

**DRAFT**

---

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**647 North Santa Cruz Ave, Los Gatos, CA 95030**

THIS DECLARATION CONTAINS A JUDICIAL REFERENCE PROVISION AND A BINDING ARBITRATION PROVISION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT. ARBITRATION INCLUDES A WAIVER OF THE CONSTITUTIONAL RIGHT TO A JURY. YOU MUST READ THE JUDICIAL REFERENCE AND ARBITRATION PROVISIONS CAREFULLY AND SHOULD CONSULT LEGAL COUNSEL WITH ANY QUESTIONS.

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

## TABLE OF CONTENTS

	<u>Page #</u>
INTRODUCTORY PARAGRAPHS A thru B .....	1
ARTICLE I DEFINITIONS AND INTERPRETATIONS .....	5
1.1. "Articles": .....	5
1.2. "Assessment": .....	5
1.3. "Assessment Lien": .....	5
1.4. "Association": .....	5
1.5. "Board" or "Board of Directors": .....	5
1.6. "Budget": .....	5
1.7. "Bylaws": .....	5
1.8. "Cal BRE": .....	5
1.9. "City": .....	6
1.10. "Common Area": .....	6
1.11. "Common Expenses": .....	6
1.12. "County": .....	6
1.13. "Davis-Stirling Act": .....	6
1.14. "Declarant": .....	6
1.15. "Declaration": .....	6
1.16. "Eligible Mortgages": .....	6
1.17. "Eligible Mortgage Holder": .....	6
1.18. "Eligible Insurer or Guarantor": .....	6
1.19. "First Lender": .....	6
1.20. "First Mortgage": .....	6
1.21. "Foreclosure": .....	6
1.22. "Governing Documents": .....	6
1.23. "Hazardous Materials": .....	6
1.24. "Homeowners Association Handbook": .....	7
1.25. "Homeowners Handbook": .....	7
1.26. "Lot": .....	7
1.27. "Major Components": .....	7
1.28. "Map": .....	7
1.29. "Member": .....	7
1.30. "Mortgage": .....	7
1.31. "Mortgagee": .....	7
1.32. "Mortgagor": .....	7
1.33. "Notice of Delinquent Assessment": .....	7
1.34. "Occupant": .....	7
1.35. "Owner": .....	7
1.36. "Person": .....	8
1.37. "Private Street": .....	8
1.38. "Project": .....	8
1.39. "Public Report": .....	8
1.40. "Regular Assessments": .....	8
1.41. "Reimbursement Charge": .....	8
1.42. "Reserves or Reserve Funds": .....	8
1.43. "Reserve Study": .....	8
1.44. "Residence": .....	8
1.45. "Right to Repair Law": .....	8
1.46. "Rules": .....	8
1.47. "SB 800": .....	8
1.48. "Special Assessments": .....	8
1.49. "Utility Facilities": .....	8
1.50. "General Rules": .....	9
1.51. "Articles and Sections": .....	9
1.52. "Priorities and Inconsistencies": .....	9
1.53. "Severability": .....	9
1.54. "Statutory References": .....	9
ARTICLE II. DESCRIPTION OF PROJECT AND CREATION OF PROPERTY RIGHTS .....	9

2.1.	Description of Project:	9
2.2.	Easements; Dedication of Common Area:	9
2.3.	Easements to Accompany Conveyance of Lot:	10
2.4.	Delegation of Use:	10
2.5.	Conveyance of Common Area to Association:	10
2.6.	Owners' Rights and Easements for Utilities:	10
2.7.	Reciprocal Private Ingress and Egress Easements:	10
2.8.	Encroachment Easements:	10
2.9.	Residence Maintenance Easements:	11
A.	Easements	11
B.	Arbitration	11
2.10.	Maintenance Easement:	11
2.11.	Drainage Easements:	11
2.12.	Common Utility Meter Easement:	12
2.13.	Other Easements:	12
2.14.	Rights of Entry and Use:	12
2.15.	Partition of Common Area:	12
2.16.	All Easements Part of Common Plan:	12
ARTICLE III.	ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS	12
3.1.	Association to Own and Manage Common Areas:	12
3.2.	Membership:	12
3.3.	Transferred Membership:	13
3.4.	Membership and Voting Rights:	13
ARTICLE IV.	ASSESSMENTS, LIENS AND FORECLOSURE	13
4.1.	Creation of the Lien and Personal Obligation of Assessments:	13
4.2.	Purpose of Assessments:	13
4.3.	Assessments:	14
A.	Regular Assessments	14
B.	Special Assessments	14
4.4.	Restrictions on Increases in Regular Assessments or Special Assessments	14
A.	Approval of Members for Certain Assessments	14
B.	Assessments - Emergency Situations	14
C.	Notice and Quorum for Any Action Authorized Under Section 4.4	15
4.5.	Division of Assessments:	15
4.6.	Date of Commencement of Regular Assessments; Due Dates:	15
4.7.	Effect of Nonpayment of Assessments:	15
4.8.	Transfer of Lot by Sale or Foreclosure:	15
4.9.	Priorities; Enforcement; Remedies	16
A.	Statement of Charges	16
B.	Payment Plan	16
C.	Notice of Delinquent Assessment	17
D.	Lien Releases	17
E.	Enforcement of Assessment Lien and Limitations on Foreclosure	17
F.	Foreclosure	18
G.	Sale by Trustee	19
H.	Purchase By Association	19
I.	Suspension of Voting Rights of Delinquent Owner	19
J.	Fines and Penalties	19
4.10.	Reimbursement Charges	19
4.11.	Unallocated Taxes:	20
4.12.	Estoppel Certificate:	20
ARTICLE V.	DUTIES AND POWERS OF THE ASSOCIATION	20
5.1.	Duties:	20
A.	Maintenance	20
B.	Inspection and Maintenance Guidelines; Homeowners Association Handbook	21
C.	Insurance	22
D.	Discharge of Liens	22
E.	Assessments	22
F.	Payment of Expenses and Taxes	22
G.	Enforcement	22

H.	Annual Budget.....	22
I.	Utility Service.....	22
5.2.	Powers: .....	22
A.	Utility Service.....	22
B.	Easements.....	23
C.	Manager .....	23
D.	Adoption of Rules .....	23
E.	Access.....	23
F.	Assessments and Liens .....	23
G.	Fines and Disciplinary Action.....	23
H.	Enforcement.....	24
I.	Acquisition and Disposition of Property.....	24
J.	Loans .....	24
K.	Dedication.....	24
L.	Contracts .....	24
M.	Delegation .....	24
N.	Water and Garbage Service .....	24
O.	Appointment of Trustee.....	25
P.	Litigation/Arbitration .....	25
Q.	Other Powers.....	25
R.	Common Area Improvements.....	25
S.	Granting Rights.....	25
5.3.	Commencement of Association's Duties and Powers:.....	25
ARTICLE VI.	ARCHITECTURAL CONTROL.....	25
6.1.	Purpose of Architectural Controls:.....	25
6.2.	Requirement for Approval of Plans: .....	26
6.3.	Board or Architectural Control Committee Action: .....	26
6.4.	Landscaping: .....	27
6.5.	Solar Energy System:.....	27
6.6.	Governmental Approval:.....	27
6.7.	Structural Integrity:.....	27
6.8.	Completion of Work; Review of Work: .....	27
6.9.	No Waiver of Future Approvals:.....	28
6.10.	Variances:.....	28
ARTICLE VII.	USE RESTRICTIONS .....	28
7.1.	Use of Lots and Units: .....	29
7.2.	Nuisances:.....	29
7.3.	Allowed Vehicles and Parking:.....	29
7.4.	Parking: .....	31
7.5.	Commercial Activity: .....	31
7.6.	Storage in Common Area: .....	31
7.7.	Signs: .....	31
7.9.	Animals:.....	31
7.10.	Garbage and Refuse Disposal: .....	32
7.11.	Radio, Television, and Internet Antennas:.....	32
7.12.	Basketball Standards and Sports Apparatus: .....	32
7.13.	Clothes Lines:.....	32
7.14.	Motor Vehicle Maintenance:.....	33
7.15.	Liability of Owners for Damage to Common Area:.....	33
7.16.	Right to Lease: .....	33
7.17.	Commonly Metered Utilities: .....	34
7.18.	Flags, Pennants, Banners and Signage:.....	34
7.19.	Activities Causing Increase in Insurance Rates: .....	34
7.20.	Common Area Use: .....	34
7.21.	Drainage: .....	34
7.22.	Owner's Obligation to Inspect, Maintain and Repair: .....	34
ARTICLE VIII.	INSURANCE; DAMAGE OR DESTRUCTION; CONDEMNATION.....	35
8.1.	Insurance:.....	35
A.	Association Insurance: .....	35
B.	Amount, Term and Coverage.....	36

C.	Representation for Claims.....	36
D.	Waiver of Subrogation .....	37
E.	Review of Policies .....	37
F.	Separate Insurance Limitations .....	37
G.	Copies of Policies; Notice to Members .....	37
H.	Limitation on Liability .....	37
I.	Policies and Procedures Regarding the Filing and Processing of Claims .....	37
J.	Review of Policies .....	37
8.2.	Damage or Destruction: .....	38
A.	Cost of Damage – Lots and Units: .....	38
B.	Process For Repair or Reconstruction .....	38
C.	Process If Repair or Reconstruction Not Undertaken .....	39
D.	Right of First Refusal:.....	40
8.3.	Condemnation:.....	40
ARTICLE IX.	GENERAL PROVISIONS .....	40
9.1.	Enforcement:.....	40
9.2.	Invalidity of Any Provision:.....	40
9.3.	Term:.....	41
9.4.	Amendments.....	41
A.	Unilateral Amendment by Declarant.....	41
B.	Amendment by Members .....	41
C.	Amendments Requiring Consent of Owners.....	41
D.	Amendments Requiring City's Consent.....	41
E.	Agreements Among Owners .....	41
9.5.	Rights of First Lenders: .....	41
A.	Amendments.....	42
B.	Reserves: .....	42
C.	First Lenders Rights Confirmed .....	42
D.	Distribution of Proceeds of Insurance, Condemnation or Termination .....	42
9.6.	Limitation of Restrictions on Declarant:.....	42
9.7.	Termination of Any Responsibility of Declarant and Acceptance of Obligations by the Association: .	43
9.8.	Owners' Compliance: .....	43
9.9.	Notice: .....	43
9.10.	Special Provisions Relating to Enforcement of Declarant's Obligation to Complete Common Area Improvements .....	44
9.11.	Special Provisions Relating to Enforcement of Declarant's Obligation to Pay Assessments.....	44
9.12.	Fair Housing: .....	45
9.13.	Dispute Resolution: .....	45
A.	Claims for Declaratory Relief or Enforcement of Governing Document .....	45
B.	Design or Construction Defect Claims .....	45
C.	Notices to Members of Legal Proceedings Against Declarant.....	46
D.	Judicial Reference for Certain Disputes .....	46
E.	Arbitration of Disputes .....	48
9.14.	City Provisions:.....	49
9.15.	Mergers or Consolidations: .....	50

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

647 N. Santa Cruz Ave

THIS DECLARATION, made on the date hereinafter set forth, by 647 N SANTA CRUZ AVE, LLC., a California limited liability company, hereinafter referred to as "Declarant," is made with reference to the following facts:

A. **Location of Property.** Declarant is the owner of certain property located in the Town of Los Gatos ("City"), County of Santa Clara ("County"), State of California, more particularly described on the Map entitled Tract No. \_\_\_\_\_, filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on \_\_\_\_\_, 20\_\_\_\_, in Book \_\_\_\_\_ of Maps, page(s) \_\_\_\_\_ ("Map").

B. **Owner's Interest.** The development shall be referred to as the "Project" as defined in Section 1.38. Each Lot shall have appurtenant to it a membership in 647 North Santa Cruz, a nonprofit mutual benefit corporation, which shall own the Common Area.

C. **General Plan of Improvement.** Declarant intends by this Declaration to impose upon the Project, as defined and described in this Declaration, mutually beneficial restrictions under a general plan of improvement for the benefit of all Owners of Lots and Units.

NOW, THEREFORE, Declarant hereby declares that all of the Project described above shall be held, sold, leased, mortgaged, encumbered, rented, used, occupied, improved and conveyed subject to the following declarations, limitations, easements, restrictions, covenants, and conditions, which are imposed as equitable servitudes pursuant to a general plan for the development of the Project for the purpose of enhancing and protecting the value and desirability of the Project and every part thereof, and which shall run with the Project and be binding on Declarant and its successors and assigns, and on all parties having or acquiring any right, title or interest in or to the described Project or any part of it, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

### ARTICLE I DEFINITIONS AND INTERPRETATIONS

1.1. **"Articles":** The Articles of Incorporation of the Association, as amended from time to time.

1.2. **"Assessment":** That portion of the cost of inspecting, maintaining, improving, repairing, operating and managing the Project, including Reserves, which is to be paid by each Owner as determined by the Association, and shall include Regular Assessments, Special Assessments, and Reimbursement Charges.

1.3. **"Assessment Lien":** A lien imposed by the Association on a Lot to collect a delinquent Assessment pursuant to California Civil Code section 5675.

1.4. **"Association":** 647 N SANTA CRUZ, a California nonprofit mutual benefit corporation, the Members of which shall be the Owners of Lots and Units in the Project.

1.5. **"Board" or "Board of Directors":** The governing body of the Association.

1.6. **"Budget":** A written, itemized estimate of the Association's income and Common Expenses prepared and adopted by the Association pursuant to the Bylaws.

1.7. **"Bylaws":** The Bylaws of the Association, as amended from time to time.

1.8. **"Cal DRE":** The California Department of Real Estate and any department or agency of the California state government that succeeds to the Cal DRE's functions.

