duties or obligations of this Section, or for damages of the breach of any such duties or obligations, the losing Party shall pay the attorneys' fees and courts costs of the prevailing Party.

## **22. DECLARANT-RELATED DISPUTE RESOLUTION**

The purpose of this Article 22 is to provide an expedited means of resolving any claims, disputes and disagreements which may arise after the Close of Escrow or other conveyance of any portion of the Property by Declarant, between:

- (a) **Declarant**, as the owner / seller of the Project, or any director, officer, partner, member, employee or agent of the Declarant, or any contractor, subcontractor, design professional, engineer or supplier who provided labor, services or materials to the Project and who is bound or has agreed to be bound to the following dispute notification and resolution procedure (collectively, the "**Declarant Parties**"), and either or both:
- (b) the **Association** or a **Purchaser / Owner** ("**Claimant**")

relating to or arising out of the Property, or any portion thereof, this Declaration or other Governing Document for the Association or any other document or agreement between Declarant Parties (or any one of them) and Purchaser/Owner (unless any such agreement specifies another form of dispute resolution), the sale of the Property or any portion thereof, the use or condition of the Property or any portion thereof, or the design or construction of or any condition on or affecting the Property or any portion thereof, including, but not limited to construction defects, surveys, soils conditions, grading, specifications, installation of improvements or disputes which allege fraud, failure to disclose material facts, misrepresentation or breach of implied or express warranties as to the condition of the Property, any Unit or Improvements therein or thereon ("**Post-Closing Dispute**").

Initially, Declarant, the Association and/or any Owner agree to attempt to resolve any Post-Closing Dispute asserted by an Owner or the Association absent a formal resolution process. Any resolution not so achieved, however, and which is not otherwise resolved

pursuant to any applicable statutory dispute resolution procedures, shall be resolved by resolution process ("**Declarant Resolution Process**" or "**Resolution Process**") described hereafter, subject to the general rules ("**General Rules**") set forth below. Alternatively, Declarant, an Owner or the Association may elect to resolve any unresolved Post-Closing Dispute through a small claims court proceeding.

**THE RESOLUTION PROCESS INVOLVES WAIVER OF THE RIGHT TO A JURY TRIAL. BY EXECUTING THIS DECLARATION AND BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, RESPECTIVELY, DECLARANT, EACH OWNER AND THE ASSOCIATION, AGREE TO BE BOUND BY THE PROVISIONS OF THIS ARTICLE 22.**

**22.1. GENERAL RULES**

**(Real Estate Commissioners' Regulation §2791.8 [as of 2004])**

**22.1.1. FEE TO INITIATE RESOLUTION PROCESS**

Declarant shall be responsible for advancing the fee necessary to initiate the Resolution Process.

**22.1.2. PAYMENT OF FEES**

Resolution Process fees and costs – including those paid by Declarant to initiate the Resolution Process and any ongoing fees and costs – shall be paid as mutually agreed upon by the Parties. In the event the Parties cannot agree upon the mutual payment of the fees and costs, such fees and costs shall be paid as determined by the person or persons presiding at the Resolution Process.

**22.1.3. NEUTRAL, IMPARTIAL FACILITATOR**

A neutral or impartial person(s) ("**Facilitator**" or "**Resolution Facilitator**") shall oversee, administer and preside over the Resolution Process

**22.1.4. TIMELY APPOINTMENT OF OVERSEER**

The Resolution Facilitator shall be appointed or selected within sixty (60) days from the initiation of the Resolution Process. The person(s) appointed, selected, designated or assigned as a Resolution Facilitator may be challenged for bias.

**22.1.5. VENUE**

The venue of the Resolution Process shall be in the county where the Property is located, unless the Parties agree in writing to another location.

**22.1.6. COMMENCEMENT AND TIMING**

The proceeding or hearing of the Resolution Process shall commence promptly at the earliest convenient date in light of all of the facts and circumstances and shall be conducted without undue delay. The foregoing notwithstanding, should a specific Resolution Process be utilized, such Resolution Process shall be deemed to be promptly and timely commenced if it is to be commenced in accordance with the rules applicable to such Resolution Process; if the rules thereof, however, do not specify a date by which the proceeding or hearing of such Resolution Process must commence, then such hearing or proceeding shall commence on a date mutually agreed upon by the Parties, and if they cannot agree, then on a date determined by the Resolution Facilitator.

**22.1.7. FAIR AND REASONABLE RULES AND PROCEDURES**

The Resolution Process shall be conducted in accordance with rules and procedures that are reasonable and fair to the Parties.

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**22.1.8. PROMPT ISSUANCE OF DECISION OR RULING**

The Resolution Process shall conclude promptly and timely – including the issuance of any decision or ruling following the proceeding or hearing.

**22.1.9. REMEDIES AVAILABLE TO RESOLUTION FACILITATOR**

The Resolution Facilitator shall be empowered and authorized to provide all recognized remedies available in law or equity for any cause of action that is the basis of the Resolution Process proceeding or hearing.

**22.1.10. PUNITIVE DAMAGES**

The Parties may authorize the limitation or prohibition of punitive damages.

**22.1.11. JUDICIAL REMEDY**

If a Resolution Process provides or allows for a judicial remedy in accordance with Applicable Law, it shall be presumed that the proceeding or hearing satisfies the foregoing General Rules.

**22.2. DECLARANT RESOLUTION PROCESS****22.2.1. NOTICE.**

A Claimant with a claim defined as a Post-Closing Dispute above, shall notify the Declarant and Declarant Party(ies) in writing of such claim, which writing shall describe the nature of such claim and any proposed remedy ("**Claim Notice**"). Said Claim Notice shall be given to the Declarant's and Declarant Parties' statutory agent pursuant to the "Notice" provisions of the Section hereinafter entitled "**Notice; Demand Document Delivery**" (NOTE: a Claimant may confirm the current name and address of Declarant's agent by contacting, as of the date of Recordation of these CC&RS, the California Secretary of State, Special Filings Unit, P.O. Box 94244-2250, or by telephone at (916) 653-3984).

**22.2.2. RIGHT TO INSPECT AND RIGHT TO CORRECTIVE ACTION**

Within a reasonable period after receipt of the Claim Notice, which period shall not exceed sixty (60) days, Declarant (and any applicable Declarant Parties) and the Claimant(s) shall meet at a mutually-acceptable place within or near the Project to discuss the Dispute claim. At such meeting or at such other mutually-agreeable time, Declarant (and any applicable Seller Parties) and their respective representatives shall have full access to any property that is subject to the Dispute claim and shall have the right to conduct inspections, testing and/or destructive or invasive testing of the same in a manner deemed appropriate by Declarant (and any applicable Declarant Parties), which rights shall continue until such time as the Dispute is resolved as provided in this Article 22. The parties to the Dispute shall negotiate in good faith in an attempt to resolve the claim. If Declarant (and any applicable Declarant Parties) elects to take any corrective action, Declarant (and any applicable Declarant Parties) and their respective representatives and agents shall be provided full access to the Project to take and complete corrective action

**22.2.3. CIVIL CODE SECTIONS 1368.4, 1375, 1375.05 AND 1375.1**

Nothing contained herein shall be deemed a waiver or limitation of the provisions of **CIVIL CODE §§ 1368.4, 1375, 1375.05 and 1375.1**. If the claim is subject to the provisions of **CIVIL CODE §§ 1375, 1375.05 and 1375.1** as they may be amended from time to time, compliance with the procedures of these Sections shall satisfy the requirements of Sections 22.2.1, 22.2.2 and 22.2.4, as applicable.

#### 22.2.4. MEDIATION

If the Parties to the Dispute cannot resolve the claim pursuant to the procedures described in Section 22.2.2 above, the matter shall be submitted to mediation pursuant to the mediation procedures adopted by Judicial Arbitration and Mediation Services ("JAMS") (except as such procedures are modified by the provisions of this Section 22.2.4) or any successor thereto or to any other entity offering mediation services that is mutually acceptable to such parties. No person shall serve as a mediator in any Dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all Parties to the Dispute participating in the mediation. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. Except as provided in Section 22.3.1 below, Purchaser/Owner covenants that Purchaser/Owner shall not commence any arbitration against the Declarant Parties without complying with the procedures described in this Section 22.2.4.

##### (A) POSITION MEMORANDA; PRE-MEDIATION CONFERENCE

Within ten (10) days of the selection of the mediator, each Party to the Dispute participating in the mediation shall submit a brief memorandum setting forth its position with regard to the issues that need to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all parties to the Dispute participating in the mediation shall attend unless otherwise agreed. The mediation shall be commenced within ten (10) days following the submittal of the memoranda and shall be concluded within fifteen (15) days from the commencement of the mediation unless the parties to the Dispute participating in the mediation mutually agree to extend the mediation period. The mediation shall be held in the county in which the Project is located or such other place as is mutually acceptable to the parties to the Dispute participating in the mediation.

##### (B) CONDUCT OF MEDIATION

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

##### (C) EXCLUSION AGREEMENT

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

**(D) PERSONS PERMITTED AT SESSIONS**

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

**(E) EXPENSES**

All expenses of the mediation, including, but not limited to, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof or expert advice produced at the direct request of the mediator, shall be borne equally by the Parties to the Dispute participating in the mediation unless they agree otherwise. Each Party to the Dispute participating in the mediation shall bear its own attorneys' fees and other costs in connection with such mediation.

**22.2.5. ARBITRATION**

Claimant(s) and Declarant Parties shall resolve any Post-Closing Dispute not resolved as provided above exclusively through a binding arbitration Resolution Process. This arbitration provision shall apply to any unresolved Post-Closing Disputes of any kind or nature regardless of the relief sought.

**(A) FEDERAL ARBITRATION ACT**

Because many of the materials and products incorporated into the Property are manufactured in other states, the development and conveyance of the Property or any portion thereof evidences a transaction involving interstate commerce and the **FEDERAL ARBITRATION ACT (9 U.S.C. §1 et seq.) ("The Act")** now in effect and as it may be hereafter amended will govern the interpretation and enforcement of the arbitration provisions under this Article 22. Accordingly, any and all unresolved Post-Closing Disputes shall be arbitrated, which arbitration shall be mandatory and binding, pursuant to **THE ACT**.

**(B) WAIVER OF LITIGATION AND APPEAL**

The Association, Owner(s) and Declarant:

- (1) **ARE GIVING UP RIGHTS THEY MIGHT HAVE TO HAVE ANY POST-CLOSING DISPUTES LITIGATED IN A COURT OF LAW.**
- (2) **ARE GIVING UP THEIR RIGHTS TO APPEAL ANY DECISION OF THE ARBITRATOR.**
- (3) **SHALL BE COMPELLED TO ARBITRATE ANY AND ALL POST-CLOSING DISPUTES OR CLAIMS.**

**(C) GENERAL ARBITRATION PROVISIONS**

(1) **JAMS Arbitration Procedures** The arbitration procedures adopted by Judicial Arbitration and Mediation Services ("JAMS") shall govern the conduct of the arbitration ("JAMS Rules").

(2) **Waiver of Trial by Judge or Jury** By agreeing to resolve all Disputes through binding arbitration, Claimant(s) and Declarant Parties each agree give up the right to have their respective claims and defenses decided by a judge or a jury. All claims and defenses shall instead be decided by the arbitrator.

(3) **Qualifications of Arbitrators** The arbitrator shall be neutral and impartial and an attorney or retired judge with at least ten (10) years experience in common interest development real estate matters.

(4) **Appointment of Arbitrator** The arbitrator to preside over the Dispute shall be selected in accordance with the JAMS Rules, but no later than sixty (60) days after a notice of claim is filed.

(5) **Expenses** The fees and costs charged by JAMS and the arbitrator ("*Arbitration Expense*") to initiate the arbitration Resolution Process shall be advanced by Declarant. All Arbitration Expense, however, shall be paid as mutually agreed upon by the Parties. In the event the Parties cannot agree upon the mutual payment of such Arbitration Expense, such Arbitration Expense shall be paid as determined by the arbitrator. The foregoing notwithstanding, except as otherwise agreed by the Parties or as required by Applicable Law, an Owner shall not be required to pay a total Arbitration Expense greater than that that would be imposed upon the disputant if the Dispute had been filed as a suit in court. The arbitrator may not award against an Owner any Arbitration Expense in excess of that that would be recoverable as costs if the Post-Closing Dispute had been litigated to final judgment in court.

(6) **Attorneys' Fees and Costs** Each Party shall bear its own attorneys fees and costs (including expert witness costs) in the arbitration.

(7) **Venue** The venue of the arbitration shall be in the County where the Property is located unless the Parties agree in writing to another location.

(8) **Preliminary Procedures** If state or federal law requires the Association or an Owner or Declarant to take steps or procedures before commencing an action in court, then the Owner or Declarant must take such steps or follow such procedures, as the case may be, before commencing the arbitration. In addition, nothing contained herein shall be deemed a waiver or limitation of the provisions of **CIVIL CODE §§ 1368.4, 1375, 1375.05 or 1375.1**.

(9) **Participation by Other Parties** The Association, an Owner and Declarant, to the extent any such party is defending a claim in the arbitration, may, if it chooses, have all necessary and appropriate parties included as parties to the arbitration. The absence of another Party's participation in the Resolution Process shall not be asserted or accepted as a reason by Claimant or Declarant to delay, to refuse to participate in the Resolution Process, or to refuse to enforce this Article 22.

(10) **Rules of Law** The arbitrator must follow California substantive law (including statutes of limitations) but strict conformity with the rules of evidence is not required, except that the arbitrator shall apply Applicable Law relating to privilege and work product. The arbitrator shall be authorized to provide all recognized remedies available at law or equity for any cause of action.

(11) **Decision of Arbitrator** The arbitrator shall issue a prompt and timely written decision within thirty (30) days after the hearing is closed, which decision shall be final and binding upon the Parties. If an Owner, the Declarant or the Association request it, the arbitrator's written decision shall include the reasons for it.

**(D) Additional Rules Applicable To Certain Cases.**

In any arbitration in which a claim of Owner, the Association or Declarant exceeds \$250,000 in value, the following additional rules will supplement the JAMS Rules and govern in the event of a conflict between the following rules and the rules set forth above, the JAMS Rules, or both.

(1) **Qualifications of Arbitrator** The arbitrator shall be a retired judge of the California Superior Court, a California Court of Appeal, or the California Supreme Court.

(2) **Rules of Law** The California Evidence Code shall apply.

(3) **Reasoned Award** The written decision by arbitrator shall include the reasons for it.

(4) **Additional Discovery Rights** In addition to the discovery rights provided for in the JAMS Comprehensive Arbitration Rules, the parties will have the following discovery rights:

(i) **Inspection, Examination and/or Test** The right to a reasonable inspection, examination and/or test of any site, defect, personal injury or property damage relevant to any claim;

(ii) **Deposition of Opposing Party** The right to take one deposition of each opposing party for up to four hours. The deposition of a person designated by an entity or organization as most knowledgeable, or an individual officer or employee of an entity or organization, shall count as the deposition of a party which is not a natural person.

(iii) **Deposition of Expert Witnesses** The right to take the deposition of each expert witness designated by an opposing party for up to four hours.

(iv) **Additional Depositions** The arbitrator shall have discretion to allow additional depositions and longer depositions upon a showing of good cause.

**22.3. SEVERABILITY**

Should any provision in this Article 22 be determined to be unenforceable or to have been waived, the remaining provisions shall be deemed to be severable therefrom and enforceable according to their terms. In the event the arbitration Resolution Process is held not to apply or is held invalid, void or unenforceable in its entirety for any reason, the Parties agree that all Post-Closing Disputes shall be tried before a judge in a court of competent jurisdiction without a jury. The judge in such court of competent jurisdiction shall have the power to grant all legal and equitable remedies and award compensatory damages. The Parties each hereby waive and covenant not to assert their constitutional right to trial by jury of Post-Closing Disputes. The Parties hereby covenant and agree that their mutual waiver of jury trial shall be binding upon their respective successors and assigns and upon all persons and entities asserting rights or claims or otherwise acting on behalf of the Parties or their successors and assigns.

**22.3.1. EXCEPTIONS TO MEDIATION AND ARBITRATION;  
STATUTES OF LIMITATION**

The procedures set forth in this Article 22 shall apply only to Post-Closing Disputes and shall not apply to any Dispute, matter or issue described in Article 21. Nothing in this Article 22 shall be considered to toll, stay, reduce or extend any applicable statute of limitations;

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provided, however, that the Parties shall be entitled to commence a legal action which in the good faith determination of any Party is necessary to preserve the Parties' respective rights under any applicable statute of limitations, provided that a Party shall take no further steps in prosecuting the action until it has complied with the procedures described in this Article 22.

### **22.3.2. SURVIVAL; SUCCESSORS AND ASSIGNS**

The rights and obligations of the Parties pursuant to this Article 22 shall survive the Close of Escrow. This Article 22 and the rights, duties and obligations of the Parties shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective Parties.