- 1.9. **"City"**: The City of Cupertino, a municipal corporation.
- 1.10. **"Common Area"**: The portions of the Property (and all improvements thereon) owned by the Association for the common use and enjoyment of the Owners consisting upon recordation of the Maps and conveyance by deed to the Association of Lot "A", described on said Map.
- 1.11. **"Common Expenses"**: The actual and estimated expenses the Association incurred for inspecting, maintaining, repairing, operating and replacing the Common Area and any reasonable Reserve for such purposes as found and determined by the Board and all sums designated Common Expenses by or pursuant to the Declaration, Articles, or Bylaws.
- 1.12. **"County"**: The County of Santa Clara.
- 1.13. **"Davis-Stirling Act"**: California Civil Code sections 4000, et seq.
- 1.14. **"Declarant"**: 647 N. Santa Cruz Ave, LLC., a California limited liability company, and any successor or assign that expressly assumes the rights and duties of the Declarant under this Declaration in a recorded written document.
- 1.15. **"Declaration"**: This Declaration, as amended or supplemented from time to time.
- 1.16. **"Eligible Mortgages"**: Mortgages held by "Eligible Mortgage Holders."
- 1.17. **"Eligible Mortgage Holder"**: A holder, insurer, or guarantor of a First Mortgage on a Lot which has requested timely written notices from the Association, in a written request that includes the name and address of the Eligible Mortgage Holder, and the Lot number.
- 1.18. **"Eligible Insurer or Guarantor"**: An insurer or governmental guarantor of a First Mortgage.
- 1.19. **"First Lender"**: Any Person, entity, bank, savings and loan association, insurance company, or other financial institution holding a recorded First Mortgage on any Lot.
- 1.20. **"First Mortgage"**: Any Mortgage recorded in the County made in good faith and for value on a Lot with first priority over other Mortgages encumbering the Lot.
- 1.21. **"Foreclosure"**: The legal process by which a Lot owned by an Owner who is in default under a Mortgage is sold, pursuant to California Civil Code section 2924a et seq. or sale by the Court pursuant to California Code of Civil Procedure § 725a et seq. and any other applicable laws.
- 1.22. **"Governing Documents"**: This Declaration, as amended from time to time, the exhibits, if any, that are attached to the Declaration, together with the other basic documents used to create and govern the Project, including the Map, the Articles, the Bylaws, and the Rules.
- 1.23. **"Hazardous Materials"**: Any substance, material or waste which is or becomes: (i) regulated by any local or regional Governmental authority of the State of California or the United States Government as a hazardous waste; (ii) is defined as a "solid waste," "sludge," "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "non-RCRA hazardous waste," "RCRA hazardous waste," or "recyclable material," under any federal, state or local statute, regulation, or ordinance, including, without limitation, Sections 25115, 25117, 25117.9, 25120.2, 25120.5 or 25122.7, 25140, 25141 of the California Health and Safety Code; (iii) defined as a "Hazardous Substance" under section 25316 of the California Health and Safety Code; (iv) defined as a "Hazardous Material," "Hazardous Substance" or "Hazardous Waste" under Section 25501 of the California Health and Safety Code; (v) defined as a "Hazardous Substance" under Section 25281 of the California Health and Safety Code; (vi) asbestos; (vii) petroleum products, including, without limitation, petroleum, gasoline, used oil, crude oil, waste oil, and any fraction thereof, natural gas, natural gas liquefied, methane gas, natural gas, or synthetic fuels, (viii) materials defined as hazardous or extremely hazardous pursuant to the California Code of Regulations; (ix) pesticides, herbicides and fungicides; (x) polychlorinated biphenyls; (xi) defined as a "Hazardous Substance" pursuant to Section

311 of the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.); (xii) defined as a "Hazardous Waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; (xiii) defined as a "Hazardous Substance" or "Mixed Waste" pursuant to Section 101 of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 9601 et seq., and regulations promulgated thereunder; (xiv) defined as a "Hazardous Substance") pursuant to Section 401.15 of the Clean Water Act, 40 C.F.R. 116; (xv) defined as an "Extremely Hazardous Substance" pursuant to Section 302 of the Superfund Amendments and Reauthorizations Act of 1986, 42 U.S.C. Section 11002 et seq.; or (xvi) defined as "medical waste" pursuant to Section 25023.2 of the California Health and Safety Code, Chapter 6.1 (Medical Waste Management Act).

1.24. **"Homeowners Association Handbook"**: Recommendations and directions for inspection and maintenance of Common Area improvements by the Association and/or the Board.

1.25. **"Homeowners Handbook"**: Recommendations and directions for inspection and maintenance of Lots and Units by Owners.

1.26. **"Lot"**: Each Lot or parcel shown on the Map, with the exception of the Common Area.

1.27. **"Major Components"**: Those elements of the Project, including, without limitation, structural elements, machinery and equipment, that the Association is obligated to maintain as provided in California Civil Code sections 5300(b) and 5550.

1.28. **"Map"**: That Map, described above in Introductory Paragraph A.

1.29. **"Member"**: A Person entitled to membership in the Association as provided herein. Regardless of the number of Persons or entities comprising the Owner, no Lot shall, at any time, constitute or include more than one Member of the Association except for the 5 owners of Units located on one lot.

1.30. **"Mortgage"**: A mortgage, deed of trust, assignment of rents, issues and profits or other proper instrument (including, without limitation, those instruments and estates created by sublease or assignment) given as security for the repayment of a loan or other financing which encumbers a Lot, made in good faith and for value.

1.31. **"Mortgagee"**: The holder of a Mortgage including the beneficiary of a deed of trust that constitutes a Mortgage.

1.32. **"Mortgagor"**: A Person who encumbers its Lot with a Mortgage, including a trustor of a deed of trust that constitutes a Mortgage.

1.33. **"Notice of Delinquent Assessment"**: A Notice of Delinquent Assessment filed by the Association for a delinquent Assessment pursuant to Section 4.9.C.

1.34. **"Occupant"**: A Person who legally occupies a Lot or Unit, including, without limitation, a tenant or guest, invitee, renter, lessee, family member, or relative.

1.35. **"Owner"**: The record Owner, whether one (1) or more Persons or entities (all of whom or which, collectively constitute one (1) Owner, with each Lot, for all purposes of this Declaration, having no more than one (1) Owner, in each case, as from time to time designated on the records of the Association) of fee simple title to any Lot which is a part of the Project but expressly excluding: (a) those Persons or entities having (i) an interest merely as security for the performance of an obligation and/or (ii) option rights; rights of first refusal; rights of first negotiation and/or a recorded memorandum of any such rights, in each case until such Persons or entities obtain fee title to the Lot and/or (b) those Persons or entities who have leasehold and/or other non-ownership occupancy interests in a Lot. If a Lot is sold under a recorded contract of sale, the purchaser under the contract of sale, rather than the holder of the fee interest, be considered the "Owner" from and after the date the Association receives written notice of the recorded contract. The term "Owner" includes Declarant



with respect to each Lot that Declarant owns.

1.36. "Person": A natural person, a corporation, a limited liability company, a partnership, a trust, or other legal entity.

1.37. "Private Street": That private street located within the Common Area shown on the Map.

1.38. "Project": All of the real property above described on the Map including all improvements and structures erected or to be erected on that real property, subject to this Declaration.

1.39. "Public Report": The official document and permit issued pursuant to the Subdivided Lands Act [Business & Professions Code §§ 11000 et seq.] by the State of California Department of Real Estate authorizing the offering of the Lots and Units for sale to the public.

1.40. "Regular Assessments": A Regular Assessment levied by the Association pursuant to Section 4.3.B.

1.41. "Reimbursement Charge": A charge levied by the Board against an Owner to reimburse the Association for costs and expenses incurred in bringing the Owner and/or its Lot and/or Occupant into compliance with the provisions of this Declaration, determined and levied pursuant to Sections 4.10 and 5.1.A of this Declaration.

1.42. "Reserves or Reserve Funds": That portion of the Common Expenses collected as part of the Regular Assessments levied against the Lots and Units in the Project allocated (i) for the future repair and replacement of, or additions to, the Major Components which the Association is obligated to maintain pursuant to this Declaration, including Reserves for replacement of structural elements and mechanical equipment or other facilities maintained by the Association; and (ii) to cover the deductible amounts of any insurance policies maintained by the Association.

1.43. "Reserve Study": The tri-annual study of Major Components of a Common Interest Development required by California Civil Code sections 5550 and 5560.

1.44. "Residence": The residential structure that is located within a Lot.

1.45. "Right to Repair Law": Division 2, Part 2, Title 7 (commencing with Section 895) of the California Civil Code ("SB 800").

1.46. "Rules": The rules adopted from time to time by the Board or the Association pursuant to Section 5.2.D.

1.47. "SB 800": The "Right to Repair Law".

1.48. "Special Assessments": A Special Assessment levied by the Association pursuant to Section 4.3.B.

1.49. "Unit": A unit constitutes one of the 5 units in the multi-family building situated on a single lot.

1.50. "Utility Facilities": Defined in Section 2.6.

**B. Interpretations:**

1.50. "General Rules": This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for creating and operating a residential planned development and maintaining the Common Area. As used in this Declaration, the singular includes the plural and the plural the singular. The masculine, feminine and neuter each includes the other, unless the context dictates otherwise.

1.51. "Articles and Sections: The Article and Section headings have been inserted for convenience only and may not be considered in resolving questions of interpretation or construction. Unless otherwise indicated, any references in this Declaration to articles or sections are to Articles and Sections of this Declaration.

1.52. "Priorities and Inconsistencies": If there are conflicts or inconsistencies between the Governing Documents, then the provisions of this Declaration shall prevail.

1.53. "Severability": The provisions of this Declaration are independent and severable. A determination of invalidity or partial invalidity or unenforceability of any one provision of this Declaration by a court of competent jurisdiction does not affect the validity or enforceability of any other provisions of this Declaration.

1.54. "Statutory References": All references made in this Declaration to statutes are to those statutes as currently in effect or to subsequently enacted replacement statutes.

**ARTICLE II. DESCRIPTION OF PROJECT AND CREATION OF PROPERTY RIGHTS**

2.1. **Description of Project:** The Project is a planned development, consisting of the Common Area, the six (6) Lots and Units, five (5) units and all improvements thereon.

2.2. **Easements; Dedication of Common Area:** Each of the Lots and Units shown on the Map shall have appurtenant to it as the dominant tenement an easement over the Common Area(s) as the servient tenement for ingress and egress, and for use, occupancy and enjoyment, and for the construction, maintenance and operation of utilities; subject to the following provisions:

A. The right of the Association to discipline Members and to suspend the voting rights of a Member for any period during which any Assessment against the Member's Lot remains unpaid, and for any infraction of the Declaration, Bylaws, Articles or written Rules in accordance with the provisions of Sections 4.9, 5.2.F and 9.1 hereof.

B. The right of the Association to dedicate, transfer or mortgage all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided, that in the case of the borrowing of money and the mortgaging of its property as security therefor, the rights of such Mortgagee shall be subordinate to the rights of the Members of the Association. No such dedication, transfer or mortgage shall be effective unless an instrument signed or approved by two-thirds (2/3rds) of each class of Members agreeing to such dedication, transfer or mortgage has been recorded.

C. The right of the Association to grant easements under, in, upon, across, over, above or through any portion of the Common Area for purposes, including, without limitation, access, utilities, and parking, which are beneficial to the development of the Project in accordance with the general plan established by this Declaration.

D. The right of the Association or Declarant to install or have installed a cable or central television antenna system. The system, if and when installed, shall be maintained by the Association or cable television franchisee. To the extent required to effectuate the foregoing plan, there shall be an easement in favor of each Lot for the purpose of connecting the same with the master cable television terminal, central television antenna or line. Each Lot shall be subject to an easement in favor of all other Lots and Units and in favor of the entity holding the cable television or similar communications services franchise, to provide for the passage through the Lot and any

structure thereon of television connections from any other Lot to the cable system, and shall be subject to a further easement for the placement and maintenance of such connections.

E. Easements for work necessary to complete development and construction of the Project, as more particularly described in Section 9.6.

The foregoing easements are granted and reserved subject to the condition that their use and enjoyment shall not unreasonably interfere with the use, occupancy or enjoyment of all or any part of the Lot servient to them or to which they are appurtenant.

2.3. **Easements to Accompany Conveyance of Lot:** Easements that benefit or burden any Lot shall be appurtenant to that Lot and shall automatically accompany the conveyance of the Lot, even though the description in the instrument of conveyance may refer only to the fee title to the Lot.

2.4. **Delegation of Use:** Any Owner may delegate, in accordance with the Bylaws, its right of enjoyment to the Common Area and facilities to the Members of its family, guests, Occupants, or contract purchasers, who reside in the Project, but no such delegation will operate to relieve the Owner of its obligations hereunder.

2.5. **Conveyance of Common Area to Association:** On or before conveyance of title to the first Lot, Declarant shall deed the Common Area to the Association to be held for the benefit of the Members of the Association.

2.6. **Owners' Rights and Easements for Utilities:** The rights and duties of the Owners of Lots and Units within the Project with respect to sanitary sewer, drainage, water, electric, gas, television receiving, telephone equipment, DSL fiber optic or other cables and lines, exhaust flues, and heating facilities (hereinafter referred to, collectively, as "Utility Facilities") shall be as follows:

A. Whenever Utility Facilities are installed within the Project, which Utility Facilities or any portion thereof lie in or upon a Lot or Lots and Units owned by other than the Owner of a Lot served by said Utility Facilities, the Owners of any Lots and Units served by said Utility Facilities, shall have the right of reasonable access for themselves or for utility companies or the City upon not fewer than seventy two (72) hours notice, except in the case of an emergency, to repair, to replace and generally maintain said Utility Facilities as and when the same may be necessary, due to failure or inability of the Board to take timely action to make such repairs or perform such maintenance; provided, however, that the Owner making such repairs or causing such repairs to be made shall (1) restore the affected Lot(s) to its condition before repairs were commenced and (2) indemnify and hold harmless the Association and the affected Lot Owner(s) from liability for injuries and damages that arise from such repairs, except to the extent that the Person seeking indemnity caused or contributed to the harm.

B. Whenever Utility Facilities are installed within the Project which serve more than one (1) Lot, the Owner of each Lot served by said Utility Facilities shall be entitled to the full use and enjoyment of such portions of said Utility Facilities as service its Lot.

C. In the event of a dispute between or among 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) Owner addressed to the other Owner(s), the matter shall be submitted first to the Board for mediation, and thereafter, if the dispute remains unresolved, to binding arbitration within sixty (60) days pursuant to Section 9.13.E of the Declaration.

2.7. **Reciprocal Private Ingress and Egress Easements:** Each Lot shall have the right of ingress and egress over all other Lots and Units via the PIEE easement area described on the Map.

2.8. **Encroachment Easements:** Each Lot as the dominant tenement shall have an easement over adjoining Lots and Units and Common Area as the servient tenements for the purpose of accommodating any encroachment due to foundations, exterior wall, windows, roof overhang and fences or walls which are built in accordance with the original design, plans and specifications of Declarant, or due to engineering errors, errors or adjustments in original construction, settlement or

shifting of the building, or similar causes. There shall be valid easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the intentional conduct of said Owner or Owners other than adjustments by Declarant in the original construction. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owners of each adjoining Lot agree that minor encroachments over adjoining Lots and Units and Common Area shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist. In the event that an error in engineering, design or construction results in an encroachment of a building into the Common Area, or into or onto an adjoining Lot, or into a required setback area, a correcting modification may (at the discretion of Declarant) be made in the subdivision map. Said modification shall be in the form of a certificate of correction and shall be executed by Declarant (so long as Declarant is the sole owner of the Project) and by Declarant's engineer and by the City Engineer. If the correction occurs after title to the Common Area has been conveyed to the Association, the Association shall also execute the certificate of correction. The Board of Directors may, by vote or written approval of a majority of the Directors, authorize the execution of the certificate of correction.