## **23. MISCELLANEOUS PROVISIONS REGARDING ENFORCEMENT AND LEGAL ACTION**

### **23.1. FAILURE TO ENFORCE**

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

### **23.2. VIOLATION OF LAW**

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

### **23.3. GOVERNING LAW**

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

### **23.4. MEETING AND NOTICE TO MEMBERS PRIOR TO CERTAIN LEGAL ACTIONS BY THE BOARD**

Notwithstanding anything contained in this Declaration to the contrary, the Board shall not institute any significant legal proceeding, including any mediation, or administrative proceeding, against any person without (i) conducting a Special Meeting of Members to discuss the nature of the proposed proceeding, and (ii) providing the Members written notice of such Special Meeting, which notice shall be sent not less than thirty (30) days [CIVIL CODE §1368.4] and not more than ninety (90) days before such Special Meeting. The notice shall describe the following:

- (a) The purpose of the proceeding;
- (b) The parties to the proceeding;
- (c) The anticipated cost to the Association (including attorneys' fees) in processing the proceeding;
- (d) The source of funds to process the proceeding (Operating Account or Reserve Account);
- (e) The options, including civil action, that are available to address the purpose of the proceeding;
- (f) The place, day and hour of the meeting.
- (g) All such notices shall be delivered in accordance with the provisions therefor contain in Section entitled "Notice" herein.

**23.4.2. DEFINITION OF "SIGNIFICANT LEGAL PROCEEDING."**

For purposes herein, "significant legal proceeding" shall mean and refer to any legal proceeding in which it reasonably could be anticipated that any of the following events could occur:

- (a) The levy of a Special Assessment to fund all or any portion of the costs of the proceeding;
- (b) The expenditure of funds from the Association's Reserve Account in connection with the proceeding in an amount in excess of five percent (5%) of the then current reserves;
- (c) The expenditure of funds from the Association's Regular Assessment Operating Account in connection with the proceeding in an amount in excess of five percent (5%) of the then current fiscal year's budgeted gross expenses;
- (d) The amount at issue is in excess of \$25,000;
- (e) The proceeding could have a material adverse effect on the ability to sell and/or refinance the Units during the period in which the proceeding is being prosecuted; or
- (f) The matter relates to the filing of any civil action by the Association against the Declarant or other person for alleged damage to the Association Property, alleged damage to the Units or portions thereof that the Association is obligated to maintain or repair, or alleged damage to the Units or portions thereof that arises out of, or is integrally related to, damage to the Association Property or Units or portions thereof that the Association is obligated to maintain or repair.

**24. EXISTING CONDOMINIUM PROJECT DISCLOSURE.****24.1. DOCUMENTATION/LIMITATION ON WARRANTIES.**

Future purchasers of a condominium, subject to this Declaration, and the Association, as defined herein, are hereby advised by the Declarant of the following information:

- (a) The Condominium Project was (reportedly) *originally constructed in 1980's*. The Declarant does not warrant that the Project was constructed in accordance with the City/County (as applicable) building code in effect at the time of original construction. In addition, the Declarant further advises that the Project may not have been constructed in accordance with the City/County (as applicable) building code in effect in any year up to and including the year of the recordation of this Declaration.
- (b) The original Condominium Plan was recorded on February 26, 1979 as File No. 79-081484 in the Official Records, San Diego County, California.
- (c) The Declarant is neither a developer nor a builder nor was involved in the original construction of the Project.
- (d) With the exception of "cosmetic changes" to the Project, the Declarant has not changed the original construction of the Project.
- (e) The Declarant represents that the following items in the Project will be in "working condition" as of the close of escrow of each Condominium subject to this Declaration: appliances, roof, plumbing, and electrical. With the exception of the foregoing representation, the Project is *being sold "AS IS."*
- (f) THE DECLARANT DOES NOT MAKE ANY WARRANTY, EXPRESSED OR IMPLIED, AS TO THE CONDITION OF THE CONDOMINIUM AND/OR THE BUILDINGS IN WHICH THE CONDOMINIUM ARE LOCATED, AS SHOWN AND DESCRIBED ON THE CONDOMINIUM PLAN REFERRED TO IN SUBSECTION 1.4 HEREIN, OR WITH REGARD TO ANY IMPROVEMENTS LOCATED WITHIN THE PROJECT BUT OUTSIDE OF THE CONDOMINIUM BUILDING.

**2251 MENDOCINO  
DECLARATION**

**- 71 -**

(g) All Owners of Condominiums, their successors and assigns by acceptance of a deed to a Condominium hereby agree to assume all risks of any future problems which may arise as a result of the construction of the project by the Original Declarant and/or as a result of problems which may arise with regard to the following items: appliances, roof, plumbing, and electrical.

## **25. GENERAL PROVISIONS**

### **25.1. SEVERABILITY.**

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

### **25.2. EXTENSION OF DECLARATION.**

Each and all of these covenants, conditions and restrictions shall terminate on December 31, 2055, after which date they shall automatically be extended for successive periods of ten (10) years, unless the Owners have executed and recorded at any time within six (6) months prior to December 31, 2055, or within six (6) months prior to the end of any such ten (10) year period, in the manner required for the conveyance of real property, a writing in which it is agreed that said restrictions shall terminate on December 31, 2055, or at the end of any such ten (10) year period.

### **25.3. ANNEXATION.**

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

### **25.4. APPROVAL BY FHA AND VA.**

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

### **25.5. NOTICE.**

In each instance in which notice or demand is to be given to the Owner and/or Occupant of a Dwelling/Lot, the same shall be in writing and may be served in one or more of the following manners:

#### **25.5.1. PERSONAL SERVICE; HAND DELIVERY.**

Personal service of a notice or demand to the Owner or to any one or more co-Owners of the Condominium; to any general partner of a partnership which is the Owner of Record of the Condominium; to the manager of a limited liability company which is the Owner of Record of the Condominium; and/or to any officer or agent for service of process of a corporation which is the Owner of Record of the Condominium, shall be deemed delivered to such Owner, co-Owners, partnership, limited liability company or corporation, as the case may be.

**25.5.2. SERVICE BY MAIL, EXPRESS MAIL.**

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

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

(b) **TO THE ASSOCIATION:** To the **2251 MENDOCINO CONDOMINIUMS HOMEOWNERS ASSOCIATION** at the principal office of the Association (or to such other address as the Association may from time to time designate in writing to the Owners).

**25.5.3. COMPLETION OF SERVICE.**

Any notice or demand deposited with the U.S. Postal Service (a) by First Class U.S. Mail shall be deemed delivered four (4) days after such deposit; and, (b) by Express Mail shall be deemed delivered two (2) days after such deposit.

**25.6. REPORTS TO PROSPECTIVE PURCHASERS; ESTOPPEL CERTIFICATE - CIVIL CODE SECTION 1368.**

In accordance with California Civil Code Section 1368, or any successor statute or law, the Owner of a Condominium shall, as soon as practicable before transfer of title or execution of a real property sales contract therefor, as defined in California Civil Code Section 2985, provide the following disclosures to the prospective purchaser:

(a) A copy of the Declaration, Bylaws, Articles, Association Rules, and Architectural Standards, if any;

(b) A copy of the most recent financial reports as required by the Bylaws;

(c) A certificate signed by an authorized representative of the Association as to the amount of any assessments levied upon the Owner's interest in his Condominium which are unpaid on the date of the Statement. The certificate shall also include information on late charges, interest and costs of collection which, as of the date of the certificate, are or may be made a lien upon the Owner's Condominium, pursuant to California Civil Code Section 1367, or any successor statute or law. A properly executed certificate of the Association as to the status of assessments on a Condominium is binding upon the Association as of the date of its issuance.

(d) Any change in the Association's current Regular and Special Assessments and fees which have been approved by the Board, but have not become due and payable as of the date these disclosures are provided.

(e) Upon written request, the Association shall, within ten (10) days of the mailing or delivery of the request, provide the Owner of a Condominium with a copy of the items specified hereinabove. The Association may charge a fee for this service, as well as a fee or assessment to change its records in connection with the transfer of title to a Condominium. Any fees or assessments contained in this Section shall not exceed the reasonable costs to prepare and reproduce the requested items or the actual costs to change records.

**25.7. NOTIFICATION OF SALE OR CONVEYANCE.**

Concurrently with the consummation of the sale or other conveyance of any Condominium where the transferee becomes an Owner of the Condominium, within five (5) business days thereafter, the transferee shall notify the Association in writing of such sale or conveyance. Such notification shall set forth the name of the transferee and his Mortgagee and transferor, the common address of the Condominium purchased by the transferee, the transferee's and the Mortgagee's mailing address, and the date of sale or conveyance. Before the receipt of such notification, any and all

**2251 MENDOCINO  
DECLARATION**

**- 73 -**

communications required or permitted to be given by the Association, the Board, the Board's delegated committee or the Association's manager shall be deemed to be duly made and given to the transferee if duly and timely made and given to the transferee's transferor. Mailing addresses may be changed at any time upon written notification to the Association. Notices shall be deemed given and given in accordance with the provisions of the Section herein entitled "Notice."

**25.8. 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.

**25.9. GOVERNING DOCUMENTS.**

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

**25.10. SINGULAR INCLUDES PLURAL.**

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

**25.11. LIBERAL CONSTRUCTION.**

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

IN WITNESS WHEREOF, the undersigned, being Declarant herein, has executed this instrument this 6<sup>th</sup> day of June, 2007.

**DECLARANT:**

**ROBERT HICKMAN AND LANETTE HICKMAN,  
TRUSTEES OF THE HICKMAN FAMILY TRUST  
DATED NOVEMBER 30, 2005 SD, INC.,  
A CALIFORNIA CORPORATION**

By: Robert Hickman, Trustee  
**ROBERT HICKMAN  
TRUSTEE**

By: Lanette Hickman, Trustee  
**LANETTE HICKMAN  
TRUSTEE**

**(Please Attach Proper Notary Certificate(s) of Acknowledgment)**

**2251 MENDOCINO  
DECLARATION**

**- 75 -**

**ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of San Diego

On June 6, 2007 before me, C.P. DeHart, a Notary Public,  
 personally appeared  
Robert Hickman And Janette Hickman

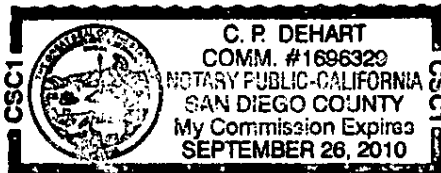


personally known to me

OR



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



WITNESS my hand and official seal.

jurat.doc (10/95)

**EXHIBIT "A" - LEGAL DESCRIPTION**

**LOTS 38 AND 39, BLOCK 12 OF LOMA ALTA NO. 1, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 1078, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, AUGUST 28, 1907.**

**2251 MENDOCINO  
DECLARATION**

**- 76 -**

RECORDING REC'D BY:

1194

88 601277

Westland Title Company  
4660 La Jolla Village Drive  
San Diego, CA 92122

RECORDED IN  
OFFICIAL RECORDS  
OF SAN DIEGO COUNTY, CA.

88 NOV 22 PM 3:20

VERA L. LYLE  
COUNTY RECORDER

WHEN RECORDED MAIL TO:

Frank De Santis  
1510 Front Street, Ste. 300  
San Diego, Ca. 92101

TITLE ORDER NO.: 304635-3

RF	8
AR	6
MG	1

MN

CONDOMINIUM PLAN

We, the undersigned, being all of the record owners and record holders of a security interest in the real property described as follows: Lot 38 and 39, block 12 Loma Alta, 2251 Mendocino Boulevard, San Diego, California according to map thereof NO. 1078 filed in the office of County Recorder of San Diego County California.

do hereby certify that we consent to the recordation of the Plan of Condominium pursuant to California Civil Code Section 1351 consisting of (I) a survey map of the surface of the land included within the project to which this Condominium Plan relates and (II) the diagrammatic floor plan of the building built or to be built on said land herein and (III) this certificate.

DATED: 11-18-1988

B.B.M.B.  
Benito Balestrieri  
Margherita Balestrieri

BY: Benito Balestrieri  
BY: Margherita Balestrieri

DATED: 11-9-88

Penninsula Bank of San Diego

BY: John Donnelly  
BY: Patricia Wiskind

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, COUNTY RECORDER

1

**CORPORATION**

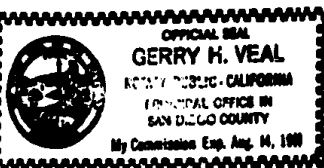
STATE OF California  
COUNTY OF San Diego } ss.

1195

On this 9th day of November, in the year 1988  
before me, the undersigned, a Notary Public in and for said State, personally  
appeared John Donnelley  
and Patricia A. Wilkins;

☒ personally known to me  
☐ proved to me on the basis of satisfactory evidence

to be the persons who executed the within instrument as Officer  
Vice president and Real Estate Loans respectively,  
of the corporation therein named and acknowledged to me that the corporation executed it pursuant to its by-laws or a resolution of its board of directors



Signature [Signature]  
T-716  
NOTARY PUBLIC IN AND FOR SAID STATE

(This area for official seal)

CAT. NO. N98827  
TO 1944 CA (9-84)

(Individual)

**TICOR TITLE INSURANCE**

STATE OF CALIFORNIA  
COUNTY OF San Diego } ss.

On November 18, 1988 before me, the undersigned, a Notary Public in and for  
said State, personally appeared Benito Baisteri & Margherita Baisteri

[Signature], personally known to me or  
proved to me on the basis of satisfactory evidence to be  
the person is whose name is subscribed to the  
within instrument and acknowledged that they executed the same.

WITNESS my hand and official seal.



Signature Kathleen L. Perdue

(This area for official notarial seal)

FICIAL RECORDS, SAN DIEGO COUNTY, 1988, 1195, 1195

1. ALL LIVING UNITS ARE CONTAINED IN ONE BUILDING.
2. RESIDENTIAL LIVING UNITS ARE NUMBERED L-1, L-2, L-3, L-4. THE TOTAL NUMBER OF LIVING UNITS IS FOUR.
3. "LIVING UNIT": EACH LIVING UNIT CONSISTS OF THE ELEMENTS OF THE CONDOMINIUM WHICH ARE NOT OWNED IN COMMON WITH THE OWNERS OF OTHER CONDOMINIUMS; EACH LIVING UNIT AREA IS AS SHOWN AND DESCRIBED HEREIN BY BUILDING FLOOR PLANS AND TYPICAL LIVING UNIT FLOOR PLANS.

A. THE BOUNDARIES OF EACH LIVING UNIT ARE THE INTERIOR UNFINISHED SURFACES (NOT INCLUDING PAINT, PAPER, MAX, TILE, ENAMEL OR OTHER FINISHES) OF THE CEILING, FLOOR, INTERIOR BEARING WALLS AND PERIMETER WALLS AS SHOWN ON THE TYPICAL FLOOR PLAN DEFINED HEREIN.

B. THE FINISHED CEILING ELEVATION FOR EACH LIVING UNIT IS 8.00 FEET ABOVE THE FINISHED FLOOR ELEVATION ON EACH FLOOR UNLESS OTHERWISE NOTED ON THE TYPICAL FLOOR PLAN.

C. FOR LIVING UNIT DIMENSIONS SEE TYPICAL LIVING UNIT DEFINED HEREIN.

D. FOR LIVING UNIT RELATIONSHIP TO THE BUILDING AND ADJACENT LIVING UNITS SEE BUILDING FLOOR PLANS DEFINED HEREIN.

E. FOR BUILDING HORIZONTAL TIES TO PROJECT BOUNDARY LINES SEE SHEET 2. ALL DISTANCES SHOWN ARE TO THE OUTSIDE FACE OF BUILDING STUD LINE. KNOWN AS THE BUILDING F.O.S.

F. THE FOLLOWING ARE NOT A PART OF THE LIVING UNIT: BEARING AND PLUMBING WALLS, CONDUITS, WIRES, WIRING AND OTHER UTILITY INSTALLATIONS (EXCEPT FOR THE OUTLETS LOCATED WITHIN THE BOUNDARIES OF THE UNITS).

4. "COMMON AREA": THOSE PORTIONS OF THE PROJECT NOT CONSTITUTING INDIVIDUAL LIVING UNITS. COMMON AREA INCLUDES, WITHOUT LIMITATION, LAWN, DRIVING AREA, BEARING WALLS, COLUMNS, GIRDERS, SUBFLOORS, UNFINISHED FLOORS, ROOFS AND FOUNDATION, CONDUITS, PIPES, PLUMBING, WIRES, AND OTHER UTILITY INSTALLATIONS (EXCEPT THE OUTLETS THEREOF WHEN LOCATED WITHIN A LIVING UNIT) REQUIRED TO PROVIDE POWER, LIGHT, TELEPHONE, GAS, WATER, SEWERAGE, DRAINAGE, AND CABLE TELEVISION SYSTEM HEADS WHICH PROTRUDE INTO THE AIRSPACE OF A LIVING UNIT.

5. "EXCLUSIVE USE AREA": THOSE PORTIONS OF THE COMMON AREA SET ASIDE FOR THE EXCLUSIVE USE OF A CONDOMINIUM OWNER OR OWNERS. THOSE NUMBERED BALCONIES, STORAGE AREAS, AND GARAGE AREAS ON THIS CONDOMINIUM PLAN ARE HEREBY SET ASIDE AND ALLOCATED FOR THE EXCLUSIVE USE OF THE OWNER OR OWNERS OF THE LIVING UNIT WHICH BEARS THE SAME NUMBER ON THIS CONDOMINIUM PLAN AND SHALL BE DEEMED APPURTENANT TO SUCH LIVING UNIT.

A. THE LOWER HORIZONTAL BOUNDARY OF A BALCONY IS EQUAL TO THE FINISHED FLOOR ELEVATIONS OF THE CORRESPONDING UNIT. THE UPPER HORIZONTAL BOUNDARY WILL EXTEND UP TO A PLAIN 8.00 FEET ABOVE THE LOWER HORIZONTAL BOUNDARY.

B. THE LOWER HORIZONTAL BOUNDARY OF EACH GARAGE SPACE WILL BE AT THE FINISHED LOWER SURFACE OF SAID AREA AT THE TIME OF RECORDING THIS PLAN. THE UPPER HORIZONTAL BOUNDARY OF EACH GARAGE SPACE SHALL EXTEND UP TO THE FINISHED CEILING ABOVE THE LOWER HORIZONTAL BOUNDARY THEREOF.

6. ALL LATERAL BOUNDARIES ARE VERTICAL PLANES AT THE LIMITS OF THE HORIZONTAL DIMENSIONS SHOWN ON THESE PLANS. ANGLES BETWEEN ALL BOUNDARY PLANES AND LINES ARE 90 DEGREES UNLESS OTHERWISE NOTED. WRITTEN DIMENSIONS ON THIS PLAN SHALL HAVE PRECEDENCE OVER DIMENSIONS SCALED FROM THIS PLAN.

7. WHERE CONFLICTS OCCUR BETWEEN THE DIMENSIONS SHOWN ON THIS PLAN AND BUILDING LINES AS CONSTRUCTED, THE AIR SPACE FOR EACH LIVING UNIT SHALL BE CONSTRUCTED TO THE LIMITS BETWEEN THE WALLS THAT ARE EXISTING AT THE TIME OF RECORDING THIS PLAN.

8. IN INTERPRETING THE DEEDS AND PLANS, THE THEN EXISTING PHYSICAL BOUNDARIES OF A LIVING UNIT, WHETHER IN ITS ORIGINAL STATE OR RECONSTRUCTED IN SUBSTANTIAL ACCORDANCE WITH THE ORIGINAL PLANS THEREOF, SHALL BE CONCLUSIVELY PRESUMED TO BE ITS BOUNDARIES RATHER THAN THE BOUNDARIES EXPRESSED IN THE DEED OR THIS PLAN, REGARDLESS OF SETTLING OR LATERAL MOVEMENT OF THE BUILDING AND REGARDLESS OF MINOR VARIANCE BETWEEN THE BOUNDARIES SHOWN ON THIS PLAN OR DEED, AND THOSE OF THE BUILDING.



#### LEGEND

- INDICATES LATERAL BOUNDARY
- L— INDICATES LIVING UNIT
- L-1— INDICATES LIVING UNIT NUMBER
- B— INDICATES BALCONY (EXCLUSIVE USE AREA)
- G— INDICATES GARAGE (EXCLUSIVE USE AREA)
- S— INDICATES STORAGE (L-1, L-2, L-3, L-4 SEE)

#### BASE OF ELEVATION

CITY OF SAN DIEGO BRASS PLUG IN THE WESTERN THE INTERSECTION OF VOLTAIRE AND VENICE STR 88.983 NSL

#### BASE OF BEARINGS

THE BASES OF BEARINGS FOR THIS CONDOMINIUM: EASTERLY RIGHT-OF-WAY LINE OF MENDOCINO BOUL TO MAP NO. 1078, I.E.-NORTH 8°56' WEST

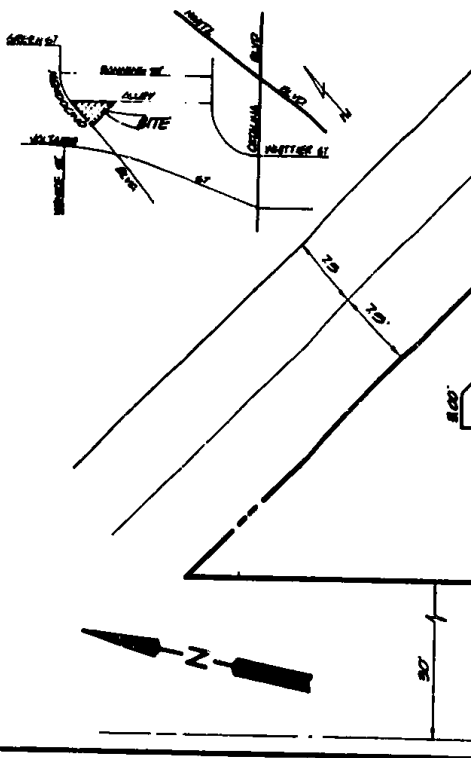
#### LEGAL DESCRIPTION

LOT 38 AND LOT 39, BLOCK 12, MAP NO. 1078, OFFICE OF THE COUNTY RECORDER OF SAN DIEGO, CALIFORNIA.

#### ENGINEER'S STATEMENT

I HEREBY CERTIFY THAT I AM A REGISTERED C. THE STATE OF CALIFORNIA, AND THAT THIS PLAN SHEETS CORRECTLY SHOWING THE BOUNDARIES OF RELATION THERETO OF THE UNITS SHOWN HEREBY.

*Randy R. Brown* 10/31  
RANDY R. BROWN RCE 36190 DATE



# CONDOMINIUM PLAN

SHEET 1 OF 4 SHEETS

## LEGEND

- INDICATES LATERAL BOUNDARY
- L-1 INDICATES LIVING UNIT
- L-2 INDICATES LIVING UNIT NUMBER
- B INDICATES BALCONY (EXCLUSIVE USE AREA)
- G INDICATES GARAGE (EXCLUSIVE USE AREA)
- S INDICATES STORAGE (L-1, L-2, L-3, L-4 EXCLUSIVE USE AREA)

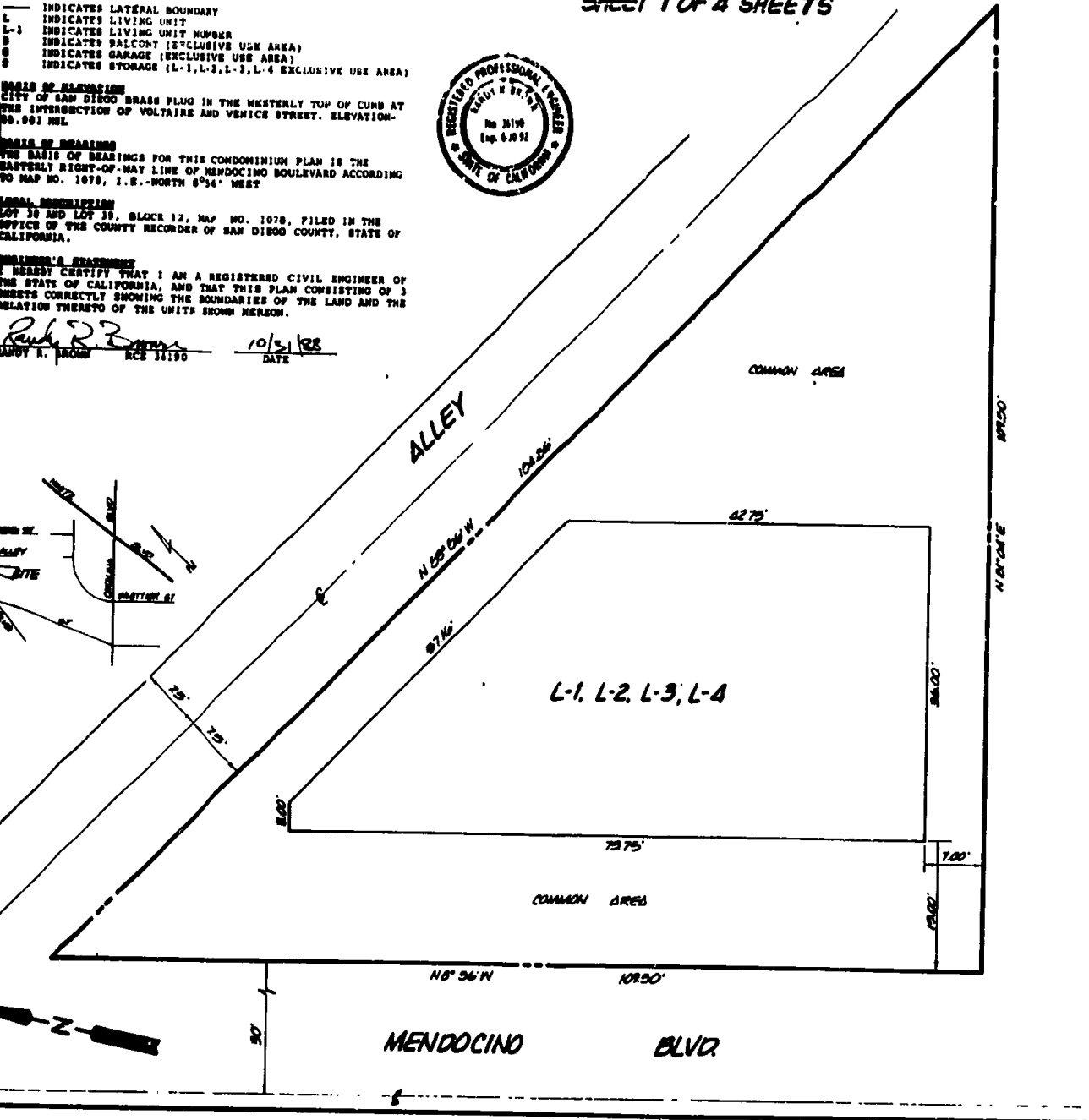
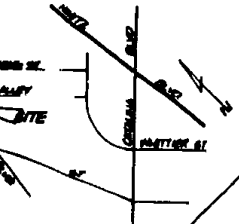
**DATE OF REVISION**  
CITY OF SAN DIEGO BRASS PLUG IN THE WESTERLY TOP OF CURB AT THE INTERSECTION OF VOLTAIRE AND VENTURA STREET. ELEVATION- 85.001 MSL

**DATE OF BEARINGS**  
THE BASIS OF BEARINGS FOR THIS CONDOMINIUM PLAN IS THE EASTERLY RIGHT-OF-WAY LINE OF MENDOCINO BOULEVARD ACCORDING TO MAP NO. 1078, 1.S.-NORTH 8°56' WEST

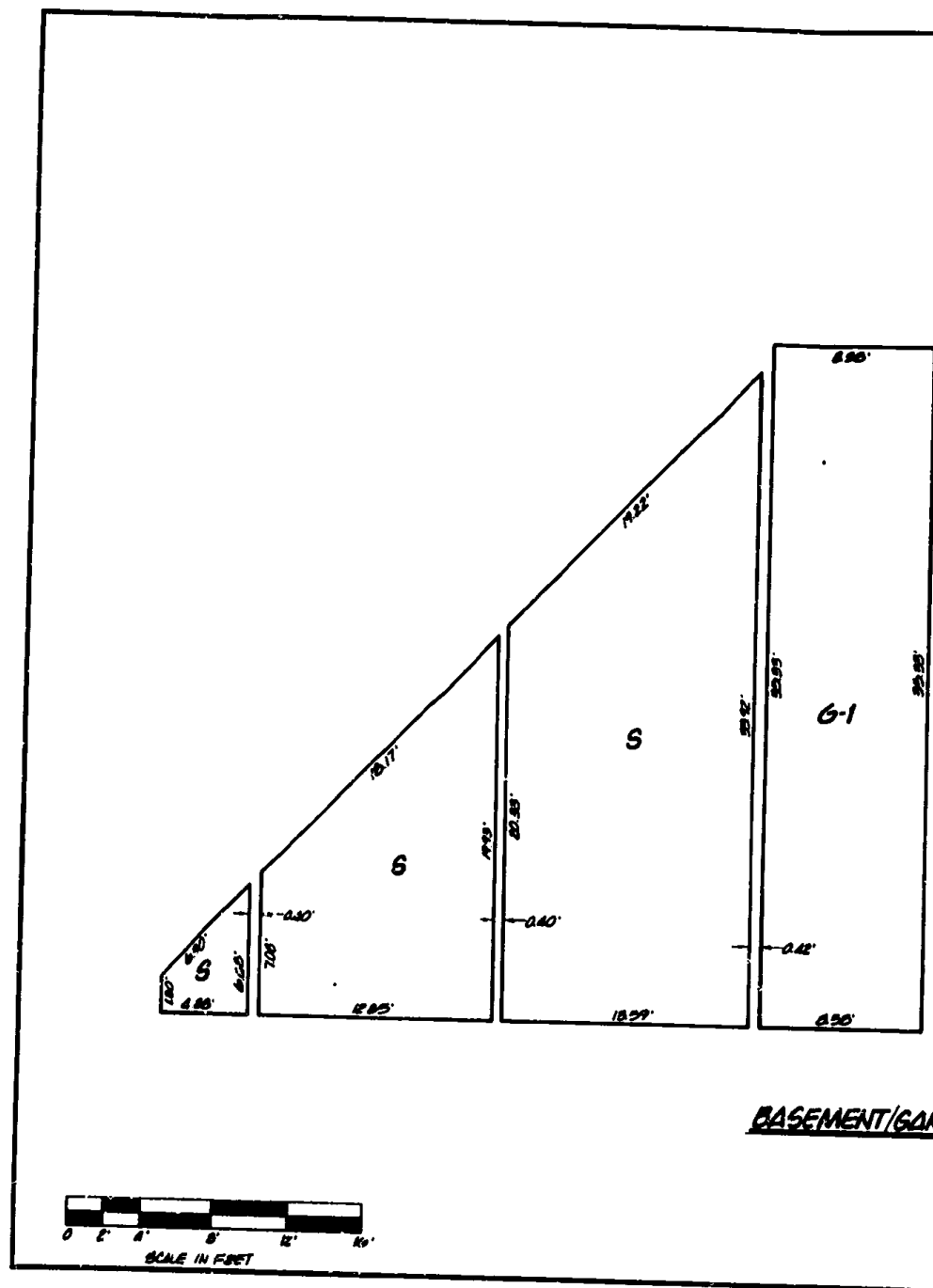
**LEGAL DESCRIPTION**  
LOT 38 AND LOT 39, BLOCK 12, MAP NO. 1078, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, STATE OF CALIFORNIA.

**ENGINEER'S STATEMENT**  
I HEREBY CERTIFY THAT I AM A REGISTERED CIVIL ENGINEER OF THE STATE OF CALIFORNIA, AND THAT THIS PLAN CONSISTING OF 3 SHEETS CORRECTLY SHOWING THE BOUNDARIES OF THE LAND AND THE RELATION THEREOF OF THE UNITS SHOWN HEREON.

*2623*  
ANDY R. BROWN REG 30190 DATE 10/31/88

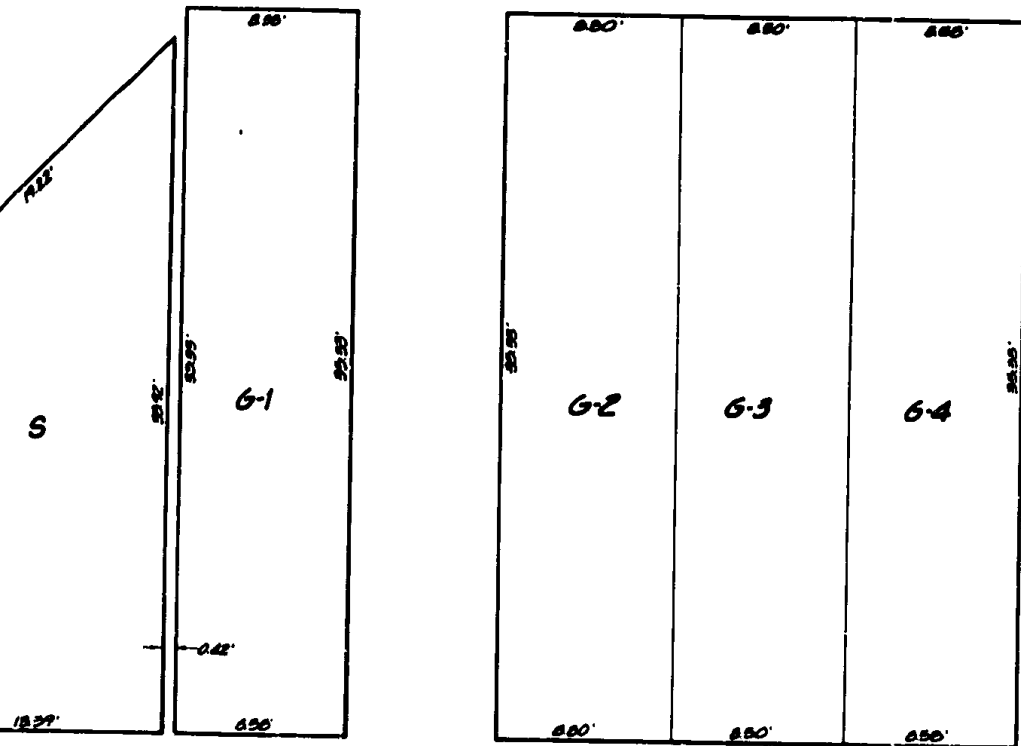


HOWARD AND BROWN ENGINEERING, INC.  
CONSULTING ENGINEERS  
2015 HWY 92 • CARLSBAD, CA 92008 • (619) 431-1000  
© 87-1871