## **2.9. Residence Maintenance Easements:**

**A. Easements:** In all cases where a structural wall of a Residence that was built as part of the original construction is located on or adjacent to the boundary line between adjacent Lots and Units, the Owner of the Residence as the dominant tenement shall have a nonexclusive easement over the adjacent Lot as the servient tenement for access to and use of that portion of the servient tenement as may be reasonably necessary for the maintenance of the wall, the reconstruction of the wall in the event of the partial or total destruction of the same, and the drainage associated with the wall or the Residence of which the wall is a part, and an easement to accommodate the foundation and/or roof or eave encroachment as per the original design, plans and specifications which were the basis for the original construction of the Residence; provided, however, that the Owner making such repairs or causing such repairs to be made shall (1) restore the affected Lot to its condition before repairs were commenced and (2) indemnify and hold harmless the Association and the affected Lot Owner from liability for injuries and damages that arise from such repairs, except to the extent that the Person seeking indemnity caused or contributed to the harm. The Owner of a Lot having a structural wall situated on the boundary line between its Lot and the adjoining Lot shall not attach anything to the outside of the wall which shall protrude across the boundary line into the adjoining Lot, and the Owner of the adjoining Lot upon which such a wall is situated shall not attach anything to the outside of the wall without (in each case) the consent and permission of the Owner of the adjoining Lot upon which the Residence of which the wall is a part is situated.

**B. Arbitration:** In the event of any dispute arising concerning the provisions of this Section, upon written request of one (1) Owner addressed to the other Owner(s), the matter shall be submitted first to the Board for mediation, and thereafter, if the dispute remains unresolved, to binding arbitration within sixty (60) days pursuant to Section 9.13.E, and judgment may be entered thereon in any court having jurisdiction.

**2.10. Maintenance Easement:** An easement over each Lot is reserved by Declarant, and is hereby granted to the Association, for the purpose of entering upon the Project to perform such maintenance, if any, as the Association may do in accordance with the provisions of Section 5.1.A and Section 7.22 of this Declaration.

**2.11. Drainage Easements:** An easement over and under each Lot as the servient tenement is reserved in favor of each other Lot as the dominant tenement for the purpose of allowing the Association's agents to enter the Lot to maintain that portion of an in-tract storm drainage system located thereon. No Owner or Occupant shall commit any act that would interfere with the operation of any drainage system (including drainage swales) installed on the Owner's Lot, each Owner shall maintain the system free of debris and other obstacles at all times. Reciprocal appurtenant easements between each Lot and the Common Area and between adjoining Lots and Units are reserved for the flow of storm water.

**2.12. Common Utility Meter Easement:** An easement over any Lot or Lots and Units in favor of the Association is reserved for the purpose of installing, maintaining, repairing and replacing the common utility meter and connecting lines installed thereon by Declarant or the Association for irrigation and Common Area lighting or other common facilities for any portion of the Project.

**2.13. Other Easements:** The Common Area and each Lot are subject to all easements, dedications, and rights of way granted or reserved in, on, over and under the Project as shown on the Map.

**2.14. Rights of Entry and Use:** The Lots and Units and Common Area shall be subject to the following rights of entry and use:

A. The right of the Association's agents to enter any Lot to cure any violation of the Governing Documents, provided that the Owner has received notice and a hearing as required by the Bylaws (except in the case of an emergency) and the Owner has failed to cure the violation or take steps necessary to cure the violation within thirty (30) days after the finding of a violation by the Association;

B. The access rights of the Association to inspect, maintain, repair or replace improvements or property located in the Common Area as described in Section 5.2.E;

C. The easements described in this Article II;

D. The right of the Association's agents to enter any Lot to perform maintenance as described in Section 7.22;

E. The rights of the Declarant during the construction period as described in Section 9.6.

**2.15. Partition of Common Area:** There shall be no subdivision or partition of the Common Area, nor shall any Owner seek any partition or subdivision thereof.

Notwithstanding any provisions to the contrary contained in this Declaration and in order to provide for a means of terminating the Project if this should become necessary or desirable, on occurrence of any of the conditions allowing an Owner of a Lot to maintain an action for partition (as such conditions are presently set forth in California Civil Code section 4610 or as such conditions in the future may be set forth in any amendment thereto or comparable provisions of law), two-thirds (2/3rds) of the Owners of Lots and Units shall have the right to petition the Superior Court having jurisdiction to alter or vacate the Map under California Government Code section 66499.21, et seq., or any comparable provisions of law, and to vest title to the Project in Owners as tenants in common and order an equitable partition of the Project in accordance with the laws of the State of California.

Nothing herein shall be construed to prohibit partition of a joint tenancy or co-tenancy in any Lot.

**2.16. All Easements Part of Common Plan:** Whenever any easements are reserved or created or are to be reserved or created in this Declaration, such easements shall constitute equitable servitudes for the mutual benefit of all property in the Project, even if only certain Lots and Units are specifically mentioned as subject to or benefiting from a particular easement. Easements referred to in this Declaration that are created by grant deeds subsequent to the date of this Declaration shall be part of the common plan created by this Declaration for the benefit of all property Owners within the Project.

### **ARTICLE III. ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS**

**3.1. Association to Own and Manage Common Areas:** The Association shall own and manage the Common Area in accordance with the provisions of the Governing Documents.

**3.2. Membership:** The Owner of a Lot or Unit shall automatically, upon becoming the

Owner of same, be a Member of the Association, and shall remain a Member thereof until such time as its ownership ceases for any reason. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Membership shall be held in accordance with the Articles and Bylaws. Each Lot is entitled to Membership as one Member, regardless of the number of Persons or entities comprising the Owner thereof. If a Person including, without limitation, the Declarant, owns more than one (1) Lot, that Person has Membership interests equal in number to the number of Lots and Units of which it is the Owner.

**3.3. Transferred Membership:** Membership in the Association shall not be transferred, encumbered, pledged, or alienated in any way, except upon the sale or encumbrance of the Lot to which it is appurtenant, and then only to the purchaser, in the case of a sale, or Mortgagee, in the case of an encumbrance of such Lot. On any transfer of title to an Owner's Lot, including a transfer on the death of an Owner, Membership passes automatically with title to the transferee subject to all restrictions imposed by this Declaration, as Amended and/or by the Association on the transferred Lot.

A Mortgagee does not have membership rights until it obtains title to the Lot through Foreclosure or deed in lieu of Foreclosure. Any attempt to make a prohibited transfer is void. No Member may resign its Membership or transfer its Membership separate and apart from the related Lot. On notice of a transfer, the Association shall record the transfer on its books.

**3.4. Membership and Voting Rights:** Membership and voting rights shall be as set forth in the Bylaws.

#### ARTICLE IV. ASSESSMENTS, LIENS AND FORECLOSURE

**4.1. Creation of the Lien and Personal Obligation of Assessments:** The Declarant, for each Lot owned within the Project, hereby covenants, and each Owner of any Lot by acceptance of a deed for that Lot, whether or not it shall be so expressed in such deed, covenants and agrees:

(1) to pay Regular Assessments, Special Assessments, and Reimbursement Charges to the Association as established in this Declaration; and,

(2) to allow the Association to enforce any Assessment Lien established under this Declaration by non-judicial proceedings under a power of sale or by any other means authorized by law.

The Regular Assessments and Special Assessments, including Reimbursement Charges as permitted under Section 4.9, together with interest, late charges, collection costs, and reasonable attorneys' fees, shall be a charge on the Lot and shall be a continuing lien as an Assessment Lien upon the Lot against which each such Assessment is made, the Assessment Lien to become effective upon recordation of a Notice of Delinquent Assessment. Each Assessment, together with interest, late charges, collection costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to the Member's successors in title unless expressly assumed by them and, if not so assumed, shall remain the personal obligation of the transferring Member. No Owner shall be exempt from liability for payment of Assessments by waiver of the use or enjoyment of any of the Common Areas or by the abandonment of the Owner's Lot.

The Membership interest of any Owner in the amounts paid pursuant to any Assessment upon the transfer of ownership shall pass to the new Owner. Upon the termination of these covenants for any reason, any amounts remaining from the collection of such Assessments after paying all amounts properly charged against such Assessments shall be distributed to the then Owners on the same pro rata basis on which the Assessments were collected.

**4.2. Purpose of Assessments:** The Assessments levied by the Association shall be used exclusively to promote the economic interests, recreation, health, safety, and welfare of all the Owners and other residents in the Project and to enable the Association to perform its obligations under this Declaration, including, without limitation, the maintenance of all Common Area improvements in good condition at all times.

#### **4.3. Assessments:**

**A. Regular Assessments:** The Board shall establish and levy Regular Assessments in an amount that the Board estimates will be sufficient to raise the funds needed to perform the duties of the Association during each fiscal year. Regular Assessments shall be made for successive one-year periods and collected in (as closely as possible) equal monthly installments.

The Regular Assessment shall include a portion for Reserves in such amounts as necessary to fully fund Reserves to meet the costs of the future repair, replacement or additions to the Major Components and fixtures that the Association is obligated to maintain and repair. Reserve Funds shall be deposited in a separate account and the signatures of at least two (2) Persons who shall either be Members of the Board or one officer who is not a Member of the Board and a Member of the Board shall be required to withdraw monies from the Reserve account and to account therefor to the Board.

**B. Special Assessments:** The Board, at any time, may levy a Special Assessment in order to raise funds for unexpected operating or other costs, insufficient operating or Reserve Funds, or such other purposes as the Board in its discretion considers appropriate. Special Assessments shall be allocated among the Lots and Units in the same manner as Regular Assessments, except in the case of an Assessment levied by the Board against a Member to reimburse the Association for costs incurred in bringing the Member and its Lot into compliance with provisions of the Governing Documents, or to replace insurance proceeds pre-empted pursuant Section 8.2.A.

#### **4.4. Restrictions on Increases in Regular Assessments or Special Assessments:**

**A. Approval of Members for Certain Assessments.** Except as provided in Section 4.4.B, without having first obtained the approval of such action by the vote or written assent of Members casting a majority of the votes at a meeting of the Association at which a quorum is present, the Board may not: (1) impose a Regular Assessment on any Lot which is more than twenty percent (20%) greater than the Regular Assessment for the immediately preceding fiscal year; or (2) levy a Special Assessment to defray the cost of any action or undertaking on behalf of the Association which in the aggregate exceeds five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. For purposes of this Section 4.4, a "quorum" means Members constituting more than fifty percent (50%) of the voting power of the Association. Any meeting of the Association for purposes of complying with this Section 4.4 shall be conducted in accordance with Chapter 5 (commencing with § 7510) of Part 3, Division 2 of Title 1 of the California Corporations Code and § 7613 of the California Corporations Code. The right of the Board to increase Regular Assessments by up to twenty percent (20%) over the Regular Assessment for the immediately preceding fiscal year is subject to the Board having complied with the provisions of California Civil Code section 5605(a), or having obtained the approval of such increase by the Members in the manner set forth above in this Section 4.4.

**B. Assessments - Emergency Situations.** Notwithstanding the foregoing, the Board, without membership approval, may increase Regular Assessments or levy Special Assessments necessary for an emergency situation in amounts that exceed the limits set forth in Section 4.4.A, above. For purposes of this Section, an emergency situation is one of the following:

- (1) an extraordinary expense required by an order of a court;
- (2) an extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible where a threat to personal safety on the Project is discovered; or,
- (3) an extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget, provided, however, that prior to the imposition or collection of the Assessment, 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 the Assessment.

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

This Section 4.4.B incorporates the statutory requirements of California Civil Code section 5610. If that Section of the California Civil Code is amended in any manner, this Section 4.4.B shall be automatically amended in the same manner without the necessity of amending this Declaration.

**C. Notice and Quorum for Any Action Authorized Under Section 4.4:** Any action authorized under Section 4.4, which requires a vote of the membership, shall be taken at a meeting called for that purpose, written notice of which shall be personally delivered or mailed to all Members not less than ten (10) nor more than ninety (90) days in advance of the meeting specifying the place, day and hour of the meeting and, in the case of a special meeting, the nature of the business to be undertaken. The action may also be taken without a meeting pursuant to the provisions of California Corporations Code section 7513, in which event the ballot and any related material may be sent by electronic transmissions, and responses may be returned by electronic transmissions.

**4.5. Division of Assessments:** Both Regular Assessments and Special Assessments shall be levied equally among the Lots and Units. Regular Assessments shall be collected on a monthly basis. Special Assessments may be collected in one (1) payment or periodically as the Board shall direct.

**4.6. Date of Commencement of Regular Assessments; Due Dates:** The Regular Assessments provided for in this Declaration shall commence as to all Lots and Units covered by this Declaration on the earlier to occur of (i) the first day of the month following the first conveyance of a Lot to the purchaser thereof under authority of a Public Report, or (ii) upon the occupancy of a subdivision interest in the Project. Subject to the provisions of Section 4.3 hereof, the Board of Directors shall use their best efforts to fix the amount of the Regular Assessment against each Lot and send written notice thereof to every Owner at least forty-five (45) days in advance of each Regular Assessment period, provided that failure to comply with the foregoing shall not affect the validity of any Assessment levied by the Board. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. Such a certificate stating that Assessments have been paid shall be conclusive evidence of such payment.

**4.7. Effect of Nonpayment of Assessments:** Any Assessment not paid within fifteen (15) days after the due date shall be delinquent, shall bear interest at the rate of ten percent (10%) per annum from thirty (30) days after the due date until paid, and shall incur a late payment penalty in an amount to be set by the Board from time to time, all of which collectively shall not exceed the maximum permitted by applicable law.

**4.8. Transfer of Lot by Sale or Foreclosure:** Sale or transfer of any Lot shall not affect the Assessment Lien. However, the sale of any Lot pursuant to Foreclosure of a First Mortgage shall extinguish the Assessment Lien of any Assessments on that Lot (including attorneys' fees, late charges, or interest levied in connection therewith) as to payments which became due prior to such sale or transfer (except for Assessment Liens as to which a Notice of Delinquent Assessment has been recorded prior to the Mortgage). Any First Lender who obtains title to a Lot pursuant to remedies in the Mortgage or through foreclosure will not be liable for more than six (6) months of the Lot's unpaid regularly budgeted Assessment accrued before acquisition of the title to the Lot by the First Lender, and will be liable for fees or costs related to the collection of unpaid Assessments. No sale or transfer shall relieve such Lot from liability for any Assessments becoming due after the foreclosure sale or from the lien thereof. The unpaid share of such Assessments shall be deemed to be Common Expenses collectible from all of the Lot Owners including such acquirer, its successors or assigns.

If a Lot is transferred, the grantor shall remain liable to the Association for all unpaid Assessments against the Lot through and including the date of the transfer. The grantee shall be



entitled to a statement from the Association, dated as of the date of transfer, setting forth the amount of the unpaid Assessments against the Lot to be transferred, and the Lot shall not be subject to a lien for unpaid Assessments in excess of the amount set forth in the statement, provided, however, the grantee shall be liable for any Assessments that become due after the date of the transfer.