# CONDOMINIUM PLAN

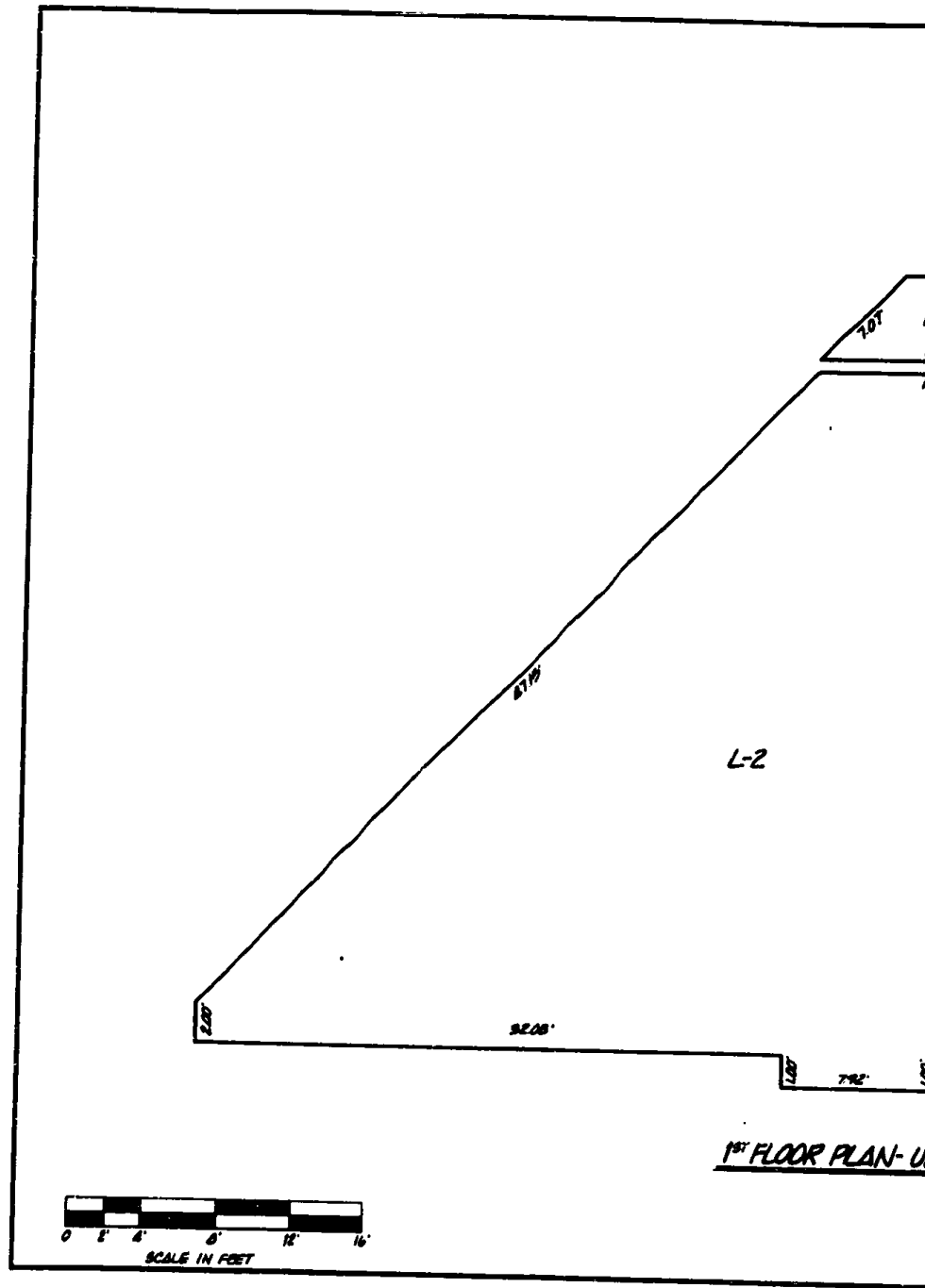
SHEET 2 OF 4 SHEETS



BASEMENT/GARAGE FLOOR PLAN

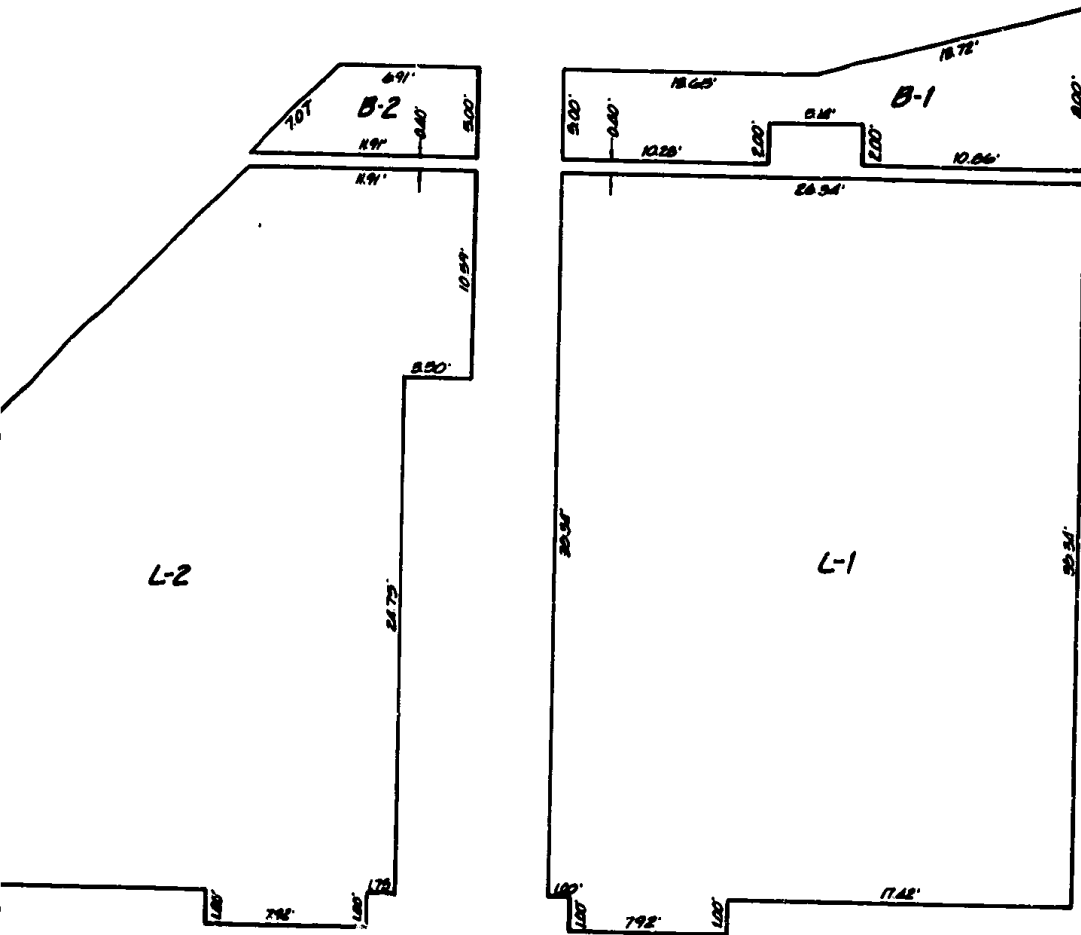
HOWARD AND BROWN ENGINEERING, INC.  
CONSULTING ENGINEERS  
12111 15TH ST. - SAN DIEGO, CALIF. 92131  
601-1271

1200



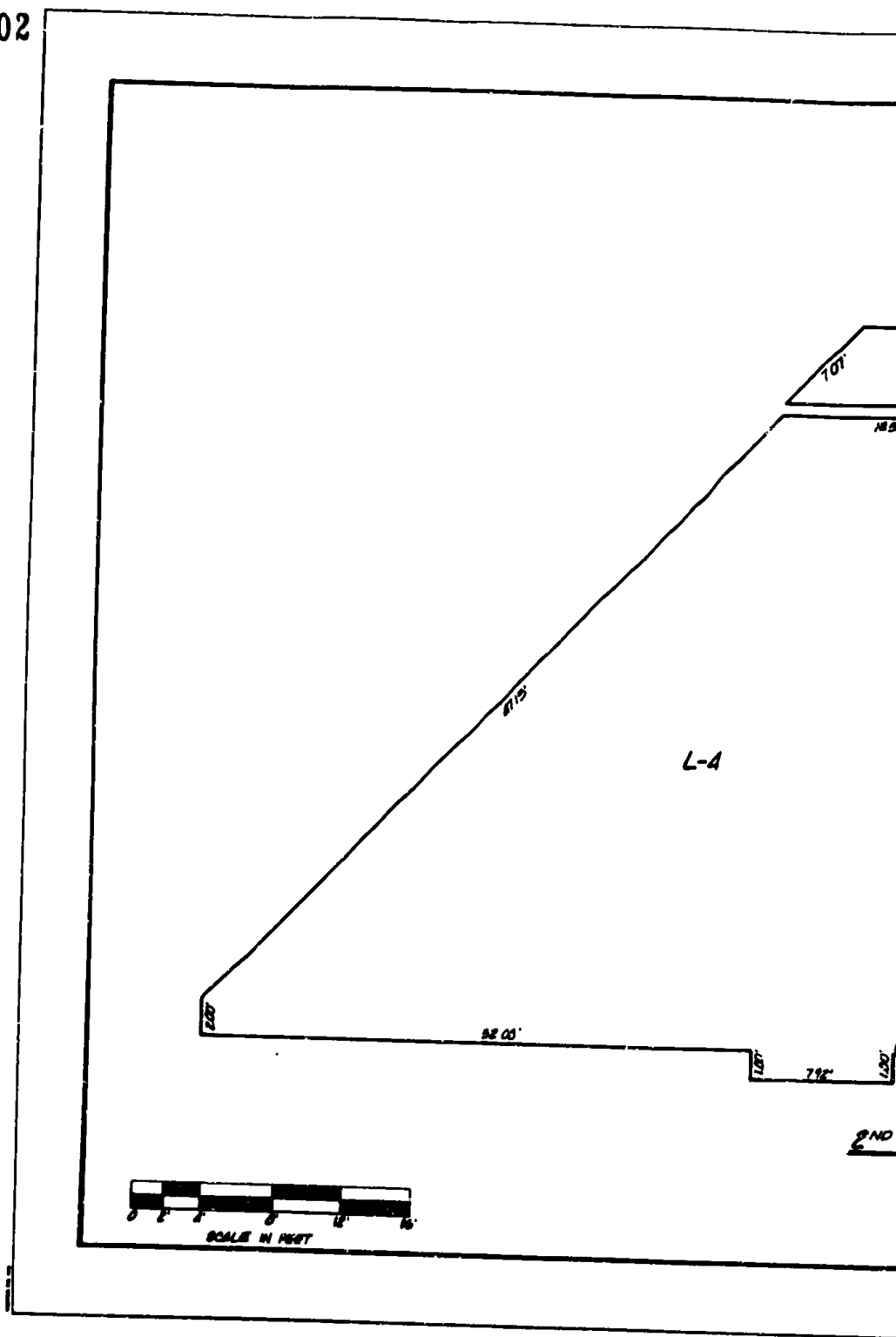
# CONDOMINIUM PLA

SHEET 3 OF 4 SHEETS



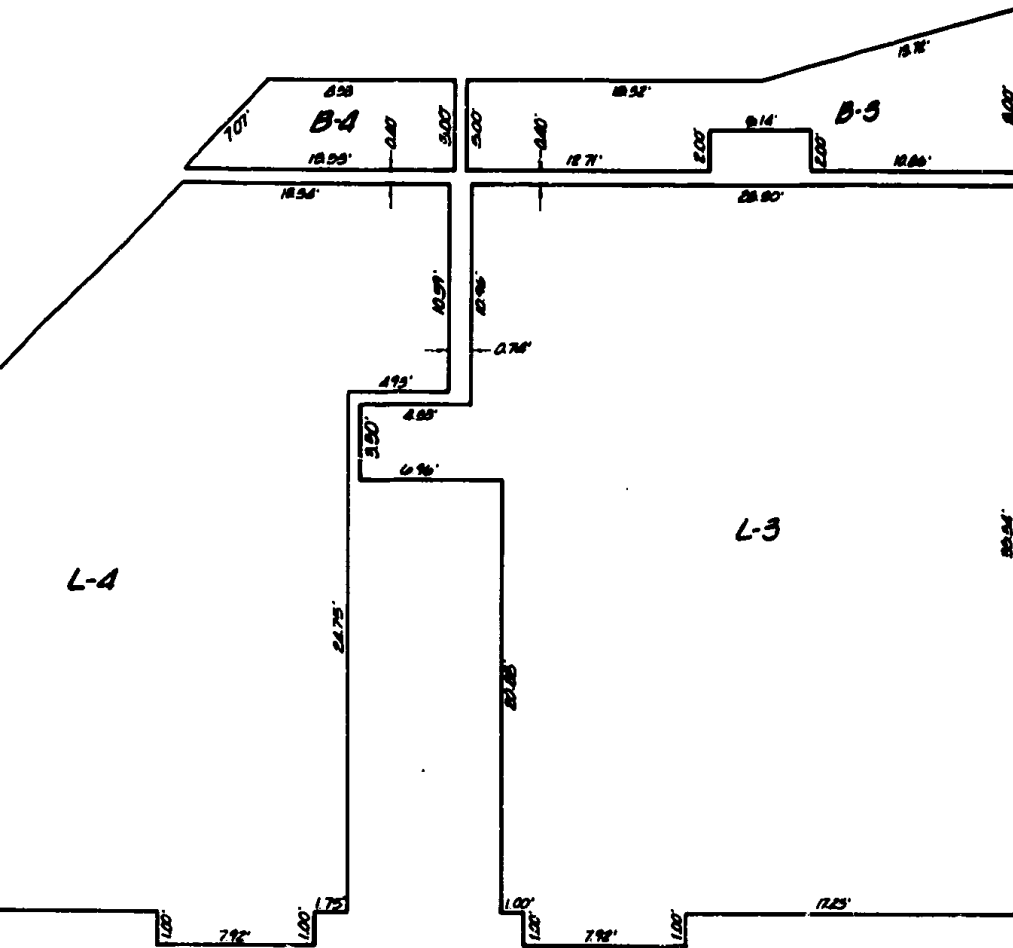
1<sup>ST</sup> FLOOR PLAN- UNIT 344

HOWARD AND BROWN ENGINEERING, INC.  
CONSULTING ENGINEERS  
101 N. 10TH ST. • OAKLAND, CALIF. 94612 • (415) 434-4400  
© 87-871



# CONDOMINIUM PLAI

SHEET 4 OF 4 SHEETS



2ND FLOOR PLAN

HOWARD and BROWN ENGINEERING, INC.  
 100 N. 10TH ST. • SUITE 100 • SAN ANTONIO, TX 78205 • (512) 441-1000  
 © 87-871

RECORDING REQUESTED BY  
CHICAGO TITLE COMPANY  
AND WHEN RECORDED MAIL TO

ROBERT HICKMAN  
2272 HARTFORD STREET  
SAN DIEGO, CA. 92110

F8.  
5P

9977

DOC # 2007-0334728



MAY 16, 2007 2:31 PM

OFFICIAL RECORDS  
SAN DIEGO COUNTY RECORDER'S OFFICE  
GREGORY J. SMITH, COUNTY RECORDER  
FEES: 19.00  
PAGES: 5



Escrow No. -  
Order No. 78041017 - P11

2007-0334728

AMENDMENT TO CONDOMINIUM PLAN/2251 MENDOCINO BOULEVARD CONDOMINIUM PLAN

AMENDMENT TO CONDOMINIUM PLAN RECORDED NOVEMBER 22, 1988 AS FILE NO. 88-601277 OF  
OFFICAL RECORDS

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION  
(Additional recording fee applies)

CPFR4 --11/13/96bk

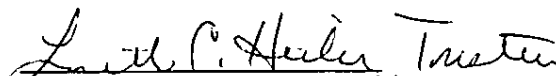
## Certificate of Consent by Owners

We, the undersigned, being all of the record owners of the real property described as follows: lot 38 and 39, Block 12, Loma Alta no.1 in the city of San Diego, County of San Diego, State of California according to map thereof no. 1078 file in office of the county recorder of San Diego County, August 28, 1907.

We do hereby consent to the recording of this amendment to the condominium plan recorded November 2, 1988 as document #88-601277 of official records.

SAN DIEGO COUNTY

  
Robert D. Hickman, Trustee

  
Lanette C. Hickman, Trustee

Notary Acknowledgement Attached

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

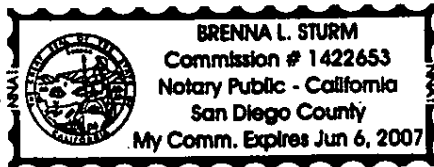
County of San Diego

} ss.

On May 16, 2007, before me, Brenna L. Sturm, notary public  
Date Name and Title of Officer (e.g., Jane Doe, Notary Public)  
 personally appeared Robert D. Hickman 3 Lanette C. Hickman,  
Name(s) of Signer(s)

- ☐ personally known to me  
☒ 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.



Place Notary Seal Above

WITNESS my hand and official seal.