**4.9. Priorities; Enforcement; Remedies:** If an Owner fails to pay an Assessment when due, the Association has the right, and option, to bring legal action against the Owner to enforce collection of the unpaid and past due Assessment, or may impose an Assessment Lien on the Lot owned by Owner pursuant to the provisions of California Civil Code section 5675. Suit to recover a money judgment for unpaid Assessments and attorneys' fees, shall be maintainable without foreclosing or waiving the lien securing the same. The Association shall distribute the written notice described in subdivision (b) of California Civil Code section 5730 entitled "Notice Assessments and Foreclosure" to each Member during the 60-day period immediately preceding the beginning of the Association's fiscal year. The notice is to be printed in at least 12-point type.

**A. Statement of Charges:** At least thirty (30) days prior to the Association recording an Assessment Lien upon a Lot pursuant to California Civil Code section 5650, the Association shall notify the Owner of record in writing by certified mail of the following:

(1) A general description of the collection and lien enforcement procedures of the Association and the method of calculation of the amount owed, a statement that the Owner has the right to inspect the Association's records, pursuant to California Civil Code section 5205, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION".

(2) An itemized statement of the charges owed by the Owner, including items on the statement which indicate the amount of any delinquent Assessments, the fees and reasonable costs of collection, reasonable attorneys' fees, any late charges, and interest, if any.

(3) 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.

(4) The right to request a meeting with the Board as provided by California Civil Code section 5675.

(5) The right to dispute the Assessment debt by submitting a written request for dispute resolution to the Association pursuant to the Association's "meet and confer" program required in Article 2 (commencing with Section 5900) of Chapter 10 of the California Civil Code.

(6) The right to request alternative dispute resolution with a neutral third party pursuant to Article 3 (commencing with Section 5925) of Chapter 10 of the California Civil Code before the Association may initiate foreclosure against the Owner's Lot, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

**Note:** Any payments made by the Owner toward the debt shall first be applied to the Assessments owed, and, only after the Assessments owed are paid in full shall the payments be applied to the fees and costs of collection, attorneys' fees, late charges, or interest. The Association need not accept any tender of a partial payment of an Assessment and all costs and attorneys' fees attributable thereto. Acceptance of any such tender does not waive the Association's right to demand and receive full payment. When an Owner makes a payment, the Owner may request a receipt and the Association shall provide it. The receipt shall indicate the date of payment and the Person who received it. The Association shall provide a mailing address for overnight payment of Assessments.

**B. Payment Plan:** An Owner may submit a written request to meet with the Board to discuss a payment plan for the Assessment debt noticed pursuant to Section 4.9.A. The Association shall provide the Owner(s) the standards for payment plans, if any exist. The Board shall meet with the Owner in an executive session within forty five (45) days of the postmark of the request, if the

request is mailed within fifteen (15) days of the date of the postmark of the notice, unless there is no regularly scheduled Board meeting within that period, in which case the Board may designate a committee of one or more Members to meet with the Owner. Payment plans may incorporate any Assessments that accrue during the payment plan period. Payment plans shall not impede the Association's ability to record a lien on the Owner's Lot to secure payment of delinquent Assessments. Additional late fees shall not accrue during the payment plan period if the Owner is in compliance with the terms of the payment plan. In the event of a default on any payment plan, the Association may resume its efforts to collect the delinquent Assessments from the time prior to entering into the payment plan.

**C. Notice of Delinquent Assessment:** After compliance with the provisions of California Civil Code section 5660(a), the Association may record a Notice of Delinquent Assessment and establish an Assessment Lien against the Lot of the delinquent Owner prior and superior to all other liens recorded subsequent to recordation of the Notice of Delinquent Assessment, except (1) all taxes, bonds, Assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any First Mortgage of record recorded prior to recordation of the Notice of Delinquent Assessment. The Notice of Delinquent Assessment shall include an itemized statement of the charges owed by the Owner described in Section 4.9.A above, a description of the Lot against which the Assessment and other sums are levied, the name of the record Owner, and the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice shall be signed by any officer of the Association or any management agent retained by the Association and shall be mailed by certified mail to every Person whose name is shown as an Owner of the Lot in the Association's records no later than ten (10) calendar days after recordation.

**D. Lien Releases:** Within twenty-one (21) days after payment of the sums specified in the Notice of Delinquent Assessment, the Association shall record or cause to be recorded in the Office of the County Recorder in which the Notice of Delinquent Assessment is recorded a lien release or notice of rescission and provide the Owner a copy of the lien release or notice that the delinquent Assessment has been satisfied.

**E. Enforcement of Assessment Lien and Limitations on Foreclosure:** The collection by the Association of delinquent Regular Assessments or delinquent Special Assessments of an amount less than one thousand eight hundred dollars (\$1,800), not including any accelerated Assessments, late charges, fees and costs of collection, attorneys' fees, or interest, may not be enforced through judicial or non-judicial foreclosure, but may be collected or secured in any of the following ways:

(1) By a civil action in small claims court, pursuant to Chapter 5.5 (commencing with Section 116.110) of Title 1 of the California Code of Civil Procedure. If the Association chooses to proceed by an action in small claims court, and prevails, the Association may enforce the judgment as permitted under Article 8 (commencing with Section 116.810) of Title 1 of the California Code of Civil Procedure. The amount that may be recovered in small claims court to collect upon a debt for delinquent Assessments may not exceed the jurisdictional limits of the small claims court and shall be the sum of the following:

(a) The amount owed as of the date of filing the complaint in the small claims court proceeding.

(b) In the discretion of the court, an additional amount to that described in subparagraph (a) equal to the amount owed for the period from the date the complaint is filed until satisfaction of the judgment, which total amount may include accruing unpaid Assessments and any reasonable late charges, fees and costs of collection, attorneys' fees, and interest, up to the jurisdictional limits of the small claims court.

(2) By recording a lien on the Owner's Lot upon which the Association may not foreclose until the amount of the delinquent Assessments secured by the lien, exclusive of any accelerated Assessments, late charges, fees and costs of collection, attorneys' fees, or interest, equals or exceeds one thousand eight hundred dollars (\$1,800) or the Assessments are more than twelve (12) months delinquent. If the Association chooses to record a lien under these provisions, prior to

recording the lien, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution as set forth in Article 2 (commencing with Section 5900) of Chapter 10 of the California Civil Code.

(3) Any other manner provided by law, except for judicial or non-judicial foreclosure.

F. **Foreclosure:** The Association may collect delinquent Regular Assessments or delinquent Special Assessments of an amount of one thousand eight hundred dollars (\$1,800) or more, not including any accelerated Assessments, late charges, fees and costs of collection, attorneys' fees, or interest, or any Assessments that are more than twelve (12) months delinquent, by a civil action, including, if within the jurisdiction of the small claims court, in small claims court, pursuant to Chapter 5.5 (commencing with Section 116.110) of Title 1 of the California Code of Civil Procedure, or any other manner provided by law, including using judicial or non-judicial foreclosure subject to the following conditions:

(1) Prior to initiating a foreclosure on an Owner's separate interest, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to the Association's "meet and confer" program required in California Civil Code Article 2 (commencing with Section 5900) of Chapter 10 of the California Civil Code or alternative dispute resolution as set forth in California Civil Code Article 3 (commencing with Section 5925) of Chapter 10 of the California Civil Code. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner, except that binding arbitration shall not be available if the Association notifies the Owner that the Association intends to initiate a judicial foreclosure.

(2) The decision to initiate Foreclosure of an Assessment Lien for delinquent Assessments that has been validly recorded shall be made only by the Board and may not be delegated to an agent of the Association. The Board shall approve the decision by a majority vote of the Board Members in an executive session. The Board shall record the vote in the minutes of the next meeting of the Board open to all Members. In the Association's minutes, the Board shall maintain the confidentiality of the Owner or Owners of the Lot by identifying the matter in the minutes by the Lot number of the property, rather than the name of the Owner or Owners. A Board vote to approve foreclosure of a lien shall take place at least thirty (30) days prior to any public sale.

(3) The Board shall provide notice by personal service, by certified mail, or as otherwise permitted by law, to an Owner of a Lot who occupies the Lot or to the Owner's legal representative, if the Board votes to foreclose upon the Lot. The Board shall provide written notice to an Owner of a Lot who does not occupy the Lot by first-class mail, postage prepaid, at the most current address shown on the books of the Association. In the absence of written notification by the Owner to the Association, the address of the Owner's Lot may be treated as the Owner's mailing address.

(4) A non-judicial foreclosure by the Association to collect upon a debt for delinquent Assessments shall be subject to a right of redemption. The redemption period within which the Lot may be redeemed from a foreclosure sale under this paragraph ends ninety (90) days after the sale.

In addition to the requirements of California Civil Code section 2924, a notice of default shall be served by the Association on the Owner's legal representative in accordance with the manner of service of summons in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the California Code of Civil Procedure. Upon receipt of a written request by an Owner identifying a secondary address for purposes of collection notices, the Association shall send additional copies of any notices required by this Section to the secondary address provided. The Association shall notify Owners of their right to submit secondary addresses to the Association, at the time the Association issues the pro forma operating Budget pursuant to California Civil Code section 5310. The Owner's request shall be in writing and shall be mailed to the Association in a manner that shall indicate the Association has received it. The Owner may identify or change a secondary address at any time, provided that, if a secondary address is identified or changed during the collection process, the

Association shall only be required to send notices to the indicated secondary address from the point the Association receives the request.

**G. Sale by Trustee:** Any sale by the trustee shall be conducted in accordance with the provisions of §§ 2924, 2924b, 2924c, 2924f, 2924g, 2924h and 2924j of the California Civil Code applicable to the exercise of powers of sale in mortgages and deeds of trust, including any successor statutes thereto, or in any other manner permitted by law. The fees of a trustee may not exceed the amounts prescribed in California Civil Code sections 2924c and 2924d. Nothing in this Declaration shall preclude the Association from bringing an action directly against an Owner for breach of the personal obligation to pay Assessments nor from taking a deed in lieu of foreclosure.

**H. Purchase By Association:** The Association, acting on behalf of the Lot Owners, shall have the power to bid for the Lot at a Foreclosure sale, and to acquire and hold, lease, mortgage and convey the Lot. If the purchase of a Lot would result in a five percent (5%) or greater increase in Assessments, the purchase shall require the vote or written consent of a majority of the total voting power of the Association, including a majority of Members other than Declarant. During the period a Lot is owned by the Association, following Foreclosure:

- (1) no right to vote shall be exercised on behalf of the Lot;
- (2) no Assessment shall be assessed or levied on the Lot; and,
- (3) each other Lot shall be charged, in addition to its usual Assessment, its share of the Assessment that would have been charged to such Lot had it not been acquired by the Association as a result of Foreclosure.

After acquiring title to the Lot at Foreclosure sale following notice and publication, the Association may execute, acknowledge and record a deed conveying title to the Lot which deed shall be binding upon the Owners, successors, and all other parties.

**I. Suspension of Voting Rights of Delinquent Owner:** The Board may temporarily suspend the voting rights of a Member who is in default in payment of any Assessment. Any other discipline, fine, or penalty requires a noticed hearing as provided in the Bylaws, Section 7.2.D.

**J. Fines and Penalties:** In conformity with California Civil Code section 5725(b), fines and penalties imposed by the Association for violation of this Declaration as a disciplinary measure for failure of an Owner to comply with this Declaration or the Rules, except for late payments, are not "Assessments," and are not enforceable by Assessment Lien, but are enforceable by court proceedings; provided, however, pursuant to California Civil Code section 5725(a), monetary penalties imposed by the Association to reimburse the Association for costs incurred for repair of damage to Common Area or facilities for which the Owner or Occupant(s) were responsible may become the subject of a lien. Provided however that any such enforcement as a lien shall only be permitted if there are no Lots and Units in the Project that are subject to the jurisdiction of the Department of Real Estate under a Final Subdivision Public Report. In the event that California Civil Code section 5725(b) is amended to permit fines and penalties imposed by the Association for violation of the Governing Documents as a disciplinary measure for failure of an Owner to comply with this Declaration or the Rules to be enforceable by Assessment Lien, then this provision shall be deemed amended to conform to any such amendment of California Civil Code section 5725(b).

The provisions of this Section 4.9 are intended to comply with the current requirements of California Civil Code section 5725. If these Sections are amended or rescinded in any manner the provisions of this Section 4.9 automatically shall be amended or rescinded in the same manner. California Civil Code sections 5650-5735 may have been amended by the State Legislature, and the Board should confirm the current statutory requirements.

**4.10. Reimbursement Charges:** The Board may levy a Reimbursement Charge against a Member to reimburse the Association for costs incurred by the Association in the repair of damage to the Common Area and facilities for which the Member (or the Occupant(s) for which the Member is responsible) was responsible, and in bringing the Member and its Lot into compliance with the

provisions of the Governing Documents. The Reimbursement Charges shall be in the amount required to reimburse the Association for the actual costs and expenses incurred to enforce the Association's rights under this Declaration. Reimbursement Charges shall be payable when directed by the Board after written notice to the Owner(s), which notice shall in no event be less than thirty (30) days. If an Owner disputes a Reimbursement Charge, the Owner may request a hearing before the Board.

**4.11. Unallocated Taxes:** In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than against the Lots and Units, said taxes shall be included in the Assessments made under the provisions of Section 4.1 and, if necessary, a Special Assessment may be levied against the Lots and Units in an amount equal to said taxes, to be paid in two (2) installments, in each case, before the due date of each tax installment.

**4.12. Estoppel Certificate:** Within ten (10) days of the mailing or delivery of a written request by any Owner, the Board shall provide the Owner with a written statement from an authorized representative of the Association, containing the following information: (i) whether to the actual current knowledge of the authorized representative, the Owner or Occupant of the Owner's Lot is in violation of any of the provisions of the Governing Documents; (ii) the amount of Regular Assessments, Special Assessments, and Reimbursement Charges, including installment payments, paid by the Owner during the fiscal year in which the request is received; and (iii) the amount of any Assessments levied against the Owner's Lot that are unpaid as of the date of the statement, including any late charges, interest or costs of collection, and that, as of the date of the statement, are or may be made a lien against the Owner's Lot as provided by this Declaration. The Association may charge a fee to provide this information, provided the fee shall not exceed the Association's reasonable cost to prepare and reproduce the requested items.

## **ARTICLE V. DUTIES AND POWERS OF THE ASSOCIATION**

**5.1. Duties:** In addition to the duties enumerated in the Articles and Bylaws, or elsewhere provided for in this Declaration, and without limiting the generality of those duties, the Association shall perform the following duties:

**A. Maintenance:** The Association shall inspect, maintain and repair the following:

**(1) Common Area Maintenance:** The Common Area, all improvements and landscaping thereon, and all property owned by the Association, including, without limitation, parking areas, driveways, private streets, irrigation systems, lighting fixtures, and utility, sewer or drainage systems not maintained by a public entity, utility company, or improvement district, and all facilities (including Utility Facilities to the extent described in Section 2.6).

**(2) Driveway Maintenance:** The shared driveway that exists within the area designated "PIEE" on the Map.

**(3) Storm Drain:** The storm drain system, structure and equipment within the area designated "PSDE" on the Map.

**(4) Fire Protection Equipment:** Any built-in fire detection and protection equipment wherever located on the Project including any interior sprinklers but excluding smoke and/or carbon monoxide detectors located inside the Residences. Maintenance shall include periodic testing of such equipment (at least as often as required by City and per Title 19 of the California Code of Regulations).

**(5) Cooperation of Owners/Occupants:** Each Owner and Occupant shall fully cooperate with the agents of the Association in the performance of the Association's maintenance and repair obligations described above. Such cooperation shall include, but is not limited to, immediate notification to the Board or its managing agent of any maintenance or repair problems for which the Association is responsible and access to the Owner's or Occupant's Lot as may be necessary to inspect and, if appropriate, to perform any necessary maintenance or repairs.

Except as expressly assigned to the Association in this Section 5.1.A, all other maintenance

and repair obligations for any residential structure shall be done by and at the expense of the Owner of the Residence as described in Section 7.22.

The responsibility of the Association for inspection, maintenance and repair shall not extend to repairs or replacements arising out of or caused by the willful or negligent act or omission of any Owner or Occupant, or the Occupant's pet(s). Any such repairs or replacements not covered by insurance carried by the Association shall be made by the responsible Owner, provided the Board approves the Person or entity actually making the repairs and the method of repair. If the responsible Owner fails to take the necessary steps to make the repairs within a reasonable time under the circumstances, the Association may cause the repairs to be made and shall impose a Reimbursement Charge upon the responsible Owner, which charge shall bear interest at the rate of ten percent (10%) per annum (but no greater than the maximum rate allowed by law) until paid in full. If such repair is covered by the insurance carried by the Association, the Association shall be responsible for making the repairs, and the responsible Owner shall pay any deductible pursuant to the insurance policy. If the Owner fails to make such payment, then the Association may make such payment and charge the cost thereof as a Reimbursement Charge to the Responsible Owner, which charge shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate allowed by law) until paid in full. If the Owner disputes the charge, the Owner shall be entitled to a notice and a hearing as provided in the Bylaws before the charge may be imposed.

**(6) Standard of Maintenance:** Maintenance shall mean the exercise of reasonable care of buildings, road, landscaping, lighting and other related improvements and fixtures in a state similar to their original condition, normal wear and tear excepted. Maintenance of landscaping shall further mean the exercise of regular fertilization, irrigation, and other garden practices necessary to promote a healthy, weed free environment for optimum plant growth.

**B. Inspection and Maintenance Guidelines; Homeowners Association Handbook:**

The Declarant shall provide the Association with a Homeowners Association Handbook, and each Owner who or which purchases a Lot directly from Declarant with a Homeowners Handbook both including manufacturers' guidelines and schedules for the inspection and maintenance of the improvements within the Project. Replacement copies of the Homeowners Handbook may be obtained from the Association at the Association's principal place of business. The Association may charge a reasonable fee for providing replacement copies of the Homeowners Handbook. The Board shall comply with the Homeowners Association Handbook for the periodic inspection and maintenance of the Common Area improvements and landscaping that the Association is required to maintain under this Declaration, and any other improvements outside of the Common Area, which the Association has the responsibility to maintain, including, without limitation, the maintenance requirements provided for in Section 5.1.A(2). The Board shall take all appropriate actions to implement and comply with the Homeowners Association Handbook.

**(1)** The Board shall cause professional inspections of Major Components and of all Common Area infrastructure to be routinely made. The Board shall engage professionals to conduct such inspection if the Board or the Association's manager deems that such inspections by professionals, such as an architect, a civil engineer and a landscape architect, or other such professional, is warranted. Inspections shall be made at least yearly, and for appropriate items or events, more often. Inspections will include a review of all repair records since the previous inspection. The Board shall cause a log ("Maintenance Log") to be kept to record all inspection and maintenance performed, and to record who performed the work, the results, and the date the inspection or maintenance was performed.

**(2)** The Board shall prepare and maintain annual reports of the results of the inspection, and the status of maintenance of the Common Area, including a copy of the Maintenance Log. The reports shall address any noted deterioration which may require future attention. The reports may also recommend supplemental specialized investigations.

**(3)** The Board shall keep permanent records of all: (a) Complaints and potential problems, including description, date and by whom; (b) Reports, including inspections and recommendations; (c) Maintenance and repairs, including description, location, date, by whom made and cost; and (d) Plans, including construction drawings, subsequent modifications, and repair plans.

(4) For a period of ten (10) years after the date of substantial completion of construction of the Project or recordation of a Notice of Completion, whichever occurs earlier, the Board shall also furnish to Declarant copies of: (a) the report of each inspection performed for the Board, whenever such inspection is performed and for whatever portion of the Common Area that is inspected, within thirty (30) days after the completion of such inspection; and (b) the most recent inspection and/or maintenance report prepared for any portion of the Project, within ten (10) days after the Association's receipt of a written request therefor from Declarant.

(5) The Board may, from time to time, make appropriate revisions to the Homeowners Association Handbook based on the Board's review thereof, to update such handbook to provide for inspection and maintenance according to current industry practices so long as such changes do not reduce the useful life or functionality of the items being maintained. No changes may be made to the Homeowners Association Handbook without the Declarant's prior written consent for a period of ten (10) years after completion of construction of the Common Area improvements, or the close of escrow on the sale of the first Lot, whichever occurs later.

(6) The Board shall inspect, maintain and operate the Common Area of the Project in accordance with all applicable municipal, state, and federal laws, statutes and ordinances, as the case may be. The Board shall also, as a separate and distinct responsibility, insure that third parties (including Owners and Occupants) utilize the Common Area in accordance with the aforementioned regulations. The Board shall, when it becomes aware of any violation of the aforementioned regulations, expeditiously correct such violations.

C. **Insurance:** The Association shall obtain and maintain such policy or policies of insurance as are required by Section 8.1 of this Declaration.

D. **Discharge of Liens:** The Board shall discharge by payment, if necessary, any lien against the Common Area and charge the cost thereof to the Owner or Owners responsible for the existence of the lien after notice and hearing as provided in the Bylaws.

E. **Assessments:** The Board shall fix, levy, collect and enforce Assessments as set forth in Article IV hereof.

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

G. **Enforcement:** The Association and the Board shall be responsible for the enforcement of this Declaration.

H. **Annual Budget:** During the month of December of each year, the Association shall establish a budget for all expenses of the Project for the coming year, including maintenance, insurance, repair, replacement, including reserves, and management. Each Lot Owner shall be responsible for payment of its share of the budgeted expenses, and other expenses incurred by the Association during the year. On request of any Owner, the Association shall prepare and distribute any financial statements and reports that may be required by law.

I. **Utility Service:** The Association shall have the authority (but not the obligation) to obtain, for the benefit of the all the Lots and Units, all water, gas and electric service and refuse collection.

5.2. **Powers:** In addition to the powers enumerated in the Articles and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Association and the Board, where applicable, shall have the following powers:

A. **Utility Service:** The Association shall have the authority (but not the obligation) to obtain, for the benefit of all of the Owners, all water, gas and electric service, cable television service, communications service, and refuse collection, janitorial service, and window cleaning service.

**B. Easements:** The Association shall have authority by document signed by the President and the Secretary, to grant easements where necessary for roads, utilities, communication services, cable television, and sewer facilities over the Common Area to serve the Common Areas and Lots and Units, and/or where necessary to satisfy or achieve appropriate governmental purpose or request. The Board of Directors may grant exclusive use easement rights over a portion of the Common Area to a Member with the affirmative vote of sixty-seven percent (67%) of the separate interests in the Project, and without the approval of the Members in those limited cases set forth in California Civil Code section 4600, and in such case the Board may cause an amendment to the Declaration to be recorded to conform to the grant of the exclusive use easement rights.

**C. Manager:** The Association shall employ a professional management firm and contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, except for the responsibility to levy fines, impose discipline, hold hearings, file suit, record or foreclose liens, or make capital expenditures, provided that any contract with a firm or Person appointed as a manager or managing agent shall not at any time exceed a one (1) year term, shall provide for the right of the Association to terminate the same at the first annual meeting of the Members of the Association, and to terminate the same without cause or payment of a termination fee on ninety (90) days' written notice, or for cause on thirty (30) days' written notice.

**D. Adoption of Rules:** The Association or the Board, by majority vote, may adopt reasonable Rules not in conflict with the law, or with the Governing Documents, relating to the use of the Common Area and all its facilities, and the conduct of Owners and Occupants with respect to the Project and other Owners. Written copies of such Rules and any schedule of fines and penalties adopted by the Board shall be furnished to Owners. All changes to the Rules will become effective fifteen (15) days after they are either: (i) posted in a conspicuous place in the Common Area; or (ii) sent to the Owners via first-class mail or by any system or technology designed to record and communicate messages. The adoption of any Rules or amendment or repeal of any Rule shall comply with the procedures required by California Civil Code sections 4350, 4355, 4360 and 4365, to the extent applicable.

**E. Access:** For the purpose of performing inspections, construction, maintenance or emergency repair for the benefit of the Common Area or the Owners in common, and/or to perform maintenance work that a Lot Owner has failed to perform as provided in Section 7.22, the Association's agents or employees shall have the right, after reasonable notice (except in emergencies, not less than twenty-four (24) hours) to the Owner or Occupant of the Lot in which such maintenance work has not been performed, to enter the Lot at reasonable hours. Such entry shall be made with as little inconvenience to the Owner or Occupant as practicable, and any damage caused by such entry shall be repaired at the expense of the Association.

**F. Assessments and Liens:** The Board shall have the power to levy and collect Assessments in accordance with the provisions of Article IV hereof.

**G. Fines and Disciplinary Action:** The Board may impose fines or take disciplinary action against any Owner for failure to pay Assessments or for violation by Owner or Occupant for whom Owner is responsible, of any provision of the Governing Documents. Penalties may include, but are not limited to, fines, temporary suspension of voting rights, or other appropriate discipline, provided the Owner is given notice and a hearing as provided in the Bylaws before the imposition of any fine or disciplinary action. The Board shall have the power to adopt a schedule of reasonable fines and penalties for violations of the terms of this Declaration, and for violations of any Rules adopted pursuant to Section 5.2.D. The penalties prescribed may include suspension of all rights and privileges of membership; provided, however, that suspension for failure to pay Assessments shall be for a maximum period of thirty (30) days, renewable by the Board for an additional thirty (30) day period or periods until paid; and provided further that suspension for infraction of Rules or violation of this Declaration, other than for failure to pay Assessments, shall be limited to a maximum period of thirty (30) days per infraction or violation, and shall be imposed only after a hearing before the Board. The Board may extend that period for an additional thirty (30) day period or periods in the case of a continuing infraction or violation, and no hearing need be held for such extension. Written copies of



Rules and the schedule of penalties shall be furnished to Owners. The Board shall levy fines and penalties and shall enforce such Assessments as appropriate under applicable law.

**H. Enforcement:** The Board shall have the authority to enforce this Declaration as per Section 9.1 hereof.

**I. Acquisition and Disposition of Property:** The Board shall have the power to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real or personal property in connection with the affairs of the Association. Any transfer of property shall be by document signed or approved by two-thirds (2/3rds) of the total voting power of the Association which shall include two-thirds (2/3rds) of the Members other than Declarant, or where the two (2) class voting structure is still in effect, two-thirds (2/3rds) of the Members of each class of Members.

**J. Loans:** The Board shall have the power to borrow money, and, only with the assent (by vote or written consent) of two-thirds (2/3rds) of the total voting power of the Association including two-thirds (2/3rds) of the Members other than Declarant, or where the two (2) class voting structure is still in effect, two-thirds (2/3rds) of the voting power of each class of Members, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

**K. Dedication:** The Board shall have the power to dedicate all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication shall be effective unless an instrument has been signed by two-thirds (2/3rds) of the total voting power of the Association including two-thirds (2/3rds) of the Members other than Declarant, or where the two (2) class voting structure is still in effect, two-thirds (2/3rds) of the voting power of each class of Members, agreeing to such dedication.

**L. Contracts:** The Board shall have the power to contract for goods and/or services for the Common Area(s), for the Lots and Units, or for the Association, subject to limitations set forth in the Bylaws, or elsewhere in this Declaration. The Board shall not enter into any contracts with an independent contractor until it meets the requirements of Section 8.1.A.(3) herein.

**M. Delegation:** The Board, and the officers of the Association shall have the power to delegate their authority and powers to committees, officers or employees of the Association, or to a manager employed by the Association, provided that the Board shall not delegate its responsibility:

(1) to make expenditures for capital additions or improvements chargeable against the Reserve Funds;

(2) to conduct hearings concerning compliance by an Owner or Occupant with the Governing Documents;

(3) to make a decision to levy monetary fines, levy Reimbursement Charges, temporarily suspend an Owner's rights as a Member of the Association or otherwise impose discipline;

(4) to make a decision to levy Regular Assessments or Special Assessments; or,

(5) to make a decision to bring suit, record a claim of lien or institute Foreclosure proceedings for default in payment of Assessments.

**N. Water and Garbage Service:** The Board shall have the authority (but not the obligation) to acquire and pay for water service and trash or garbage service for all homes situated in the Project. All funds collected from Owners for water service or trash and garbage service shall be segregated from all other funds and shall be used for no purpose other than providing water service, and trash and garbage service.

O. **Appointment of Trustee:** The Board acting on behalf of the Association, has the power to appoint or designate a trustee to enforce Assessment Liens by sale as provided in Section 4.9 and California Civil Code section 5700(a).

P. **Litigation/Arbitration:** The Board of Directors has authority to enter into a contract with one or more attorneys in a matter involving alleged design or construction defects in the Project, only as to the facilities or improvements the Association is responsible for maintaining as provided herein, only if the matter is not resolved pursuant to the procedures set forth in Section 9.13, and only after getting the vote at a duly noticed and properly held membership meeting, of a majority of the Members other than Declarant.

If, and to the extent that, there is any inconsistency between this Section 5.2.P and applicable provisions of the California Civil Code pertaining to the commencement of an action by the Association for construction defect litigation, the applicable provisions of the California statutes shall control.

Q. **Other Powers:** In addition to the powers contained herein, the Board may exercise the powers granted to a nonprofit mutual benefit corporation under California Corporations Code section 7140.

R. **Common Area Improvements:** The Board shall have the authority and power to demolish, remove and reconstruct any and all improvements on or over or under the Common Area in a manner not inconsistent with this Declaration, and to construct, improve and repair improvements that are appropriate for the use and benefit of the Members of the Association, and to charge for the use of such improvements, provided that the Board shall not include in any Regular Assessment or Special Assessment the cost of any new capital improvement which exceeds \$5,000 in cost to be expended in any one calendar year, unless fifty-one percent (51%) or more of the voting power of the Association previously shall have approved said expenditure.