Brenna L. Sturm  
 Signature of Notary Public

**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: Certificate of Consent by OwnersDocument Date: \_\_\_\_\_ Number of Pages: 1

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

**Capacity(ies) Claimed by Signer**

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

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

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

**RIGHT THUMBPRINT  
OF SIGNER**  
 Top of thumb here

# 2251 MENDOCINO BOULEVARD CONDOMINIUM PLAN

## AMENDMENT NOTES:

THIS SHEET AMENDS SHEET 2 OF THE "2251 MENDOCINO BOULEVARD CONDOMINIUM PLAN" AS FOLLOWS:

1. ALL STORAGE AREAS "S" ARE DELETED FROM THE ORIGINAL PLAN.
2. GARAGE "G-1" IS RECONFIGURED AS SHOWN HEREON.

REFERENCE IS MADE TO THE ORIGINAL PLAN FOR ALL OTHER INFORMATION, INCLUDING, BUT NOT LIMITED TO, ALL OTHER BEARINGS, DISTANCES, NOTES AND DESIGNATIONS AS SHOWN THEREON.

Robert D. Hickman, Trustee

Robert D. Hickman, Trustee

Lanette C. Hickman, Trustee

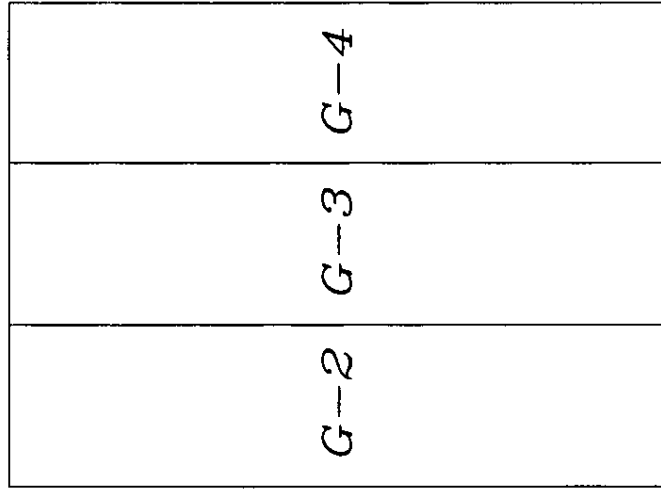
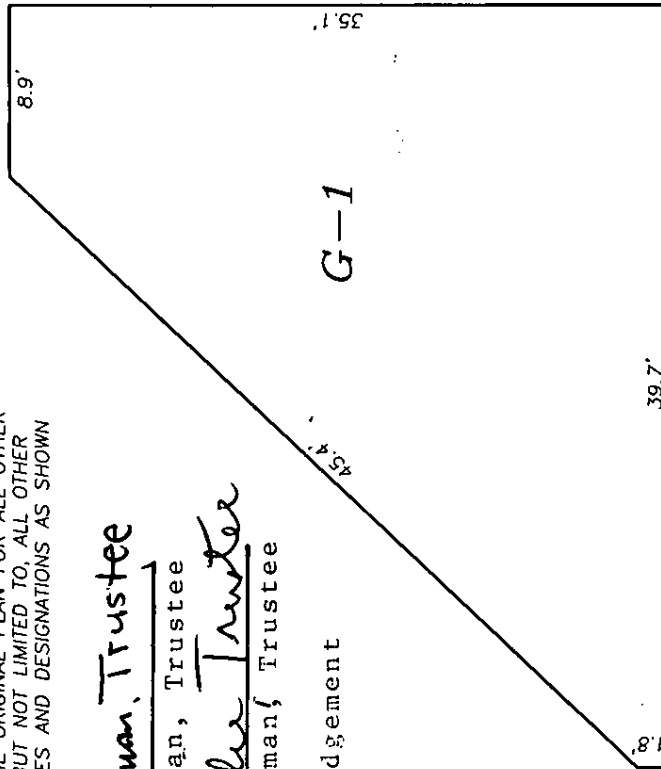
Lanette C. Hickman, Trustee

Notary Acknowledgement  
Attached



Robert J. Bateman  
ROBERT J. BATEMAN, P.L.S. 7046

DATED: APRIL 26, 2007



9980

BASEMENT/GARAGE FLOOR PLAN

SAN DIEGO LAND SURVEYING & ENGINEERING INC.

AMENDED SHEET 2 OF 4 SHEETS

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of

San Diego

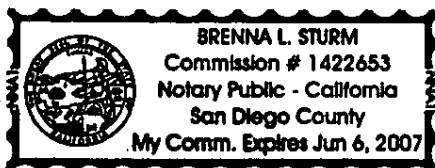
} ss.

On May 4, 2007, before me, Brenna L. Sturm, notary public,  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Robert D. Hickman 3 Lanette C. Hickman,  
Name(s) of Signer(s)

- ☐ personally known to me  
☒ 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.



Place Notary Seal Above

WITNESS my hand and official seal.

Brenna L. Sturm  
Signature of Notary Public

**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: Condominium Plan

Document Date: April 26, 2007 Number of Pages: 1

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

**Capacity(ies) Claimed by Signer**

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

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

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

<b>RIGHT THUMBPRINT OF SIGNER</b>
Top of thumb here

Recording requested by:  
CHICAGO TITLE COMPANY

1829

DOC # 2007-0386986



Recording Requested By:

JUN 08, 2007 8:00 AM

When Recorded Mail To:

OFFICIAL RECORDS  
SAN DIEGO COUNTY RECORDER'S OFFICE  
GREGORY J. SMITH, COUNTY RECORDER  
FEES: 22.00  
PAGES: 6

2251 MENDOCINO CONDOMINIUMS  
C/O CCI  
7777 ALVARADO RD #615  
LA MESA CA 91941-3648

*Handwritten initials: PB and GP*



2007-0386986

*Handwritten number: 7804017-11*

SPACE ABOVE FOR RECORDER'S USE

Index as: "AMENDMENT TO CONDOMINIUM PLAN"

**CERTIFICATE OF CONSENT TO RECORDATION  
PURSUANT TO CIVIL CODE SECTION 1351(e)**

**SECOND AMENDMENT TO CONDOMINIUM PLAN**

**"2251 MENDOCINO CONDOMINIUMS"**

*(Original Condominium Plan recorded NOVEMBER 22, 1988  
as Document No. 1988-601277  
First Amendment to Condominium Plan recorded May 16, 2007  
as Document No. 2007-0334728)*

**CITY OF SAN DIEGO, SAN DIEGO COUNTY, CALIFORNIA**

811^ sig\_cp-

The undersigned, **ROBERT HICKMAN AND LANETTE HICKMAN, TRUSTEES OF THE HICKMAN FAMILY TRUST DATED NOVEMBER 30, 2005**, being the record owner of the real property hereinbelow described, does hereby consent to the recordation of this Second Amendment to Condominium Plan (hereafter "*Second Amended Plan*") pursuant to California Civil Code Section 1351(e), with reference to the following:

1. **REAL PROPERTY COVERED:**

The Original Plan (defined below) and this Second Amended Plan cover that certain real property located in the City of San Diego, County of San Diego, State of California, the legal description of which is as follows:

**LOTS 38 AND 39, BLOCK 12 OF LOMA ALTA NO. 1, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 1078, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, AUGUST 28, 1907.**

2. **ORIGINAL PLANS:**

The Record Owner intends by recordation of this instrument to amend that certain condominium plan titled "**CONDOMINIUM PLAN**" recorded in the Office of the San Diego County Recorder, California on **NOVEMBER 22, 1988**, as Document No. **1988-601277** and amended on **MAY 16, 2007**, as Document No. **2007-0334728**, (the "*Original Plan*"), as follows:

3. **AMENDMENTS:**

3.1. **SHEET 2 OF 4 SHEETS** of the Original Condominium Plan is hereby amended by the attached **AMENDED SHEET 2 of 4 SHEETS**, for the purposes of correcting the dimensions of the Garage G-1 shown thereon and to include the three (3) Storage areas (on the Original Plan) within the G-1 area.

3.2. Except as expressly amended herein, the Original Plan shall remain in full force and effect.

**4. DECLARATION:**

The Original Plan and this Second Amended Plan are subject to the terms and conditions stated in that certain ***DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR 2251 MENDOCINO BOULEVARD*** ("Original Declaration") recorded on ***NOVEMBER 22, 1988*** as File No. ***1988-601278***, as amended by that certain ***"FIRST AMENDMENT AND SUPERSEDING DECLARATION OF RESTRICTIONS FOR '2251 MENDOCINO CONDOMINIUMS,"*** recorded concurrently with this Second Amended Plan.

IN WITNESS WHEREOF, the undersigned, being Declarant herein and under the Original Declaration, hereby executes this Second Amendment on

June 6, 2007

ROBERT HICKMAN AND LANETTE HICKMAN,  
TRUSTEES OF THE HICKMAN FAMILY TRUST  
DATED NOVEMBER 30, 2005 SD, INC., A  
CALIFORNIA CORPORATION

By: Robert Hickman, Trustee  
ROBERT HICKMAN  
TRUSTEE

By: Lanette Hickman, Trustee  
LANETTE HICKMAN  
TRUSTEE

*(Please Attach Proper Notary Certificate(s) of Acknowledgment)*

**ALL-PURPOSE ACKNOWLEDGMENT**

State of California

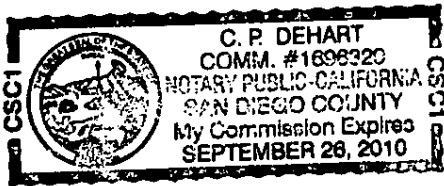
County of San Diego

On June 6, 2007 before me, C.P. DeHart, a Notary Public,  
 personally appeared Robert Hickman and Lorette Hickman

☒ personally known to me

OR

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



WITNESS my hand and official seal.

A large, stylized handwritten signature in black ink, appearing to be "C. P. DeHart", written over a horizontal line.

jurat.doc (10/95)

# 2251 MENDOCINO BOULEVARD CONDOMINIUM PLAN

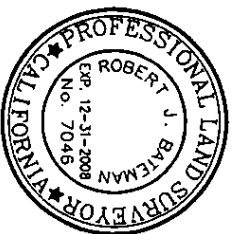
## AMENDMENT NOTES:

THIS SHEET AMENDS SHEET 2 OF THE "2251 MENDOCINO BOULEVARD CONDOMINIUM PLAN" AS FOLLOWS:

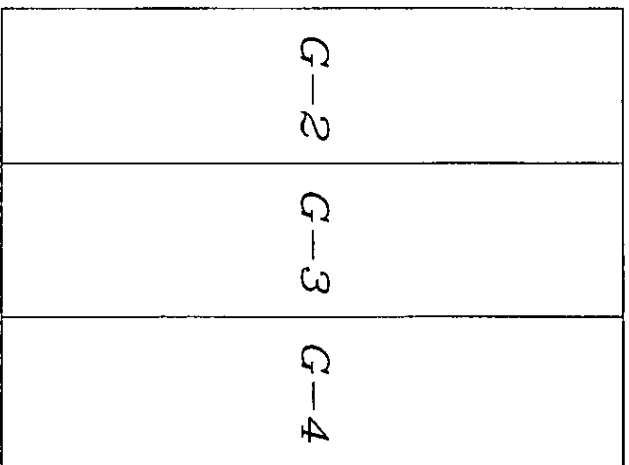
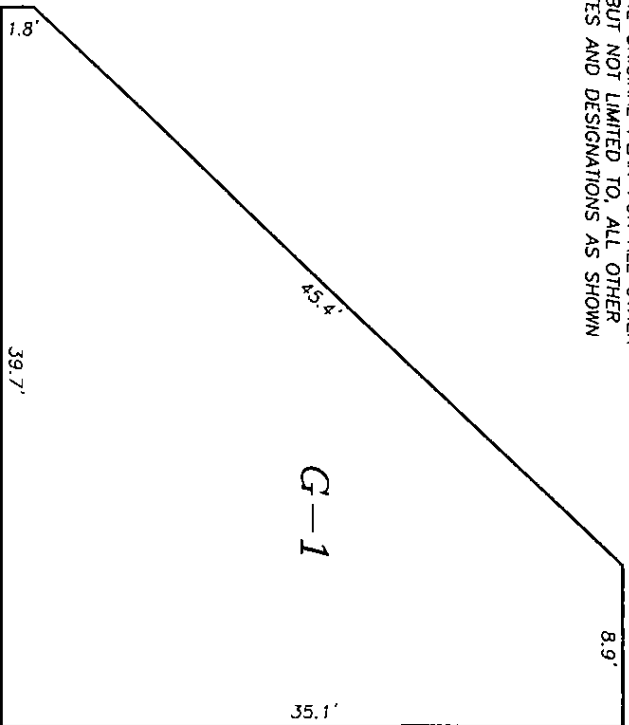
1. ALL STORAGE AREAS "S" ARE DELETED FROM THE ORIGINAL PLAN.
2. GARAGE "G-1" IS RECONFIGURED AS SHOWN HEREON.

REFERENCE IS MADE TO THE ORIGINAL PLAN FOR ALL OTHER INFORMATION, INCLUDING, BUT NOT LIMITED TO, ALL OTHER BEARINGS, DISTANCES, NOTES AND DESIGNATIONS AS SHOWN THEREON.

ROBERT J. BATEMAN, P.L.S. 7046  
DATED: APRIL 26, 2007



1834



BASEMENT/GARAGE FLOOR PLAN

SAN DIEGO LAND SURVEYING & ENGINEERING INC.

AMENDED SHEET 2 OF 4 SHEETS

88 601278

1204

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OFFICIAL RECORDS  
OF SAN DIEGO COUNTY, CA.

88 NOV 22 PM 3:20

VERA L. LYLE  
COUNTY RECORDER

Recording Requested By  
and  
When Recorded Return To:

The Law Office of Frank DeSantis  
1510 Front Street, Suite 300  
San Diego, California 92101

RF	46
AR	43
MG	2

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

2251 Mendocino Boulevard  
(condominium/Planned Unit Development)

OFFICIAL RECORDS, SAN DIEGO COUNTY, VERA L. LYLE, RECORDER

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## SUBORDINATION AGREEMENT

PUBLIC RECORDS, SAN DIEGO COUNTY, VERA L. LYNE, INCORPORATED

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made as of August 16, 1988, by Benito Balistreri and Margherita Balistreri, Husband and Wife, (hereinafter referred to as "Declarant"), with reference to the following:

**RECITALS:**

A. Declarant is the owner of that certain real property located in The City of San Diego, County of San Diego, State of California which is more particularly described as:

Lots 38 and 39, block 12, Loma Alta 2251 Mendocino Boulevard, San Diego, California, according to map thereof No. 1078 filed in the Office of the County Recorder of San Diego County, California.

(hereinafter called the "Condominium Property").

B. Declarant has or intends to improve the Condominium Property by establishing thereon a Condominium project under the provisions of the California Condominium Act providing for separate title to Living Units (hereinafter defined) appurtenant to which will be an undivided fractional interest in the Common Area (hereinafter defined). The Living Unit portion of the condominium project will be of Spanish Mediterranean architectural style and will consist of two (2) floor plans of approximately 1000 square feet to 1070 square feet.

C. The development of the Condominium Property is a four unit Condominium project. The Common Area amenities will consist of a laundry room, hallways, stairways, driveways, landscaping, and garages.

D. Before selling or conveying any interests in the Condominium Property, Declarant wishes to subject the Condominium Property in accordance with a common plan to certain covenants, conditions and restrictions for the

FICIAL RECORDS, SAN DIEGO COUNTY, VERA L. JYLF, RECORDER

benefit of Declarant and any and all present and future owners of the Condominium Property.

NOW, THEREFORE, Declarant hereby declares that all of the Condominium Property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Condominium Property and be binding on all parties having any right, title or interest therein, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE IDEFINITIONS

Section 1.1. "Articles" shall mean and refer to the Articles of Incorporation of the Association as they may from time to time be amended.

Section 1.2. "Association" shall mean and refer to 2251 Mendocino Boulevard Homeowner's Association, a California Nonprofit Mutual Benefit Corporation, its successors and assigns.

Section 1.3. "Board" or "Board of Directors" shall mean and refer to the governing body of the Association.

Section 1.4. "Boundaries" shall mean that in interpreting deeds and plans, the then existing physical boundaries of a Living Unit, whether in its original state or reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown on the plan or deed and those of the building.

Section 1.5. "Bylaws" shall mean and refer to the Bylaws of the Association as they may from time to time be amended.

Section 1.6. "Common Area" shall mean and refer to all portions of the Condominium Property not located within a Living Unit.

Section 1.7. "Common Expenses" shall mean and include the actual and estimated expenses of operating the Condominium Property and Recreation Area and any reasonable reserve for such purposes.

Section 1.8. "Condominiums" shall mean and refer to a fee simple estate in the Condominium Property as defined in Section 783 of the California Civil Code and shall consist of a separate interest in a Living Unit and an undivided fractional interest as tenant in common in the Common Area.

Section 1.9. "Condominium Building" shall mean a residential structure containing condominium Living Units

Section 1.10. "Condominium Plan" shall mean and refer to the Condominium Plan or Plans recorded pursuant to California Civil Code Section 1351 covering the Condominium Property, or portion thereof, including such amendments thereto as may from time to time be recorded.

Section 1.11. "Condominium Property" shall mean and refer to that certain real property located in The City of San Diego, County of San Diego, State of California, more particularly described as:

Lots 38 and 39, block 12, Loma Alta 2251 Mendocino Boulevard, San Diego, California, according to map thereof No. 1078 filed in the Office of the County Recorder of San Diego County, California.

and such additions as may be annexed thereto as provided in the Declaration.