S. **Granting Rights:** The power to grant exclusive or non-exclusive easements, licenses, rights of way or fee interests in the Common Area, to the extent any such grant is reasonably required: (a) for utilities and facilities to serve the Common Area and the Lots and Units; (b) for purposes of conformity with the as-built location of improvements installed or authorized by Declarant or the Association; (c) in connection with any lawful lot line adjustment; or (d) for other purposes consistent with the intended use of the Project. This power includes the right to create and convey Common Areas to the extent provided for in Section 5.2.B. The Association may de-annex any real property from the encumbrance of this Declaration in connection with any lawful lot line adjustment.

5.3. **Commencement of Association's Duties and Powers:** Until incorporation of the Association, conveyance of the Common Area to the Association, and the conveyance of title to the first Lot, all duties and powers of the Association as described in this Declaration, including all rights of consent and approval, shall be and remain the duties and powers of Declarant. After the date of incorporation of the Association, and the conveyance of the Common Area to the Association, and the conveyance of title to the first Lot, the Association shall assume all duties and powers, and Declarant shall be relieved of any further liability therefor.

## ARTICLE VI. ARCHITECTURAL CONTROL

6.1. **Purpose of Architectural Controls:** The purpose and intent of this Article is to empower the Association to preserve property values and design integrity within the Project. The Board has the ultimate responsibility, but may delegate that authority to an Architectural Control Committee. The Board and the Architectural Control Committee (if one is appointed by the Board) shall operate pursuant to the following guidelines:

A. During the period of initial sales, through transition of control from Declarant to the Members of the Association, the emphasis shall be upon uniformity of appearance, and consistency in carrying out Declarant's original design and architectural scheme for the Project.

B. Following initial sell-out, the emphasis shall be upon keeping out of the Project

what is considered bizarre, outlandish, or offensive to a reasonably prudent homeowner within the Project. The objective then becomes to prevent additions, alterations or replacements which are reasonably likely to be detrimental to the overall ambiance of the Project, and reasonably likely to adversely affect property values throughout the Project. The restrictions are not intended to empower the Board or the Committee to act arbitrarily, capriciously, or whimsically in the process of reviewing plans. Standards should be established which are both reasonable and objective, and which are reasonably ascertainable, and are uniformly and fairly applied to all, and in all cases. The Board and the Committee shall base their decisions on what is in the best interests of the Project as a whole, and not upon what will appease a particular Member or group of Members.

**6.2. Requirement for Approval of Plans:** No building, fence, wall, pool, spa, obstruction, outside or exterior wiring, balcony, screen, patio, patio cover, tent, awning, carport, carport cover, trellis, improvement, or structure of any kind shall be commenced, installed, erected, painted or maintained upon the Project, nor shall any alteration or improvement of any kind be made thereto, or to the exterior of any Residence, until the same has been approved in writing by the Board, or by an Architectural Control Committee appointed by the Board. Plans and specifications showing the nature, kind, shape, color, size, materials and location of such improvements, alterations, etc., shall be submitted to the Board or to the Architectural Control Committee for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation. No fence or wall shall be erected, placed or altered on any Lot nearer to any street than the minimum building set back line. No permission or approval shall be required to repaint in accordance with Declarant's original color scheme, or to rebuild in accordance with Declarant's original plans and specifications. No permission or approval shall be required to repaint in accordance with a color scheme previously approved by the Committee or the Board, or to rebuild in accordance with plans and specifications previously approved by the Committee or by the Board. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of its Residence or to paint the interior of its Residence any color desired. The Board or Committee may consider the impact of views from other Lots and Units along with other factors, including reasonable privacy right claims, passage of light and air, beneficial shading and other factors in reviewing, approving or disapproving any proposed landscaping, construction or other improvements. However, neither the Declarant nor the Association warrants that any views in the Property are protected. No Lot is guaranteed the existence or unobstructed continuation of any particular view.

**6.3. Board or Architectural Control Committee Action:** In the event the Board or Committee fails to approve or disapprove plans and specifications in writing within sixty (60) days after the same have been submitted to it, approval will not be required and the related covenants shall be deemed to have been fully complied with. Approval of plans by the Committee or the Board shall in no way make the Committee or its Members or the Board or its Members responsible for or liable for the improvements built after approval of the plans, and the Owner whose plans are approved shall defend, indemnify and hold the Committee, the Board, the Association, and the Members thereof, harmless from any and all liability arising out of such approval.

In reviewing and approving or disapproving a proposed alteration, modification or improvements to a Lot that is subject to review, the Board or Architectural Committee shall satisfy the following requirements in accordance with California Civil Code section 4765:

(1) The Board or Architectural Committee shall provide a fair, reasonable, and expeditious procedure for making its decision. The procedure shall provide for prompt deadlines.

(2) A decision on a proposed change shall be made in good faith and may not be unreasonable, arbitrary, or capricious.

(3) A decision on a proposed change shall be consistent with any governing provision of law, including, but not limited to, the Fair Employment and Housing Act (Part 2.8, commencing with Section 12900) of Division 3 of Title 2 of the Government Code.

(4) A decision on a proposed change shall be in writing. If a proposed change is disapproved, the written decision shall include both an explanation of why the proposed

change is disapproved and a description of the procedure for reconsideration of the decision.

(5) If a proposed change is disapproved by a Committee, the applicant is entitled to reconsideration by the Board of Directors. This paragraph does not require reconsideration of a decision that is made by the Board or a body that has the same membership as the Board, at a meeting that satisfies the requirements of California Civil Code sections 4900-4950. Reconsideration by the Board does not constitute dispute resolution within the meaning of California Civil Code section 5905.

Nothing in this provision authorizes a physical change to the Common Area in a manner that is inconsistent with an association's governing documents or governing law.

**6.4. Landscaping:** No landscaping or other physical improvements or additions shall be made or added to any decks, balconies, patios or yards or portions of Lots and Units which are visible from the street or from any Common Area by any Owner until plans and specifications showing the nature, kind, shape, and location of the materials shall have been submitted to and approved in writing by the Architectural Control Committee, or the Board. No rules or restrictions shall be adopted or applied which prohibit or have the effect of prohibiting the use of low water-using plants or that have the effect of prohibiting or restricting compliance with a water-efficient landscape ordinance, or have the effect of prohibiting or restricting compliance with any regulation or restriction on the use of water adopted pursuant to Section 353 or 375 of the California Water Code. The Association may, however, apply landscaping rules and regulations, provided that such rules and regulations do not prohibit or restrict the use of low water-using plants, or prohibit or restrict compliance with any water efficient landscape ordinance, or any regulation or restriction on the use of water adopted pursuant to California Water Code sections 353 or 375. Trees and shrubs along the west and south boundaries of the Project shall be trimmed and maintained to a height determined by the Board in its discretion, after consulting with the owners of property contiguous to said boundaries. The new privacy trees and shrubs along the west and south property lines shall be maintained at a level of not less than 25 feet, after growing to that height. This height may be modified following agreement between the adjacent property owners and the Association and approval by the City's Director of Planning and Community Development.

**6.5. Solar Energy System:** The Board shall not restrict or prohibit the installation or use of a solar energy system that is protected by law, including, without limitation, California Civil Code sections 714, 714.1 and 801.5, except that it may adopt reasonable restrictions which do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or which allow for an alternative system of comparable cost, efficiency, and energy conservation benefits.

**6.6. Governmental Approval:** Before commencement of any alteration or improvements approved by the Architectural Control Committee, the Owner shall comply with all appropriate governmental laws and regulations. Approval by the Committee does not satisfy the appropriate approvals that may be required by any governmental entity with appropriate jurisdiction.

**6.7. Structural Integrity:** Nothing shall be done in or on any Lot or in or on the Common Area which will impair the structural integrity of any Residence or other building in the Project.

**6.8. Completion of Work; Review of Work:** Upon approval of the Committee or Board, the Owner shall diligently proceed with the commencement and completion of all work so approved by the Committee in compliance with the approvals granted. The work must be commenced within six months from the date of approval unless the Committee or Board permits the work to be commenced at a later time. If the work is not commenced within six months after the approval date, or such later time as the Committee or Board has granted approval, then the approval shall be deemed cancelled, and the Owner must reapply to the Committee or Board before undertaking any such work. A copy of each City inspection and approval, and a copy of final as-built drawings shall be provided to the Board.

The Committee or Board shall inspect work within sixty days after a written notice of completion has been delivered to the Committee or Board by the Owner. The Committee or Board may also inspect the work at any time prior to completion as it deems appropriate to determine that

the Committee or Board approval is being followed. The Committee or Board is to inspect the work performed, and determine whether it was performed and completed in compliance with the approval granted in all material respects. If at any time during the construction of any work, the Committee or Board finds that the work was not performed or completed in compliance of the approval granted in all material respects, or if the Committee or Board finds that the appropriate approval which was required for any work was not obtained, the Committee or Board shall notify the Owner in writing of the non-compliance. The notice shall specify in writing the particulars of non-compliance, and shall set forth the requirement of the Owner to remedy the non-compliance. The Committee or Board shall determine in its reasonable judgment whether an alteration, modification or improvement complies with the approval as granted in material respects. Minor changes, deviations or imperfections that do not negatively affect or impact the Project shall not be considered as non-compliance. The Board shall act under this Section 6.8 only if the Board has undertaken the architectural control functions, otherwise the Architectural Control Committee shall act.

If the Committee or the Board has determined an Owner has not constructed an improvement in compliance of the approval granted in all material respects, and if the Owner fails to remedy such non-compliance in accordance with provisions of the notice of non-compliance, then after expiration of thirty (30) days from the date of such notification, if the Committee has undertaken the architectural control functions under this Article, the Committee shall notify the Board, and the Board shall provide Notice and Hearing to consider the Owner's continuing non-compliance. If the Board has undertaken the architectural control functions under this Article, the Board shall act after expiration of thirty (30) days from the date of such notification. At the Hearing, if the Board finds that there is no valid reason for the continuing non-compliance, the Board shall then require the Owner to remedy the non-compliance as necessary and appropriate in the determination of the Board as to result in the improvement being rendered as reasonably in compliance as is appropriate for the overall good and benefit of the Project, or remove the same within a period of not more than forty-five (45) days from the date of the Board's determination. If the Owner does not comply with the Board's ruling within such period, or within any extension of such period as the Board, in its discretion may grant, the Board may (1) remove the non-complying improvement, (2) remedy the non-compliance, (3) institute legal proceedings to enforce compliance or completion, and to recover costs of enforcement, including attorneys' fees.

After ninety percent (90%) of the Lots and Units in the Project have been sold by the Declarant, an Owner who has submitted an application to the Committee may appeal a decision to deny or conditionally approve the Owner's application to the Board by written appeal to the Board. The Board shall notify the appealing Owner in writing of the date set for a hearing regarding the Owner's appeal within ten (10) days after receipt of the Owner's appeal. The hearing shall be held within thirty (30) days after receipt of the Owner's appeal by the Board. The Board shall make its determination on the appeal in writing delivered to the appealing Owner within ten (10) days after the hearing. The determination of the Board shall be final.

**6.9. No Waiver of Future Approvals:** The Board's or Committee's approval of any proposals, plans and specifications or drawings for any work done or proposed in connection with any matter requiring such approval does not waive the right to withhold approval of any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval.

**6.10. Variances:** The Board or the Committee may, but is not required to, authorize variances from compliance with any of the architectural provisions of this Declaration, including restrictions on height, size, floor area or placement of structure, or similar restrictions, when circumstances such as hardship, aesthetic or environmental consideration require. Such variances must be evidenced in writing, and become effective on adoption of a resolution by the Board. If variances are granted, no violation of the covenants, conditions and restrictions in this Declaration shall be deemed to have occurred with respect to the matter for which the variances were granted. The granting of a variance does not waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provisions of this Declaration covered by the variance, nor does it affect the Owner's obligation to comply with all laws affecting the use of its Lot.

## ARTICLE VII. USE RESTRICTIONS

In addition to all of the covenants contained in this Declaration, the use of the Project and each Lot in the Project is subject to the following:

**7.1. Use of Lots and Units:**

A. **Lots and Units:** No Lot shall be occupied and used except for residential purposes by the Owners, their tenants, and social guests. A Residence may be used as a combined Residence and executive or professional office by the Owner or occupant thereof, so long as such use: (a) does not interfere with the quiet enjoyment by other Owners; (b) does not include visiting clients; (c) business activities take place solely inside the Lot; (d) does not generate in-person visits by suppliers or clientele; (e) complies with all laws, regulations and ordinances applicable to the Property, including zoning, health and licensing requirements; (f) otherwise complies with the Declaration and is consistent with the residential character of the Property; (g) no signs, logos, billboards, or other advertising materials or devices are displayed in the windows of the Residence, or on exterior of the Building, or on any Common Area, to advertise the activity; (h) the existence or operation of the business is not apparent or detectable outside the Lot by sight, sound or odor; and (i) the business does not increase the liability or casualty insurance obligation or premium of the Association.

C. **Health Care Facilities:** No health care facilities operating as a business or charity, unless permitted by law or ordinance which preempts this restriction.

D. **Family Day Care Home:** No family day care home shall be permitted within the Project except as specifically authorized by California Health and Safety Code section 1597.40 and other applicable state statutes. The owner/operator of any such day care facility shall comply with all local and state laws regarding the licensing and operating of a day care home and, in addition, shall:

(1) Name the Association as an additional insured on the liability insurance policy or bond carried by the owner/operator of the day care home;

(2) Defend, indemnify and hold the Association harmless from any liability arising out of the existence and operation of the day care home;

(3) Abide by and comply with all of the Association's Rules;

(4) Supervise and be completely responsible for children at all times while they are within the project; and,

(5) Cooperate with the Association if the Association's insurance agent or carrier requires proof of insurance, proof of the agreement of the owner or operator of the day care home to these conditions, or other reasonable requests.

**7.2. Nuisances:** No noxious, illegal, or seriously offensive activities shall be carried on within any Lot, or in any part of the Project, nor shall anything be done thereon that may be or may become a serious annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of the Owners' Lots and Units, or which shall in any way increase the rate of insurance for the Project, or cause any insurance policy to be cancelled or to cause a refusal to renew the same, or which will impair the structural integrity of any Residence or other building in the Project. The Board is entitled to determine if any device, noise, odor or activity constitutes a nuisance.

**7.3. Allowed Vehicles and Parking:** Except as otherwise provided in this Section 7.3, only "Allowed Vehicles" shall be parked, stored or operated within the Project.

A. **Allowed Vehicles** shall mean appropriately licensed passenger automobiles, sports utility vehicles, motorcycles, and trucks having carrying capacity of  $\frac{3}{4}$  ton or less, vans having seating capacity of no more than eight (8) Persons. Owners and/or Occupants shall park their Allowed Vehicles only in the garages or parking space appurtenant to or assigned to their Lot. Vehicles that are not Allowed Vehicles shall not be parked or stored in the Project, except for commercial vehicles or construction equipment that are providing services to a Lot or the Association

(but only during the period of time in which such services are being provided and subject to the Rules). Allowed Vehicles shall not include any commercial vehicle, construction equipment, trailer, camper, mobile home, recreational vehicle, truck having carrying capacity of greater than  $\frac{3}{4}$  ton, van having seating capacity in excess of eight (8) Persons or any vehicle which is too large to fit within the Owner's garage, or assigned parking space, inoperable or abandoned vehicles, boats or similar equipment. Allowed Vehicles that are used both for business and personal use are not prohibited, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board. No excessively noisy or smoky vehicles (or sound-systems associated therewith) shall be operated on the Project. No Owner or Occupant of any Lot shall park or allow its invitees, licensees and/or guests collectively to park a total of more than three (3) Allowed Vehicles within the Project at any one time. Owners and Occupants shall register their vehicles with the Association and shall display a parking sticker, card, or other form of parking identification at all times.

B. No parking shall be permitted within the Private Streets of the Project, except in parking areas designated by the Board as guest or business customer parking areas. All such guest parking areas shall be used in accordance with the Governing Documents, and the laws of California. There shall be no parking of vehicles on the driveway or apron providing access to a garage.

C. The Association may install a sign at each vehicular entrance to the Project containing a statement that public parking is prohibited and that all vehicles not authorized to park on the Project will be removed at the vehicle owner's expense. The sign shall contain the telephone number of the local traffic law enforcement agency and shall not be less than 17 x 22 inches in size with lettering not less than one (1) inch in height, and the name and telephone number of each towing company that is a party to a written general towing authorization agreement with the Association. The sign may also indicate that a citation may also be issued for the violation. The Association shall enter into a written general towing authorization agreement with one or more towing companies as required by Vehicle Code section 22658.

D. The Association may cause the removal of any vehicle wrongfully parked on the Project, including a vehicle owned by an Owner or Occupant in accordance with applicable law. If the identity of the registered owner of the vehicle is known or readily ascertainable, the President of the Association or its designee shall, within a reasonable time after the tow, notify the owner of the vehicle of the removal in writing by personal delivery or first-class mail. In addition, notice of the removal shall be given to the local traffic law enforcement agency by telephone, or, if impractical, by the most expeditious means available, within one (1) hour of authorizing the tow. The notice shall include the make, model and vehicle identification number of the vehicle, the license plate number, the address from where the vehicle was removed, the grounds for removal, the time when the vehicle was first observed improperly parked at the Project, and the time authorization to tow the vehicle was given. 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, in a parking space designated "handicap" or "loading/unloading zone" without proper authority or in a manner which interferes with any entrance to, or exit from, the Project or any Lot, parking space or garage 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. Unless the Board provides otherwise, any Director or officer, any manager or manager's agent or any Owner authorized to do so by any Director or officer shall have the authority to act on behalf of the Association to cause the removal of any vehicle wrongfully parked within the Project.

E. No garage space shall be converted into any use (such as a recreational room or storage room) that would prevent use for parking space for the number of vehicles the space was designed to contain. Garage doors shall be kept closed at all times except when in use by the Occupant of the Lot which the garage is appurtenant, for ingress and egress to and from the garage. Owners are to use their assigned parking space(s) (if any) for parking of their vehicles so that unassigned Common Area parking will be available for guest or business customer parking. The Association may establish Rules from time to time for the parking of vehicles in the Common Areas.

The provisions of this Section 7.3 are intended to comply with the current requirements of Vehicle Code section 22658. If this Vehicle Code section is amended, this provision automatically shall be amended in the same manner. If this Section is repealed and no successor Section is enacted, this provision shall remain in full force and effect. Vehicle Code section 22658 may have been amended by the State Legislature since this Declaration was recorded, and the Board should confirm the current statutory requirements.

**7.4. Parking:** All Common Area parking spaces shall remain available for guest or business customer parking. Parking spaces shall be used for parking of allowed vehicles only and not for the permanent parking or storage of boats, trailers or non-mobile vehicles of any description. No parking space shall be converted into any use (such as a recreational room or storage room) that would prevent its use as parking space for the number of vehicles it was designed to contain. Owners are to use their assigned parking spaces for parking of their vehicles so that unassigned Common Area parking will be available for guest parking. The Association may establish Rules from time to time for the parking of vehicles in unassigned parking spaces in the Common Areas.

**7.5. Commercial Activity:** No business, professional, or commercial activity of any kind shall be conducted on any Lot except as provided in Section 7.1.

**7.6. Storage in Common Area:** Nothing shall be stored in the Common Area without the prior consent of the Board.

**7.7. Signs:** Subject to California Civil Code sections 712, 713 and 1353.6, no signs shall be displayed to the public view on any Lot or on any other portion of the Project, except non-commercial signs may be displayed within a Lot that are approved by the Board or a committee appointed by the Board, that conform to the Rules regarding signs, and that conform to the requirements of State law, and applicable local ordinances. "For Sale" or "For Rent" or "For Tax Deferred Exchange" signs shall be allowed to be displayed within areas of the Project that are designated in the Rules regarding such signs, and that conform to the requirements of State law, and applicable local ordinances, provided the design, dimensions and locations are reasonable. An Owner or its agent may display one (1) such For Sale or For Rent or For Tax Deferred Exchange sign within its Lot and one sign in the Common Area advertising directions to the Owner's Lot which is for sale, rent, or exchange, provided the design, dimensions and locations are reasonable and comply with the Rules regarding signs, and comply with the requirements of State law, and applicable local ordinances.

These restrictions on display of signs apply to signs that are visible from the exterior of a Lot, and are not intended to restrict signs that may be seen only from within the Lot in which the sign(s) is displayed. Declarant's rights reserved under Section 9.6 are not limited by this Section.

**7.9. Animals:** Except as provided in the Governing Documents, no animals of any kind shall be raised, bred, boarded, or kept in any Lot, or on any other portion of the Project. Service Animals used for assistance by visually impaired, hearing impaired or physically handicapped Persons, or certified companion animals prescribed by a physician, may be kept by an Owner or Occupant in accordance with the Rules. A "Service Animal" is defined in 28 CFR § 36.104, as the Code of Federal Regulations under the Americans with Disabilities Act of 1990, meaning a dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability, or as such definition may be revised by the government of the United States. Owners or Occupants of Lots and Units may keep no more than two (2) dogs, or two (2) cats, or one (1) dog and one (1) cat, within a Lot, and may keep birds or fish that are kept in cages or aquariums, provided that no such dogs, cats or other animal or fish may kept, bred, or maintained for any commercial purposes. All pets shall be kept under reasonable control at all times. No pets shall be allowed in the Common Area except as may be permitted by Rules of the Board. No Owner shall allow its dog to enter the Common Area except on a leash. After making a reasonable attempt to notify the Owner, the Association or any Owner or Occupant may, but is not obligated to, secure or cause any pet found within the Common Area in violation of the Rules of the Board or this Declaration to be removed by the Association (or any Owner or Occupant) to a pound or animal shelter under the jurisdiction of the City or the County, by calling the appropriate authorities, whereupon the Owner or Occupant may, upon payment of all expenses connected therewith, repossess the pet. Owners and Occupants shall prevent their pets from soiling



all portions of the Common Area and shall promptly clean up any waste left by their pets. Owners and Occupants shall be fully responsible for any damage caused by their pets.

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

Owners or Occupants shall use reasonable efforts to prevent any animal within its Lot from making unreasonably disturbing noises that can be heard from any other Lot. An Owner or Occupant in violation of this Section may be deemed to be permitting, or causing a serious annoyance or nuisance to any other Owner. The Board, after notice and a hearing, may require the permanent removal of any animal that the Board determines to be a danger to the health and safety of any Occupant in the Project, or otherwise to be a nuisance within the Project. The Board may find that an animal is a nuisance if the animal or its owner continues to violate the Rules regulating pets after receipt by the Owner of a written demand from the Board to comply with the Rules.

Owners and Occupants are required to inform the Association of the type of breed of pet upon commencement of occupancy and provide the Association with proof of rabies vaccination and evidence of certification of service animals. In no event shall any Owner or Occupant authorize, bring or keep within the Project: (a) any Pit Bull, Rottweiler, Doberman Pinscher, Mastiff, Presa Canario, or any other breed generally identified or described as a "fighting breed" or any dog being a mix thereof; or (b) any snakes, pigs, large lizards, spiders, rats or other vermin.

**7.10. Garbage and Refuse Disposal:** All rubbish, trash recycling materials and garbage shall be regularly removed from the Lots and Units, and shall not be allowed to accumulate therein. Trash, garbage, recycling materials and other waste shall only be kept in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition, and shall be screened from view of neighboring Lots and Units, Common Areas and streets. No toxic or Hazardous Materials shall be disposed of within the Project by dumping in the garbage containers or down the drains, or otherwise. Each Owner or Occupant shall be responsible for removal of garbage from its Lot and for prompt placement and removal of all containers placed in the Common Area for pick-up. Garbage, trash and recycling containers shall be left outside the authorized enclosure only on the scheduled day of pick up and shall be returned to the authorized enclosure no later than the day of scheduled pick up. All recycling and solid waste shall be confined to approved receptacles and enclosures.

**7.11. Radio, Television, and Internet Antennas:** No Owner shall construct, install and/or use and operate a radio and/or television antenna, satellite dish, Internet dish or an antenna one meter or more in diameter or diagonal measurement, other signal reception or transmission devices or related equipment in the Project, without the consent of the Board, which the Board shall have the discretion to withhold, subject to applicable legal requirements. In considering whether to approve applications for any such devices to be located, the Board shall consider and give great weight to considerations of aesthetics, safety within the community, uniformity of appearance, and the requirements of any applicable laws. The Board shall, in acting upon requests for approval of a satellite dish or other signal reception or transmission devices comply with California Civil Code section 4725 and FCC [Federal Communications Commission] regulations. The Board may adopt other Rules for installation and operation of any satellite dish or other signal reception or transmission devices that comply with California Civil Code section 4725 and FCC regulations.

**7.12. Basketball Standards and Sports Apparatus:** No basketball standard or fixed sports apparatus shall be attached to the exterior surface of any Residence or garage nor shall any portable apparatus for basketball be permitted on any Lot. The purpose of this restriction is to maintain uniformly high aesthetic standards, and to preserve the quiet enjoyment of the respective Lots and Units by the Owners thereof.

**7.13. Clothes Lines:** No exterior clothes lines shall be erected or maintained, and there shall be no outside laundering or drying of clothes. No draping of towels, carpets, or laundry over exterior

railings shall be allowed.

**7.14. Motor Vehicle Maintenance:** No car maintenance (other than emergency work), or boat maintenance shall be permitted on the Project except with prior written approval of the Board (except for approved construction work being undertaken on a Residence). 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. All hazardous waste shall be disposed of properly by the Owner causing or allowing that hazardous waste to be brought onto or created on the Project.

**7.15. Liability of Owners for Damage to Common Area:** The Owner of each Lot shall be liable to the Association for all damage to the Common Area improvements (including landscaping) caused by such Owner or any Occupant for whom an Owner is responsible, or pets, except for that portion of damage covered by insurance carried by the Association. The responsible Owner shall be charged with the cost of repairing such damage (including interest thereon) as described in Section 5.1.A.

**7.16. Right to Lease:**

A. Any Owner who wishes to lease its Residence must meet each of the following requirements, and the lease will be subject to these requirements whether they are included within the lease or not:

- (1) all leases must be in writing;
- (2) the lease must be for the entire Residence and not merely parts of the Residence, unless the Owner remains in occupancy;
- (3) all leases shall be subject in all respects to provisions of the Governing Documents, and all leases shall clearly obligate all Occupants to obey and comply with the Governing Documents;
- (4) all Owners who lease their Residences shall promptly notify the Secretary of the Association in writing of the names of all Occupants and Members of Occupants' family occupying such Residences, and their respective vehicle and pet information, and shall provide the Secretary of the Association with a complete copy of the lease. All Owners leasing their Residence shall promptly notify the Secretary of the Association of the address and telephone number where such Owner can be reached; and,
- (5) no Owner shall lease its Residence for a period of less than thirty (30) consecutive days or to successive tenants in order to satisfy this requirement.

B. Any failure of an Occupant to comply with the Governing 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 Occupant.

C. If any Occupant is in violation of the provisions of the Governing Documents, the Association may bring an action in its own name and/or in the name of the Owner to have the Occupant evicted and/or to recover damages. If the court finds that the Occupant is violating, or has violated any of the provisions of the Governing Documents of the Association, the court may find the Occupant guilty of unlawful detainer notwithstanding the fact that the Owner is not the plaintiff in the action and/or the Occupant is not otherwise in violation of Occupant's lease. For purposes of granting an unlawful detainer against the Occupant, 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.

D. The Association shall give the Occupant and the Owner notice in writing of the nature of the violation of the Governing Documents, and twenty (20) days from the mailing of the notice in which to cure the violation before the Association may file for eviction.

E. Each Owner shall provide a copy of the Governing Documents of the Association to each Occupant of its Lot. By becoming a Occupant, each Occupant agrees to be bound by the Governing Documents of the Association, and recognizes and accepts the right and power of the Association to evict a Occupant for any violation by the Occupant of the Governing Documents.

7.17. **Commonly Metered Utilities:** The Board may establish restrictions regarding the individual use of any utility on a common meter, and may impose reasonable charges for the individual use thereof.

7.18. **Flags, Pennants, Banners and Signage:** There shall be no exhibiting, flying or hanging of any flags, pennants, banners, kites, towels, etc., from any area of the Project (except by Declarant, during the period Declarant is marketing the Project) that would be visible from the street, Common Area, or the other Lots and Units, except in conformance with Rules adopted by the Board or the Architectural Control Committee, and except for flags, banners and signs that are expressly permitted by statute. The Association may adopt Rules regarding the display of flags, banners and signs provided that such Rules shall be consistent with the then applicable laws. Signage for the Live/Work Lots and Units shall conform to City regulations and to sign standards established by the Board.

7.19. **Activities Causing Increase in Insurance Rates:** Nothing shall be done or kept on any Lot or in any improvements constructed in any Lot, or in the Common Area, which will increase any applicable rate of insurance or which will result in the cancellation of insurance on any Lot or any part of the Common Area, or which would be in violation of any law.

7.20. **Common Area Use:** Nothing shall be stored, grown, or displayed in the Common Area that is not approved by the Board.

7.21. **Drainage:** No Owner, Member or Occupant shall do or cause anything to be done that would alter or interfere with the Project drainage patterns or block or alter the natural flow or engineered flow of surface water or interfere with drainage patterns within the Project.