Section 1.12. "Declarant" shall mean and refer to Benito Balistreri and Margherita Balistreri, Husband and Wife its successors and assigns if such successors and assigns should acquire one or more undeveloped lots in the Condominium Property (or property which may be annexed thereto as provided in the Declaration) from Declarant for the purposes of development.

Section 1.13. "Declaration" shall mean and refer to this enabling Declaration of Covenants, Conditions and Restrictions as it may from time to time be amended.

Section 1.14. "Eligible Insurer or Guarantor" shall mean and refer to an insurer or governmental guarantor who has requested notice from the Association of those matters of which such insurer or guarantor is entitled to notice by reason of the Declaration or the Bylaws.

Section 1.15. "Eligible Mortgage Holder" shall mean and refer to a holder of a first Mortgage on a Condominium who has requested notice from the Association of those matters of which such holder is entitled to notice by reason of the Declaration or the Bylaws.

Section 1.16. "Exclusive Use Area" shall mean and refer to those portions of the Common Area to which an

exclusive right to use is granted to an Owner as shown and described on the Condominium Plan and shall consist of , Balconies, garages, and storage spaces.

Section 1.17. "FHA" shall mean and refer to the Federal Housing Administration.

Section 1.18. "Living Unit" shall mean and refer to those portions of the Condominium Property shown and described as such on the Condominium Plan; provided, however, that the following are not part of any Living Unit: Bearing walls, columns, floors, roofs, foundations, central heating, central refrigeration and central air conditioning equipment, reservoir tanks, pumps and other central services, pipes, ducts, flues, chutes, conduits, wires and other utility installations, wherever located, except the outlets thereof when located in the Living Unit.

Section 1.19. "Member of Association" shall mean and refer to an Owner as defined in Section 1.22, Article I herein.

Section 1.20. "Mortgage" shall mean and refer to a deed of trust as well as a mortgage.

Section 1.21. "Mortgagee" shall mean and refer to a beneficiary under or holder of a deed of trust as well as a mortgagee.

Section 1.22. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Condominium which is part of the Project, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 1.23. "Project" shall mean and refer to the entire real property above described, including all structures and improvements erected or to be erected thereon, and such additions as may hereafter be brought within the jurisdiction of the Association.

Section 1.24. "VA" shall mean and refer to the Veterans Administration.

ARTICLE IIMEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

Section 2.1. Membership. Every Owner of a Condominium shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Condominium. Each Owner is obligated to comply with the Declaration, Articles and Bylaws and rules and regulations adopted by the Board. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of the Condominium to which it is appurtenant, and then only to the purchaser of such Condominium. Any attempt to make a prohibited transfer is void. In the event the Owner of any Condominium should fail or refuse to transfer the membership registered in his name to the purchaser of his Condominium, the Association shall have the right to record the transfer upon its books and thereupon the old membership outstanding in the name of the seller shall be null and void.

Section 2.2 Voting Rights. The Association shall have two (2) classes of voting membership.

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

Class B. Class B member(s) shall be Declarant and shall be entitled to three (3) votes for each Condominium owned. The Class B membership shall cease and be converted to a Class A membership on the happening of the following:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership.

ARTICLE IIICOVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION

Section 3.1. Creation of Lien and Personal Obligation of Assessments. The Declarant, for each Condominium owned within the Project, hereby covenants, and each Owner of any Condominium by acceptance of a deed therefor, whether or not it shall be so expressed in the deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments, which shall include an adequate reserve fund for the periodic maintenance, repair and replacement of the Common Area, and (ii) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual costs and reasonable attorney's fees, shall (except as otherwise provided in Section 3.4 below) be a charge on the Condominium and shall be a continuing lien upon the Condominium against which each such assessment is made, the lien to become effective upon recordation of a notice of assessment. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Condominium at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them.

Section 3.2. Purpose of Assessments. These assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of all the residents in the entire Project, and for the improvement and maintenance of the Common Area for the common good of the Project and to reimburse the Association for the costs incurred in bringing an Owner into compliance with the Articles, Bylaws, Declaration and rules and regulations adopted by the Board.

Section 3.3. Maximum Annual Assessment. Until January 1st of the year immediately following the conveyance of the first Condominium to an Owner, the maximum annual assessment shall be \$1,224.00 for each Condominium.

(a) From and after January 1st of the year immediately following the conveyance of the first Condominium to an Owner, the maximum annual assessment may

PUBLIC RECORDS, SAN DIEGO COUNTY, MENDOCINO COMMENT

Condominium to an Owner, the maximum annual assessment may be increased each year without a vote of the membership by not more than ten percent (10%) above the maximum assessment for the previous year.

(b) From and after January 1st of the year immediately following the conveyance of the first Condominium to an Owner, the maximum annual assessment may be increased greater than ten percent (10%) by the vote or written assent of fifty-one percent (51%) of each class of Members; provided, however, that following the conversion of the Class B membership to Class A membership, the maximum annual assessment may be increased more than ten percent (10%) above the maximum annual assessment for the previous year by the vote or written assent of (i) fifty-one percent (51%) of the total voting power of Members of the Association, and (ii) at least fifty-one percent (51%) of the total voting power of Members of the Association other than Declarant.

(c) The Board may fix the annual assessment at an amount not in excess of the maximum.

**Section 3.4. Special Assessments.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the vote or written assent of fifty-one percent (51%) of each class of Members; provided, however, that following the conversion of the Class B membership to Class A membership, any such assessment shall have the vote or written consent of (i) fifty-one percent (51%) of the total voting power of members of the Association, and (ii) fifty-one percent (51%) of the total voting power of the Members of the Association other than Declarant. The Association may also impose a special assessment against any Member to reimburse the Association for costs incurred in bringing a Member and his Condominium into compliance with the provisions of the Declaration, any amendments thereto, the Articles, the Bylaws and the Association rules and regulations, which assessment may be imposed upon the vote of the Board after notice and an opportunity for a hearing; provided, however, such special assessment (other than an assessment relating to the collection of assessments) shall not constitute a lien against the Condominium owned by the Member so assessed

and no such special assessment shall be effective unless the Member receives fifteen (15) days' prior written notice (given by any method reasonably calculated to give actual notice) of the proposed special assessment and the reasons therefor, and is given an opportunity to be heard, either orally or in writing, before the Board not less than five (5) days before the effective date of the special assessment.

Section 3.5. Notice and Quorum for Any Action Authorized Under Section 3.3 or 3.4. Any action authorized under Section 3.3 or 3.4. above requiring the vote of Members, shall be taken at a meeting called for that purpose, written notice of which shall be sent to all Members not less than ten (10) nor more than ninety (90) days in advance of the meeting; provided, however, if the notice is given by mail and the notice is not mailed by first class, registered or certified mail, then notice shall be given not less than twenty (20) days before the meeting. A quorum for such meeting shall be a majority of the voting power of the Members of the Association. If the required quorum is not present, twenty-five percent (25%) of the voting power of the membership of the Association; provided however, if (i) the meeting so adjourned is an annual meeting, and (ii) the adjourned annual meeting is actually attended in person or by proxy by less than thirty-three and one-third percent (33-1/3%) of the voting power of the membership of the Association, then the only matters which may be voted upon at the subject meeting are matters notice of the general nature of which was duly given. If the proposed action is favored by a majority of the votes cast at such meeting but such vote is less than the requisite fifty-one percent (51%) of each class of Members, Members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by the appropriate officer of the Association not later than thirty (30) days following the date of such meeting.

Section 3.6. Rate of Assessments. Both annual and special assessments (other than (i) special assessments imposed by reason of non-compliance with the Condominium documents, or (ii) special assessments to raise funds for the rebuilding or major repair of a portion of the structural Common Area) shall be levied upon each Condominium at a uniform rate, and may be collected on a monthly basis or otherwise as determined by the Board. A special assessment against Members to raise funds for the rebuilding or major repair of a portion of the structural

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Common Area shall be levied upon the basis of the ratio of the square footage of the floor area of the Living Unit of the Condominium to the total square footage of the aggregate floor area of the Living Units in all Condominiums to be assessed. A special assessment against a Member to reimburse the Association for costs incurred in bringing the Member and his Condominium into compliance with the provisions of the Condominium documents shall be assessed only against that Member and his Condominium. Any assessment not paid within thirty (30) days after the due date shall be delinquent and shall bear interest at the rate of ten percent (10%) per annum from the due date until paid in full. A late charge may be imposed by the Board.

Section 3.7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Condominiums on the first day of the month following the conveyance of the first Condominium to an Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual assessment against each Condominium at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board.

Section 3.8. Effect of Non-Payment of Assessments; Remedies of the Association. Any annual or special assessment made in accordance with this Declaration shall be a debt of the Owner of a Condominium from the time the assessment is due. At any time after any assessments levied by the Association affecting any Condominium have become delinquent, the Board may file for recording in the Office of the San Diego County Recorder a notice of delinquency as to such Condominium, which notice shall state all amounts which have become delinquent with respect to such Condominium and the costs (including attorney's fees) and interest which have accrued thereon, the amount of any assessments relating to such Condominium which is due and payable although not delinquent, a description of the Condominium with respect to which the delinquent assessments are owed, and the name of the record or reputed record Owner of such Condominium. Such notice shall be signed by the President or Vice President and Secretary or Assistant Secretary of the Association.

Immediately upon recording of any notice of delinquency pursuant to the foregoing provisions of this Section, the amounts delinquent, as set forth in such notice, together with the costs (including attorney's fees) and interest accruing thereon, shall (except as otherwise provided in Section 3.4 above) be and become a lien upon the Condominium described therein, which lien shall also secure all other payments and/or assessments which shall become due and payable with respect to the Condominium following such recording, and all costs (including attorney's fees) and interest accruing thereon. The lien shall continue for a period of one year unless extended for a period of an additional year by the recording of a written extension by the Association. When a notice of assessment has been recorded, the assessment shall constitute a lien on each respective Condominium prior and superior to all other liens, except (i) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (ii) the lien or charge of any first Mortgage of record.

In the event the delinquent assessments and all other assessments which have become due and payable with respect to the same Condominium, together with all costs (including attorney's fees) and interest which have accrued on such amounts, are fully paid or otherwise satisfied prior to the completion of any sale held to foreclose the lien provided for in this Article, the Board shall record a further notice, similarly signed, stating the satisfaction and releasing of the lien.

Each assessment lien may be foreclosed in the same manner as the foreclosure of a mortgage upon real property under the laws of the State of California, or may be enforced by sale pursuant to Sections 2924, 2924(b) and 1356 of the California Civil Code, and to that end a power of sale is hereby conferred upon the Association. The Association, acting on behalf of the foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid assessments, interest and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

Section 3.9. Subordination of the Lien to First Deeds of Trust and First Mortgages. The lien of the assessments, interest, costs and attorney's fees provided for herein shall be subordinate to the lien of any first Mortgage upon any Condominium. Sale or transfer of any Condominium shall not affect the assessment lien. However, the sale or

transfer of any Condominium pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Condominium from lien rights for any assessments thereafter becoming due. Where the Mortgagee of a first Mortgage of record or other purchaser of a Condominium obtains title to the same as a result of foreclosure, such acquirer of title, his successors and assigns, shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Condominium which became due prior to the acquisition of title to such Condominium by such acquirer. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from all the Condominiums, including such acquirer, his successors and assigns.

Section 3.10. Treatment of Monetary Penalty. A monetary penalty imposed by the Association as a disciplinary measure for failure of a Member to comply with the Declaration or Bylaws or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to the Common Area for which the Member was allegedly responsible or in bringing the Member and his Condominium into compliance with the Declaration or Bylaws, shall not be treated as an assessment which may become a lien against the Member's Condominium enforceable as provided in Section 1356 of the Civil Code. This Section shall not apply to charges imposed against an Owner which are reasonable late payment penalties for delinquent assessments nor charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorney's fees) in its efforts to collect delinquent assessments.

Section 3.11. Estoppel Certificate. The Association shall furnish, upon demand by any person, a certificate signed by an officer of the Association setting forth whether the assessments on a specified Condominium have been paid. A properly executed certificate of the Association as to the status of assessments on a Condominium is binding upon the Association as of the date of its issuance.

Section 3.12. Personal Liability of Owner. No Owner may exempt himself from personal liability for assessments levied by the Association, nor release the Condominium owned by him from the liens and charges hereof by waiver of the

use or enjoyment of any of the Common Area or by abandonment of his Condominium.

Section 3.13. Taxation of Association. In the event that any taxes are assessed against the Common Area or the person property of the Association, rather than against the individual Condominiums, said taxes shall be added to the annual assessments and, if necessary, a special assessment may be levied against the Condominium in an amount equal to said taxes, to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment.

Section 3.14. Capitalization of Association. Upon acquisition of record title to a Condominium from Declarant, each Owner shall contribute to the capital of the Association an amount equal to one-sixth (1/6) the amount of the then annual assessment for that Condominium as determined by the Board. This amount shall be deposited by the buyer into the purchase and sale escrow and disbursed therefrom to the Association. Amounts paid pursuant to this Section 3.14 shall not be considered as advance payments of regular assessments and are in addition to and not in lieu of annual and special assessments of the Association.

#### ARTICLE IV

##### RESPONSIBILITIES OF MAINTENANCE

Section 4.1. Owner Maintenance of Living Unit. Each Owner of a Condominium shall be responsible for the maintenance and repair of the glass doors and windows enclosing his Living Unit, the interior of his Living Unit and all appliances whether "built-in" or freestanding within the Living Unit, the interior surfaces of the Living Unit, and shall also be responsible for the maintenance and repair of the plumbing, electrical and heating systems servicing his Living Unit and located within the outside perimeter of the exterior bearing walls, floors and ceilings thereof, including television cable equipment and connections, Living Unit, and all appliances and equipment located within or without said Living Unit, so long as those systems are used exclusively by such Owner and not in common. Each Owner shall also be responsible for the maintenance and repair of the or Balcony and the storage space within the garage which he has the exclusive right to use, including the interior surfaces of any fences or railing (but not the exterior surfaces), and shall make such

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repairs as the Board deems necessary to preserve the attractive appearance and protect the value thereof.

Section 4.2. Owner's Grant of Easements. Each Owner hereby grants easements to other Owners to enter into each Living Unit and to have utility companies enter into Living Units to repair the plumbing, heating and electrical systems located thereon, subject to the following limitations. Entry into a Living Unit for emergency purposes may be immediate; provided, however, such entry shall be made with as little inconvenience as possible to the Owner and any damage caused thereby shall be repaired by the entering party. Entry into a Living Unit for other than emergency repairs shall be made only after three (3) days notice has been given to the Owner and shall be made with as little inconvenience as possible to the Owner and any damage caused thereby shall be repaired by the entering party.

Section 4.3. Association Maintenance of Common Area. Except as otherwise provided herein, the Association acting through the Board and its officers shall have the sole and exclusive right and duty to manage, operate, control, repair, replace or restore all of the Common Area or any portion thereof, together with the improvements, trees, shrubbery, driveways, plants and grass thereon, including all vehicular parking spaces, even though within an Exclusive Use Area, all as more fully set forth in this Declaration, the Articles and the Bylaws.

Section 4.4. Association Right of Entry. For the purpose of performing the maintenance of the Common Area or for any other purpose reasonably related to the performance by the Board of its responsibilities under this Declaration, the Association agents and employees shall have the right to effect emergency repairs. For other than emergency repairs, the Association agents and employees shall have the right to enter any Living Unit or any Exclusive Use Area portion of the Common Area to effect repairs, improvements, replacements or maintenance which the Association, after approval by two-thirds (2/3) vote of the Board, reasonably deems necessary. Such entry shall be made with as little inconvenience to the Owner as possible and any damage caused thereby shall be repaired by the Association. Further, such entry for other than emergency repairs shall be made only after no less than three (3) days notice has been given to the Owner.

Section 4.5. Association Right to Adopt Rules. The Board shall have the right to adopt reasonable rules not inconsistent with the provisions contained in this Declaration, and to amend the same from time to time relating to the use of the Common Area and the recreational and other facilities situated thereon by Owners and by their tenants or guests, and the conduct of such persons with respect to automobile parking, outside storage of boats, trailers, bicycles and other objects, disposal of waste materials, drying of laundry, and other activities which, if not so regulated, might detract from the appearance of the community or offend or cause inconvenience or danger to persons residing or visiting therein. Such rules may provide that the Owner of a Condominium whose occupant leaves property on the Common Area in violation of the rules may be assessed (on a non-lien basis) to cover the expense incurred by the Association in removing such property and storing or disposing thereof, after appropriate notice and an opportunity for a hearing before the Board and a two-thirds (2/3) vote of approval by the Board. The Board may suspend the voting rights and right to use facilities located on the Common Area of a Member who is in default in the payment of any assessment for any period during which such assessment remains unpaid, and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations, after reasonable written notice and an opportunity for a hearing before the Board as set forth in the Bylaws which satisfies the minimum requirements of Section 7341 of the California Corporations Code

Sections 4.6. Association Right to Grant Permits. The Board shall have the right to grant permits, licenses and easements over, under, upon and across the Common Area for utilities, roads and other purposes reasonably necessary or useful for the property maintenance or operation of the Project.

#### ARTICLE V

##### ARCHITECTURAL CONTROL

No building, fence, wall or other structure or improvement shall be commenced, erected, placed or altered upon the Common Area (including the Patio Exclusive Use Area) until the location and complete plans and specifications showing the nature, kind, shape, height and materials, including the color scheme, have been submitted to and approved in writing as to harmony of external design

and location of surrounding structures and topography by the Board, or by an architectural committee appointed by the Board and composed of three (3) or more, but not to exceed five (5), representatives. In the event the Board or its designated committee fails to approve or disapprove such locations, plans and specifications or other requests within thirty (30) days after the submission thereof to it, then such approval will not be required, provided that any structure or improvement so erected or altered conforms to all of the conditions and restrictions herein contained, and is in harmony with similar structures erected within the Project. The grade, level or drainage characteristics of the Condominium Property or any portion thereof, shall not be altered without the prior written consent of the Board or its designated committee. The provisions of this Article shall not apply to the initial construction by Declarant of Condominiums or other improvements to the Condominium Property and neither the Board shall have any authority or right to approve or disapprove the initial construction by Declarant of Condominiums or other improvements to the Condominium Property.

#### ARTICLE VI

##### SEPARATION OF INTEREST AND PROHIBITION OF PARTITION

Section 6.1. Separation of Interest. No Owner may sell, assign, lease or convey (i) his interest in the Common Area separate and apart from his Living Unit, nor (ii) his interest in any Exclusive Use Area separate and apart from his interest in the Common Area and Living Unit.

Section 6.2. Prohibition of Partition. Each of the Owners of a Condominium, whether such ownership is in fee simple or as a tenant in Common, is hereby prohibited from partitioning or in any way severing or separating such ownership from any of the other ownerships in the Condominium Property, except upon the showing that: (i) more than three (3) years before the filing of the action, the Project was damaged or destroyed so that a material part thereof was unfit for its use and the Project has not been rebuilt or repaired substantially to its state prior to its damage or destruction, or (ii) that three fourths (3/4) or more of the Project has been destroyed or substantially damaged, and that Owners holding in aggregate more than a fifty percent (50%) interest in the Common Area are opposed to repair or restoration of the Project, or (iii) that the Project has been in existence in excess of fifty (50) years,

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that it is obsolete and uneconomic, and that Owners holding in aggregate more than a fifty percent (50%) interest in the Common Area are opposed to repair or restoration of the Project; provided, however, that if any Condominium shall be owned by two (2) or more co-tenants as tenants in common or as joint tenants, nothing herein shall be deemed to prevent a judicial partition as between such co-tenants and no Condominium may be partitioned or subdivided without the prior written approval of the Mortgagee holding the first Mortgage on that Condominium.

Section 6.3. Power of Attorney. The Association is hereby granted an irrevocable power of attorney to sell the Condominium Property for the benefit of all the Owners thereof when the partition of the Owners' interests in said Condominium Property may be had pursuant to Section 6.2 above. The power of attorney herein granted may be exercised upon the vote or written consent of Owners holding in the aggregate at least two-thirds (2/3) of the interest in the Common Area by any two (2) Members of the Board who are hereby authorized to record a certificate of exercise in the Office of the County Recorder of San Diego County, which certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith; provided, however, that said power of attorney shall not apply to the Administrator of Veterans Affairs, an officer of the United States of America.

#### ARTICLE VII

##### RIGHT OF MORTGAGEES

Provided that the Mortgagee informs the Association in writing of its appropriate address and requests in writing to be notified, neither the Association nor any Owner shall do any of the following, unless the Mortgagees of first Mortgages encumbering at least sixty-seven percent (67%) of the Condominiums which are encumbered by a mortgage have given their prior written approval:

(a) Seek, by act or omission, to abandon the Condominium Project or to terminate the Condominium Plan or this Declaration (whether or not because of any destruction of the Project), or change, waive or abandon any scheme of regulation or enforcement thereon pertaining to the architectural design or the exterior appearance or maintenance of Living Units, the Common Area;

(b) Change the prorata interest or obligations of any Condominium for purposes of levying assessments or allocating distributions of hazard insurance proceeds or condemnation awards or for determining the prorata share of the Common Area appurtenant to each Living Unit;

(c) Partition or subdivide any Condominium;

(d) Seek, by act or omission, to abandon, partition, subdivide, encumber, sell or transfer the Common Area; provided, however, that the granting of easements for public utility or other public purposes consistent with the uses of the Common Area shall not be deemed a transfer within the meaning of this provision;

(e) Use hazard insurance proceeds for losses to any portion of the Condominium Property for other than repair, replacement or reconstruction of the Condominium Property except as may be provided by Statute upon substantial loss to the Living Unit, or Common Area.

(f) Fail to maintain fire and extended coverage insurance on the Common Area and improvements thereto on a current replacement cost basis in an amount less than one hundred percent (100%) of the insurable value, based on current replacement cost.

#### ARTICLE VIII

##### DESTRUCTION OF COMMON AREA, OR LIVING UNITS

Section 8.1. Casualty Destruction of Common Area. If any portion of the Common Area is damaged or destroyed by fire or other casualty, then:

(a) If the cost of repairing or rebuilding does not exceed the amount of the available insurance proceeds by more than five percent (5%) of the budgeted gross expenses of the Association for the fiscal year during which the repairs or rebuilding is necessitated, the Board shall contract to repair or rebuild the damaged portions of the Common Area substantially in accordance with the original plans and specifications therefor.

(b) If the cost of repairing or rebuilding exceeds the amount of available insurance proceeds by more than five percent (5%) of the budgeted gross expenses of the Association for the fiscal year during which the repairs are

rebuilding is necessitated, and if the Owners holding in aggregate more than fifty percent (50%) interest in the Common Area agree to the repair or restoration of the Project, then the Board shall contract as provided in (a) above.

(c) If the Owners do not so agree to the repair or rebuilding of the Common Area as provided in (b) above, then each Owner (and his Mortgagee(s) as their respective interest then appear) shall be entitled to receive that portion of the insurance proceeds equal to the proportion of the decrease in fair market value of his Condominium as compared to the aggregate decrease in the fair market values of all the Condominiums caused by such damage or destruction. For purposes hereof, fair market value shall be determined by a member of the American Institute of Real Estate Appraisers selected by the Board and hired by and at the expense of the Association. Should dispute arise as to the distribution of insurance proceeds, the dispute shall be decided by arbitration by the American Arbitration Association pursuant to its Commercial Rules of Arbitration.

(d) Anything in the immediately preceding paragraph to the contrary notwithstanding, the Board shall contract for such repair or rebuilding of Common Area which consists of Condominium Building(s) containing Living Units (or portions thereof and/or improvements thereto) if fifty percent (50%) or more of the Owners owning Living Units in said Condominium Building(s) agree to the repair or restoration of said Condominium Building(s).

(e) If a bid to repair or rebuild is accepted, the Board shall levy a special assessment against each Condominium in the proportion the Condominiums are assessed, pursuant to Section 3.6 of Article III of this Declaration, for purposes of raising funds for the rebuilding or major repair of a portion of the structural Common Area, to make up any deficiency between the total insurance proceeds and the contract price for such repair and rebuilding, and such assessment and all insurance proceeds, whether or not subject to liens of Mortgagees, shall be paid to the account of the Association to be used for such rebuilding.

Section 8.2. Taking of Common Area. If any portion of the Common Area is taken by condemnation, eminent domain or any proceeding in lieu thereof, and the award therefor is not apportioned among the Owners (and their Mortgagees as their respective interests then appear) by court judgment or

by agreement between the condemning authority and each of the affecting Owners, then the Owners of the Common Area (and their Mortgagees as their respective interests then appear) shall be entitled to receive a distribution from the award for such taking in the same proportion as insurance proceeds will be distributed pursuant to Subsection (c) of Section 8.1 above; provided, however, that should it be determined to repair or rebuild any portion of the Common Area, such proceeds shall be paid to the Association for that purpose in the same manner and subject to the same terms, conditions and limitations as are set forth above in Section 8.1 of this Article VIII for repairing damaged or destroyed portions of the Common Area. A decision to repair or rebuild shall be made in the same manner and subject to the same conditions and limitations as provided above in Section 8.1 of this Article VIII for determining whether to rebuild or repair following damage or destruction.

Section 8.3. Casualty Destruction of Living Unit. In the event of damage or destruction to any Living Unit, the Owner thereof shall reconstruct the same as soon as reasonably practicable and substantially in accord with the original plans and specifications thereof; provided, however, that any such Owner may, with the written consent of the Board, reconstruct or repair the same pursuant to new or changed plans and specifications. In the event the Board fails to approve or disapprove such changed plans and specifications within sixty (60) days of the receipt thereof, they shall be deemed to have been approved.

Section 8.4. Taking of a Living Unit. In the event of any taking of a Living Unit, the Owner (and his Mortgagees as their interests may then appear) of the Living Unit shall be entitled to receive the award for such taking and after acceptance thereof he (and his Mortgagee) shall be divested of any further interests in the Condominium Property if such Owner shall vacate his Living Unit as a result of such taking. In such event, said Owner shall grant his remaining interests in the Common Area appurtenant to the Living Unit so taken, if any, to the other Owners owning a fractional interest in the same Common Area, such grant to be in proportion to the fractional interest in the Common Area then owned by each.

Section 8.5. Association Insurance. The Association shall obtain and continue in effect the following insurance:

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(a) A master fire insurance policy with glass coverage and extended coverage endorsement for the full insurable value of all of the improvements within the Project. "Improvements" means and refers to the Common Area together with those appliances and improvements located within the Living Units provided by Declarant to the initial Owners of Condominiums and only includes items provided by Declarant. The form and content of such policy must be satisfactory to all institutional first Mortgagees and shall meet the maximum standards of the various institutional first Mortgagee whose loan(s) encumber any of the Condominiums.

(b) A public liability and property damage insurance policy with cross liability endorsement, if available, insuring the Association, any manager, the Declarant and the Owners against liability incident to ownership or use of the Common Area. The limits of such insurance shall not be less than \$1,000,000.00 covering all claims for death, personal injury and property damage arising out of a single occurrence.

(c) If requested by Members of the Association who have at least ten percent (10%) of the Association's voting power or any first Mortgagee or any insurer or governmental guarantor of any first Mortgage, a fidelity bond covering Members of the Board, officers and employees of the Association, and employees of any manager or managing agent, whether or not such persons are compensated for their services, naming the Association as obligee and written in an amount set forth in the Bylaws.

(d) Workers' compensation insurance covering any employees of the Association.

(e) A policy covering all loss to personalty owned by the Association insured with coverage in the maximum insurable fair market value of such personalty as determined annually by an insurance carrier selected by the Association. Insurance proceeds for improvements in the personalty owned by the Association shall be payable to the Association. In the event of any loss, damage or destruction, the Association shall cause the same to be replaced, repaired or rebuilt if it occurred in the Common Area. In the event the cost of such replacement, repair or rebuilding of Common Area (i) exceeds proceeds available therefor, or (ii) no insurance proceeds are available therefor, the deficiency or full cost thereof shall be

assessed to the Owners as a special assessment pursuant to Section 4.4 of Article IV above.

Insurance premiums for the insurance policies set forth above shall be a Common Expense to be included in the annual assessments levied by the Association. Each Owner shall be responsible to pay any deductible amount for any loss to his Condominium. Each Owner may separately insure the improvements not covered by the master fire insurance policy and personal property within his Unit. No Owner shall insure his Condominium in any manner which would cause any diminution in insurance proceeds from the master policy. Should any Owner violate this provision, he shall be responsible to the Association for any such diminution. Copies of all such insurance policies (or certificates thereof showing the premiums thereon to have been paid) shall be retained by the Association and open for inspection by Owners at any reasonable time(s). All such insurance policies shall (i) provide that they shall not be cancellable by the insurer without first giving at least ten (10) days prior notice in writing to the Association, and (ii) contain a waiver of subrogation by the insurer(s) against the Association, Board and Owners. Anything contained herein to the contrary notwithstanding, the Association shall maintain such insurance coverage as may be required by the Federal National Mortgage Association ("FNMA") so long as FNMA holds a mortgage on or owns any Condominium.

Section 8.6. Mortgagee Approval. Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with original plans and specifications, unless other action is approved by Eligible Mortgage Holders of first Mortgages on Condominiums which have at least fifty-one percent (51%) of the votes of Condominiums subject to Eligible Mortgage Holders' Mortgages.

#### ARTICLE IX

##### USE OF LIVING UNITS AND COMMON AREA AS DESCRIBED IN CONDOMINIUM PLAN

Section 9.1. Residential Purposes. Each Living Unit shall be improved, used and occupied for private, single-family dwelling purposes only, and no portion thereof nor the Common Area shall be used for any commercial purpose

whatsoever; provided, however, Declarant may use any of the Living Units and Exclusive Use Areas owned or leased by Declarant as model homes and sales offices during that period of time commencing when the Condominiums are first sold or offered for sale to the public and ending when all the condominiums in the Project are sold and conveyed by Declarant to separate owners thereof or five (5) years after the first escrow closes, whichever first occurs.

Section 9.2. Lease of Condominium. Each Owner shall have the right to lease his Condominium, provided that such lease is in writing and provides that the tenant shall be bound by and obligated to the provisions of this Declaration, the Bylaws and the rules and regulations of the Board, and that the failure to comply with the provisions of these documents shall be a default under the lease. With the exception of a lender in possession of a Condominium following a default under a First Mortgage, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure, no Owner shall lease his Condominium for transient or hotel purposes. Any lease which is either for a period of less than thirty (30) days or pursuant to which the lessor provides any services normally associated with a hotel, shall be deemed to be for transient or hotel purposes.

Section 9.3. No Use Causing Loss of Insurance. No Living Unit, Exclusive Use Area or improvements situated therein shall be occupied or used for any purpose or in any manner in which shall cause such improvements to be uninsurable against loss by fire or the perils of the extended coverage endorsement to the California Standard Fire Policy form, or cause any such policy or policies representing such insurance to be cancelled or suspended, or the company issuing the same to refuse renewal thereof.

Section 9.4. Pets. No household pets (exclusive of caged birds or aquarium fish) may be kept in any Living Unit or Exclusive Use Area. Pets shall not be allowed on other portions of the Common Area except as may be permitted by rules made by the Board. Except as provided hereinabove, no animals, livestock, birds or poultry shall be brought within the Condominium Property or kept in any Living Unit or on any portion of the Common Area. No pet shall be permitted to be kept with any portion of the Condominium Property if it makes excessive noise or otherwise constitutes an unreasonable annoyance to other Owners.

Section 9.5. Nuisance. No Living Unit or Exclusive Use Area shall be used in such manner as to obstruct or interfere with the enjoyment of occupants of other such areas or annoy them by unreasonable noise or otherwise, nor shall any nuisance be committed or permitted to occur in any Living Unit nor on the Common Area.

Section 9.6. Sign Control. No signs other than one sign of customary and reasonable dimensions advertising a Condominium for sale or lease shall be erected or displayed in any Living Unit so that it is visible from without such Living Unit without prior written permission of the Board, and all signs must conform with applicable governmental ordinances. No signs shall be erected or displayed on the Common Area except signs placed by authority of the Board. Anything contained in this Declaration to the contrary notwithstanding, Declarant shall have the right to install and maintain during the sales period set forth in Section 10.1 above, such signs, poles and advertisements as it deems appropriate in connection with its sales program for the sale to the public of Condominiums.

Section 9.7. Outside Antennae. There shall be no outside television or radio antennae, masts, poles or flag poles constructed, installed or maintained on the Condominium Property for any purpose whatsoever without the prior written consent of the Board.

Section 9.8. Owner Not to Alter Common Area. Except as otherwise specifically provided herein, nothing herein contained shall give the Owner the right to paint, decorate, remodel, landscape or adorn any part or parcel of the Common Area without the written consent of the Board.

Section 9.9. No Offensive Activity. No noxious or offensive activity shall be carried on in any Living Unit or on the Common Area, nor shall anything be done therein which may be or become an annoyance or nuisance to the other Owners other than construction or repair of improvements made at the Board's instruction or at Declarant's instruction. Nothing shall be done in any Living Unit or in, on or to the Common Area which will impair the structural integrity of any building, or which would structurally change any building located therein. Except as otherwise provided herein, nothing shall be altered or constructed in or removed from the Common Area except upon the written consent of the Board or an architectural committee appointed by the Board. All equipment, garbage

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cans, wood piles or storage piles shall be kept screened and concealed from view of neighboring Living Units, streets and Common Areas. All rubbish, trash or garbage shall be regularly removed from each Living Unit, and shall not be allowed to accumulate thereon or on the adjacent Common Area. No fences, hedges or walls shall be erected or maintained upon the Condominium Property except such as are installed in accordance with the initial construction of the buildings located on the Condominium Property or as allowed by the Board. No exterior clotheslines shall be erected or maintained, and there shall be no outside drying or laundering of clothes on the Common Area, except in areas which may be approved by the Board.

Section 9.10. Power Equipment. No power equipment, hobby shops or car maintenance (other than emergency work) shall be permitted on the Condominium Property, except with prior written approval of the Board. Approval shall not be unreasonably withheld and in deciding whether to grant approval, the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, and similar objections.

Section 9.11. Use of Common Area. Except as otherwise provided herein, the Common Area shall be improved and used only for the following purposes:

(i) affording vehicular passage and pedestrian movement within the Condominium Property, including access to the Living Units.

(ii) recreational use by the Owners and occupants of Living Units in the condominium Property and their guests, subject to rules established by the Board;

(iii) beautification of the Common Area and providing privacy to the residents of the Condominium Property through landscaping and such other means as the Board shall deem appropriate;

(iv) parking of automotive passenger vehicles in areas provided therefor as may be designated and approved by the Board by such persons, upon such terms and conditions as may from time to time be determined by the Board;

(v) as Exclusive Use Areas to be used in the manner hereinafter described. Nothing herein shall be deemed to allowed persons other than the Owner of a Living

Unit to which an Exclusive Use Area is appurtenant (or his tenants and lessees) to enjoy the use thereof.

No part of the Common Area shall be obstructed so as to interfere with its use for the purposes hereinabove permitted, nor shall any part of the Common Area be used for storage purposes (except as incidental to one of such permitted uses, or for storage of maintenance equipment used exclusively to maintain the Common Area or in storage areas designated by the Board), nor in any manner which shall increase the rate of which insurance against loss by fire, or the perils of the extended coverage endorsement to the California Standard Fire Policy form, or bodily injury, or property damage situated thereon may be obtained, or cause such premises to be uninsurable against such risks or any policy or policies representing such insurance to be cancelled or suspended or the company issuing the same to refuse renewal thereof.

Section 9.12. Additional Use. The Board shall have the right to allow one or more Owners to exclusively use portions of the otherwise nonexclusive Common Area, provided that such portions of the Common Area are nominal in area and adjacent to the Owner's Exclusive Use Area(s) or Living Unit, and, provided further, that such use does not unreasonably interfere with any other Owner's use or enjoyment of the Project.

Section 9.13. Owners Liable for Damage. Each Owner shall be legally liable to the Association for all damages to the Common Area or to any improvements thereof or thereto, including, but not limited to, the buildings, recreation facilities and landscaping caused by such Owner, his licensee(s) or any occupant of such Owner's Living Unit as such liability may be determined under California law. Each Owner shall be responsible for compliance with the provisions of the Declaration, Articles, Bylaws and rules of the Board by his guests, lessees and all occupants of his Living Unit, and shall, after written notice and an opportunity for a hearing, pay the fines and penalties assessed pursuant hereto, the Bylaws or Board rules for any violation by his guests, lessees and occupants of his Living Unit.

Section 9.14. Interior Surfaces. Each Owner shall have the right, at his sole cost and expense, to maintain, repair, paint, paper, panel, plaster, tile and finish the interior surfaces of the ceilings, floors, window frames,

door frames, trim and perimeter walls of the Living Unit, and the surfaces of the bearing walls and partitions located within the Living Unit. Said Owners shall have the right to substitute new finished surfaces in place of those existing on said ceiling, floors, walls and doors of said Living Unit.

Section 9.15. Exclusive Use Areas Appurtenant. Each Exclusive Use Area shall be (i) appurtenant to the Living Unit with which the Exclusive Use Area is conveyed, and (ii) used only for the purposes set forth in the Declaration. The right to so use an Exclusive Use Area shall be exercisable only by the Owner(s) of the Condominium appurtenant thereto and/or said Owner's tenants and licensee(s). Conveyance of a Condominium shall effect conveyance of Exclusive Use Areas appurtenant thereto and transfer of all rights thereto to the vested Owner of the Condominium. Any license(s) thereto shall be terminated upon such conveyance. No Exclusive Use Area or any rights thereto (other than said revokable licenses) shall be transferred or conveyed apart from conveyance of the Condominium to which they are appurtenant. Each Exclusive Use Area shall be deemed to be Common Area for all those purposes set forth in this Declaration which are not inconsistent with this Article IX or Article IV.

Section 9.16. Use of Exclusive Use Areas. Each Owner shall have the right to place furniture, barbecue equipment and potted plants upon the Patio or Balcony which he has the exclusive right to use.

Each Owner shall have the right to park a motor vehicle in the Covered Parking Space which he has the exclusive right to use and store non-flammable items of person property in the storage locker located within the Covered Parking Space which he has the exclusive right to use.

Except as provided in this Section 9.16, nothing contained herein shall give any Owner the right to paint, decorate, remodel or alter said Exclusive Use Areas or any other part of the Common Area without the prior written consent of the Board.

ARTICLE XGENERAL PROVISIONS

Section 10.1. Enforcement. The Association and any Owner shall have the right to enforce by any proceedings at law or in equity, all covenants, conditions, restrictions and reservations now or hereafter imposed by the provisions of this Declaration. Each Owner shall have a right of action against the Association for any failure of the Association to comply with the provisions hereof or of the Bylaws or Articles. Failure by the Association or any Owner to enforce any covenant, condition, restriction or reservation herein contained shall, in no event, be deemed a waiver of the right to do so thereafter.

Section 10.2. Severability. Should any provision in this Declaration be void or become invalid or unenforceable in law or equity by judgment or court order, the remaining provisions hereof shall be and remain in full force and effect.

Section 10.3. Amendments. During the period of time prior to conversion of the Class B membership to Class A membership in the Association, this Declaration may be amended by an instrument in writing signed by seventy-five percent (75%) of the voting power of each class of Members of the Association, which amendment shall become effective upon the recording thereof by the Office of the County Recorder of San Diego County, California. After conversion of the Class B membership in the Association to Class A membership, the Declaration may be amended by an instrument in writing signed by (i) seventy-five percent (75%) of the total voting power of the Association, and (ii) at least seventy-five percent (75%) of the voting power of Members of the Association other than Declarant. Anything contained herein to the contrary notwithstanding, no amendment material to a Mortgagee may be made to this Declaration without the prior written consent of Eligible Mortgage Holders whose Mortgages encumber fifty-one percent (51%) or more of the Condominiums within the Condominium Property which are subject to Eligible Mortgage Holder Mortgages. For purposes hereof, any amendments to provisions of this Declaration governing any of the following subjects, shall be deemed "material to a Mortgagee":

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(a) The fundamental purpose for which the Project was created (such as a change from residential use to a different use).

(b) Assessments, assessment liens and subordination thereof.

(c) The reserve for maintenance, repair and replacement of the Common Area.

(d) Property maintenance and repair obligations.

(e) Casualty, liability insurance and fidelity bonds.

(f) Reconstruction in the event of damage or destruction.

(g) Rights to use the Common Area.

(h) Annexation.

(i) Voting.

(j) The percentage interest of the Owners in the Common Area.

(k) Boundaries of any Living Unit.

(l) The interests in Exclusive Use Areas and other portions of the Common Area.

(m) Leasing of Condominiums.

(n) Imposition of any right of first refusal or similar restriction on the right of a Condominium Owner to sell, transfer or otherwise convey his Condominium.

(o) Any provisions which, by its terms, is specifically for the benefit of the first Mortgagees, or specifically confers rights on first Mortgagees.

An amendment to the Declaration shall not be considered material if it is for the purpose of correcting technical errors or for clarification. An Eligible Mortgage Holder who receives a written request to approve amendments (including additions) who does not deliver or mail to the

requesting party a negative response within thirty (30) days, shall be deemed to have approved such request.

Anything contained herein to the contrary notwithstanding, the percentage of voting power of Members necessary to amend a specific clause or provision of the Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause or provision.

Section 10.4. Extension of Declaration. Each and all of these covenants, conditions and restrictions shall terminate on December 31, 2030, after which date they shall automatically be extended for successive periods of ten (10) years unless the Owners have executed and recorded at any time within six (6) months prior to December 31, 2030, or within six (6) months prior to the end of any such ten (10) year period, in the manner required for a conveyance of real property, a writing in which it is agreed that said restrictions shall terminate on December 31, 2030 or at the end of any such ten (10) year period.

Section 10.5. FHA and VA Approval. So long as there is a Class B membership in the Association, the following shall require prior approval of the FHA and VA: annexation of additional properties to the Project, mergers and consolidations, special assessments and any amendment to this Declaration. If VA approval is required, a draft of the amendment to this Declaration shall be submitted to and approved by the VA prior to recordation of the amendment.

Section 10.6. Encroachment Easement. In the event any portion of the Common Area encroaches upon any Living Unit or any Living Unit encroaches upon the Common Area or another Living Unit as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the improvements, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists. Said valid easement shall apply only to minor encroachments not exceeding one (1) foot. There shall be easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachments, settlement or shifting; provided, however, that in no event shall an easement for encroachment be created in favor of an Owner if said encroachment occurred due to the willful misconduct of any Owner. In the event any portion of a structure on the Condominium Property

is partially or totally destroyed and then repaired or rebuilt, each Owner agrees that the minor encroachments over adjoining Living Units, Common Area shall be easements for the maintenance of said encroachments so long as they shall exist.

Section 10.7. Litigation. In the event the Association, Declarant or any Owner shall commence litigation to enforce any of the covenants, conditions or restrictions herein contained, or contained in the Bylaws, the prevailing party in such litigation shall be entitled to costs of suit and such attorney's fees as the court may adjudge reasonable and proper. The "prevailing party" shall be the party who is entitled to recover his costs of suit, whether or not the suit proceeds to final judgment. A party not entitled to recover his costs shall not recover attorney's fees. No sum for attorney's fees shall be counted in calculating the amount of a judgment for purposes of determining whether a party is entitled to recover his costs or attorney's fees.

Section 10.8. Annexation of Additional Property.

(a) Upon approval in writing of the Association, pursuant to two-thirds (2/3) of the voting power of each class of Members of the Association, the Owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file of record a Declaration of Annexation which shall extend the scheme of this Declaration to such property. After conversion of the Class B membership in the Association to Class A membership, the action herein requiring membership approval shall require the vote or written consent of (i) two-thirds (2/3) of the voting power of the Members of the Association, and (ii) two-thirds (2/3) or more of the voting power of Members of the Association other than Declarant.

(b) If, within three (3) years following the date of the original issuance by the California Department of Real Estate of the most recently issued Final Subdivision Public Report for a phase of the Project, Declarant should develop additional lands within the property described above in Recital C, such additional lands or any portion thereof may be added to the Condominium Property and included within this Declaration and the jurisdiction of the Association by action of Declarant without the assent of Members of the Association; provided, however, that the development of the

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additional lands shall be in accord with the plan of development submitted to (i) the Department of Real Estate prior to the time a Final Subdivision Public Report is issued in connection with the Condominium Property, and (ii) the VA. Said annexation may be accomplished by the recording of a Declaration of Annexation or by the recording of a separate Declaration of Covenants, Conditions and Restrictions which requires Owners of Condominiums therein to be Members of the Association. The obligation of Condominium Owners to pay dues to the Association and the right of such Condominium Owners to exercise voting rights in the Association in such annexed property shall not commence until the first day of the month following close of the first sale of a Condominium by Declarant in that particular phase of development so annexed. Prior to any annexation under this Subsection 10.8 (b), detailed plans for the development of the additional property must be submitted to the VA, and the VA must determine that such detailed plans are in accordance with the general plan and so advise Declarant. Subject to annexation of additional property as set forth in this Subsection 10.8(b):

(i) Declarant hereby reserves, for the benefit of and appurtenant to the Condominiums hereinafter located in phases 2 and 3, respectively, and their respective Owners, nonexclusive easements to use the Common Area (other than any building or Exclusive Use Area) in the Condominium Property, pursuant to and in the manner set forth in this Declaration, to the same extent and with the same effect as if each of the Owners of a Condominium in phases 2 and 3, respectively, owned an undivided interest in the Common Area in the Condominium Property.

(ii) Declarant hereby grants, for the benefit of and appurtenant to each Condominium in the Condominium Property and their Owners, the nonexclusive easement to use the Common Area (other than any building or Exclusive Use Area) in phases 2 and 3, respectively, pursuant to the provisions of and in the manner prescribed by this Declaration, to the same extent and with the same effect as if each of the Owners of a Condominium in the Condominium Property owned an undivided interest in the Common Area of the property so annexed.

The reciprocal cross-easements set forth herein shall be effective as to each phase, respectively, and as to the Condominium Property, only at such time as each phase, respectively, has been annexed by the recording of a

Declaration of Annexation or separate Declaration of Covenants, Conditions and Restrictions by Declarant, and prior to that time, neither the Condominium Property nor phases 2 or 3, respectively, shall be affected hereby nor shall the Owners in phases 2 or 3, respectively, have such rights in the Common Area within the Condominium Property.

In the event Declarant has rented any Condominium in a phase to be annexed to the Declaration for a period of one (1) year prior to the close of the first escrow for the sale of a Condominium in that phase, Declarant shall, as a condition to annexing that phase, pursuant to Subsection (b), provide to the Association a written commitment to pay to the Association, concurrently with the closing of the escrow for the first sale in that phase, appropriate amounts for reserves for replacement or deferred maintenance of Common Area improvements in that phase necessitated or arising out of the use and occupancy of Condominiums in that phase.

A Declaration of Annexation may be revoked or amended by Declarant without the approval of the Association or any Owner at any time before the conveyance of record by Declarant of a Condominium within the property annexed by the Declaration of Annexation. A draft of the notice of revocation or amendment must be submitted to and approved by the VA prior to its recordation.

Section 10.9. Owner Compliance. Each Owner, tenant or occupant of a Condominium shall comply with the provisions of this Declaration, the Bylaws, decisions and resolutions of the Association as lawfully amended from time to time, and failure to comply with any such provisions, decisions or resolutions shall be grounds for an action to recover sums due, for damages, or for injunctive relief.

Section 10.10. Special Responsibilities of Association. In the event that the improvements to be installed by Declarant to Common Area have not been completed prior to the issuance by the California Department of Real Estate of a Final Subdivision Public Report covering the Condominium Property, and in the further event that the Association is the obligee under a bond to secure performance by the Declarant to complete such improvements, then if such improvements have not been completed and a Notice of Completion filed within sixty (60) days after the completion date specified in the Planned Construction Statement appended to the bond, the Board shall consider and vote upon

the question of whether or not to bring action to enforce the obligations under the bond. If the Association has given an extension in writing for the completion of any such improvement then the Board shall consider and vote on said Notice of Completion filed within thirty (30) days after the expiration of the extension period. In the event that the Board determines not to take action to enforce the obligations secured by the bond, or does not vote on the question as above provided, then, in either such event, upon petition signed by Members representing not less than five percent (5%) of the total voting power of the Association, the Board shall call a special meeting of the Members of the Association to consider the question of overriding the decision of the Board or of requiring the Board to take action on the question of enforcing the obligations secured by the bond. Said meeting of Members shall be held not less than thirty-five (35) days nor more than forty-five (45) days following receipt of the petition. At said meeting a vote of a majority of the voting power of the Members of the Association, excluding the vote of Declarant, to take action to enforce the obligations under the bond shall be deemed to be the decision of the Association, and the board shall thereafter implement the decision by initiating and pursuing appropriate action in the name of the Association.

Section 10.11. Limitation of Restrictions on Declarant. Declarant is undertaking the work of construction of residential Condominium dwellings and incidental improvements upon the Condominium Property. The completion of that work, and the sale, rental or other disposal of said Condominium dwellings is essential to the establishment and welfare of said Condominium Property as a residential community. In order that said work may be completed and said Condominium Property be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

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

(b) Prevent Declarant or its representatives from erecting, constructing and maintaining on any part or parts of the Condominium Property such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing said Condominium

Property as a residential community and disposing of the same in parcels by sale, lease or otherwise; or

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

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

The rights of Declarant provided in Subparagraphs (a) through (d) above, may be exercised during the period of time commencing when the Condominiums are first sold or offered for sale to the public and ending when all the Condominiums in the Project are sold and conveyed by Declarant to separate owners, or five (5) years following the date of conveyance of the first Condominium in the Project from Declarant to a retail purchaser, whichever shall first occur. So long as Declarant, its successors and assigns owns one or more of the Condominiums established and described herein, Declarant, its successors and assigns shall be subject to the provisions of this Declaration. Declarant, in executing its rights under Section 10.11, shall not unreasonably interfere with the use of the Common Area by any Owner.

Section 10.12. Liens Not Invalid. No breach of any provision of these covenants, conditions and restrictions shall invalidate the lien of any Mortgage made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon any Owner whose title is derived through foreclosure sale, trustee's sale or otherwise.

IN WITNESS WHEREOF, the undersigned, being Declarant herein, has executed this instrument the day and year first hereinabove written.

By: BENITO BALISTRERI and MARGHERITA  
BALISTRERI Husband and Wife

Benito Balistreri  
Benito Balistreri

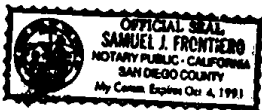
Margherita Balistreri  
Margherita Balistreri

Witnessed by Frank De Santis  
FRANK DE SANTIS  
Attorney at Law

State of California )  
                                  )ss  
County of San Diego )

On Nov 10, 1988 before me, the undersigned, a Notary Public in and for San Diego County, California, personally appeared Frank De Santis known to me, (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument as a witness thereto, who being by me duly sworn, deposed and said: that he resides at 1059 Australia El Cajon, Ca. 92020 that he was present and saw Benito and Margherita Balistreri personally known to him to be the persons described in and whose names are subscribed to the within and annexed instrument, execute the same, and that affiant subscribed his name thereto as a witness to said execution.

WITNESS my hand and official seal.



Samuel J. Frontiero  
Notary Public for said  
County and State

My Commission Expires

Oct 4, 1991, 1991

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