7.22. **Owner's Obligation to Inspect, Maintain and Repair:**

A. Except for those portions of the Project which the Association is required to inspect, maintain and repair, each Owner shall, at its sole cost and expense, maintain and repair its Lot and the Residence and all landscaping thereon, keeping the same in good condition, pursuant to and in accordance with the Homeowners Handbook.

In addition, each Owner shall have the improvements on the Owner's Lot periodically inspected for termites and immediately shall take appropriate corrective measures thereof.

B. In order to prevent leaks and to reduce the presence of mold, fungi, spores, pollens and other botanical substances, or other allergens (collectively "Mold") within the Lot, the Owners shall inspect the interior of their Residences not less frequently than once each quarter, or as recommended by the Homeowners Association Handbook, to check for water leaks or other breaches of the watertight integrity of the improvements, and for the presence of Mold. If any water leaks and/or Mold are detected within the Lot, the Owner shall immediately take appropriate corrective steps to repair the leak, and/or remove the Mold and to maintain proper ventilation within enclosed areas, and to maintain humidity levels to reduce the risk of Mold growth, and take such other prudent steps as may be appropriate to prevent leaks and Mold growth and, as required, to eliminate all existing Mold.

C. Each Owner shall inspect and maintain the improvements within its Lot in

accordance with the inspection and maintenance guidelines set forth in the Homeowners Handbook established by the Declarant. Each Owner shall retain the Homeowners Handbook and take all appropriate actions to comply with and implement the Homeowners Handbook. When an Owner transfers a Lot, the Owner shall deliver a complete copy of the Homeowners Handbook and all manufacturers' materials to the transferee of the Lot on or before the date the Lot is transferred.

D. In the event an Owner of any Lot shall fail to inspect and maintain its Lot and Residence and the improvements thereon as required herein, the Association's agents may, after notice and a hearing as provided in the Bylaws, enter the Lot and perform the necessary maintenance. The cost of such inspection and maintenance shall immediately be paid to the Association by the Owner of such Lot as a Reimbursement Charge, together with interest at the rate of ten percent (10%) per annum (but not to exceed the maximum interest rate authorized by law) from the date the cost was incurred by the Association until the date the cost is paid by the Owner.

7.25. **Electric Vehicle Charging Stations:** Notwithstanding anything contained in this Declaration to the contrary, any provision in the governing documents that either effectively prohibits or unreasonably restricts the installation or use of an electric vehicle charging station in an Owner's designated parking space, including, but not limited to, a deeded parking space, a parking space in an Owner's Common Area, or a parking space that is specifically designated for use by a particular Owner, or is in conflict with the provisions of Civil Code section 4745 is void and unenforceable. Provisions that impose reasonable restrictions on electric vehicle charging stations that are in compliance with Civil Code section 4745 are not prohibited.

#### ARTICLE VIII. INSURANCE; DAMAGE OR DESTRUCTION; CONDEMNATION

8.1. **Insurance:** The Association shall obtain and maintain the following insurance:

A. **Association Insurance:**

(1) A master hazard policy insuring all improvements, equipment and fixtures in the Project (including the Residences as originally constructed), including all built-in or set-in appliances, cabinets and floor coverings, in the amount designated by Declarant as the original replacement cost thereof based on the standard package of appliances, cabinets and floor coverings offered to all Owners before the Close of Escrow) with policy limits of 100% of the full replacement value of the covered improvements, excluding foundations, excavations and footings and other items usually excluded from such insurance or endorsements in form and content acceptable by FNMA or FHLMC or FHA and meeting such other requirements as set forth in subparagraph 8.1.B, below. The following endorsements should be included in any such master property hazard policy, if commercially reasonable to obtain:

- (a) Changes in building codes ("ordinance or law endorsement");
- (b) Inflation guard coverage;
- (c) demolition coverage;
- (d) "agreed-amount" endorsement (to eliminate a coinsurance problem);
- (e) replacement cost endorsement; and,
- (f) primary coverage endorsement.

(1) An occurrence version comprehensive general liability policy insuring the Association, its agents, the Owners and their respective family members, against liability incident to the ownership or use of the Common Area or any other Association owned or maintained real or personal property. The amount of general liability insurance that the Association shall carry at all times shall be not less than the minimum amounts required by California Civil Code section 5800 and 5805;

(2) workers' compensation insurance (statutory limits) to the extent required by law (or such greater amount as the Board deems necessary). All independent contractors who contract with the Association shall be required to carry appropriate general liability insurance, automobile liability insurance coverage and workers' compensation coverage, and shall indemnify the Association with respect to any claims from such independent contractor, or independent contractor's employees, with regards to claims for liability and workers' compensation claims from any independent contractor who performs any service for the Association. Independent contractors shall be required to carry a minimum of \$1,000,000 per occurrence, \$2,000,000 general aggregate and \$2,000,000 products-completed operations aggregate under the general liability requirement naming the Association as an additional insured for their work. Independent contractors shall also carry a minimum of \$1,000,000 combined single limit for auto liability covering all owned, hired and non-owned automobiles;

(3) fidelity bonds or insurance covering officers, directors, and employees that have access to any Association funds;

(4) flood insurance if the Project is located in an area designated by an appropriate governmental agency as a special flood hazard area;

(5) directors and officers liability insurance covering all past, present and future directors and officers of the Association, the amount of which shall at all times not be less than the minimum amounts required by California Civil Code sections 5800 and 5805, as amended from time to time, including any successor statutes;

(6) insurance against water damage, and liability for non-owned and hired automobiles;

(7) water damage insurance to the extent typically available from commercial carriers, if available at reasonable rates in the opinion of the Board.

(8) earthquake insurance to the extent required by law, and if not required by law, then to the extent available at commercially reasonable rates in the opinion of the Board; and,

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

**B. Amount, Term and Coverage.** The amount, term and coverage of any policy required hereunder (including the type of endorsements, the amount of the deductible, the named insureds, the loss payees, standard mortgage clauses, notices of changes or cancellations, and the insurance company rating) shall satisfy the minimum requirements imposed for this type of project by the Federal National Mortgage Association ("FNMA") and the Federal Home Loan Mortgage Corporation ("FHLMC"), and the Housing and Urban Development ("HUD"), or any successor to either of those entities (except for earthquake insurance, the purchase of which is within the discretion of the Board as provided by Section 8.1.A.(10), above). If the FNMA, FHLMC or HUD requirements conflict, the more stringent requirement shall be met. If FNMA, FHLMC and HUD 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 customary for similar policies on similar projects in the area. The Board shall adopt a policy regarding payment of deductibles on any insurance coverage. Unless the Board determines otherwise, the Association shall pay deductibles required under any insurance claim from Association funds, unless insufficient funds are available to the Association from the Association's accounts from funds borrowed by the Association in accordance with this Declaration, in which event the Association shall levy a Special Assessment, in accordance with Sections 4.3.B and 4.4 of this Declaration, with respect to the amount of any such deductible which exceeds funds available to the Association from Association funds or from borrowing. Owners responsible for causing damage are responsible for the amount of any deductible as provided in Section 5.1.A(2).

**C. Representation for Claims.** Each Owner appoints (or, as the case may be, confirms the authority of) 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.

**D. Waiver of Subrogation.** Any insurance maintained by the Association shall contain "waiver of subrogation" as to the Association and its officers, Directors and Members, and the Owners and Occupants of the Lots and Units (including Declarant) and their respective insurers and Mortgagees; and cross-liability and severability of interest coverage insuring each insured against liability to each other insured.

All individually owned insurance shall contain a waiver of subrogation as to the Declarant, the Association and its officers, Directors and Members, the Owners and Occupants of the Lots and Units and Mortgagees, and their respective insurers; and all Members are deemed to have waived subrogation rights as to the Declarant, the Association and/or other Members, whether or not their policies so provide.

**E. Review of Policies.** The Association shall periodically (and not less than annually) review all insurance policies maintained by the Association to determine the adequacy of the coverage and to adjust the policies accordingly.

**F. Separate Insurance Limitations.** No Owner shall separately insure its Residence 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. The insurance maintained by the Association does not cover the personal property in the Residences and does not cover personal liability for damages or injuries occurring in the Lots and Units. Each Owner shall insure its personal property against loss and obtain any personal liability insurance that it desires. In addition, any improvements made by an Owner within its Lot may be separately insured by the Owner, but the insurance is to be limited to the type and nature of coverage commonly known as "improvements insurance". The Owner shall not obtain such insurance if the policy referred to in Section 8.1.A.(1) will provide coverage for such "improvements."

**G. Copies of Policies; Notice to Members.** The Association shall distribute annually to the Members a summary of the Association's insurance policies as required by California Civil Code section 5300(9) and as provided in the Bylaws. The Association, as soon as reasonably practical, shall notify its Members by first-class mail if any of the policies have been cancelled and not immediately renewed or restored or if there is a significant change such as a reduction in coverage or limits or an increase in the deductible for any policy. If the Association receives any notice of non-renewal of a policy, the Association immediately shall notify its Members if replacement coverage will not be in effect by the date the existing coverage will lapse.

To the extent that the information required to be disclosed, as described in California Civil Code section 5300(9), is specified in the insurance policy declaration page, the Association may meet its disclosure obligations by making copies of that page and distributing copies to all its Members.

**H. Limitation on Liability.** 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 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 insurance will not be obtained or renewed.

**I. Policies and Procedures Regarding the Filing and Processing of Claims:** The Board shall adopt policies and procedures regarding the filing and processing of claims for damage and destruction of Common Area improvements or any other matters covered by insurance maintained by the Association.

**J. Review of Policies:** The Association shall periodically (and not less than once

every three (3) years) review all insurance policies to determine the adequacy of the coverage and to adjust the policies accordingly.

**8.2. Damage or Destruction:** If Project improvements (including a Residence) are damaged or destroyed by fire or other casualty, the improvements shall be repaired or reconstructed substantially in accordance with the original as-built plans and specifications, modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction and subject to such alterations or upgrades as may be approved by the Architectural Control Committee, unless either of the following occurs: (1) the cost of repair or reconstruction is more than fifty percent (50%) of the current replacement costs of all Project improvements, available insurance proceeds are not sufficient to pay for at least eighty-five percent (85%) of the cost of such repairs or reconstruction, and three-fourths (3/4) of the total voting power of the Association residing in Members and their First Lenders vote against such repair and reconstruction; or (2) available insurance proceeds are not sufficient to substantially repair or reconstruct the improvements within a reasonable time as determined by the Board, a Special Assessment levied to supplement the insurance fails to receive the requisite approval (if such approval is required) as provided in Section 4.4, and the Board, without such approval by the Owners, is unable to supplement the insurance by borrowing on behalf of the Association sufficient monies to enable the improvements to be substantially repaired or reconstructed within a reasonable time.

**A. Cost of Damage – Lots and Units:** In the case of damage or destruction of an individual Residence, whether by fire, earthquake or other causes, the Owner(s) of that Lot and Residence are responsible for the cost of reconstruction that is not covered by insurance or is within the deductible amount. If an Owner fails to pay the cost of reconstruction, the Association may elect to pay for the uninsured portion of the cost and shall have the right to assess the Owner(s) for the cost thereof and to enforce the Assessment as provided in this Declaration. In any case where insurance proceeds are pre-empted by any Owner's lender for application to said Owner's debt, the Association shall immediately impose an individual Assessment upon said Owner's Lot equal in amount to such preemption pursuant to Section 4.3, and shall enforce such Assessment in accordance with Sections 4.3 and 5.2.F hereof. The proceeds of such Assessment or lien shall then be substituted for the pre-empted insurance proceeds.

**B. Process For Repair or Reconstruction:** If the improvements are to be repaired or reconstructed and the cost for repair or reconstruction is in excess of twenty-five percent (25%) of the current replacement cost of all the Project improvements, the Board shall designate a construction consultant, a general contractor, and an architect for the repair or reconstruction. All insurance proceeds, Association monies allocated for the repair or reconstruction, and any borrowings by the Association for the repair or reconstruction shall be deposited with a commercial lending institution experienced in the disbursement of construction loan funds (the "Depository") as selected by the Board. Funds shall be disbursed in accordance with the normal construction loan practices of the Depository that require as a minimum that the construction consultant, general contractor and architect certify within ten (10) days prior to any disbursement substantially the following:

(1) that all of the work completed as of the date of such request for disbursement has been done in compliance with the approved plans and specifications;

(2) that such disbursement request represents monies which either have been paid by or on behalf of the construction consultant, the general contractor or the architect and/or are justly due to contractors, subcontractors, materialmen, engineers, or other Persons (whose name and address shall be stated) who have rendered or furnished certain services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the respective amounts paid or due to each of those Persons in respect of such services and stating the progress of the work up to the date of the certificate;

(3) that the sum then requested to be disbursed plus all sums previously disbursed does not exceed the cost of the work insofar as actually accomplished up to the date of such certificate;

(4) that no part of the cost of repair or reconstruction has been or is being

made the basis for the disbursement of any funds in any previous or then pending application;

(5) that the amount held by the Depository, after payment of the amount requested in the pending disbursement request, will be sufficient to pay in full the costs necessary to complete the repair or reconstruction; and,

(6) that mechanics' lien releases have been obtained from those eligible to file lien claims.

If the cost of repair or reconstruction is less than twenty-five percent (25%) of the current replacement cost of all the Project improvements, the Board shall disburse the available funds for the repair and reconstruction under such procedures as the Board deems appropriate under the circumstances.

The repair or reconstruction shall commence as soon as reasonably practicable after the date of such damage or destruction and shall be completed as quickly as is reasonably practicable after commencement of reconstruction, subject to delays that are beyond the control of the party responsible for making the repairs. The Owner of the damaged or destroyed improvement (and the Board, in the case of damage to the Common Area) immediately shall take such steps as may be reasonably necessary to secure any hazardous condition and to screen any unsightly views resulting from the damage or destruction.

In the event the work required to maintain or to repair or restore damage or destruction involves work that is the responsibility of Owner and the Association as provided in Sections 7.22 and 5.1.A, then all of such work shall be directed by the Board, with the expense to be allocated between Owner and the Association pursuant to Sections 7.22 and 5.1.A. If more than one Owner is involved, the expense to be paid by each Owner shall be apportioned by the Board. If the Association is involved in a dispute over the apportionment of such expenses, then the dispute shall be settled by arbitration pursuant to Section 9.13.E.

If the Association undertakes any work which Section 7.22 requires an Owner to undertake, or any work which the Association is required to undertake at the expense of the Owner, the Board shall assess the Lot of the Owner for such work and shall so inform the Owner thereof in writing; provided, however, that the Assessment shall be reduced by the amount of any insurance proceeds paid to the Association as a result of damage to or destruction of the Residence or the Lot involved. Such Assessment shall be a lien upon the Lot of the Owner and may be foreclosed, as set forth in Section 4.9.

**C. Process If Repair or Reconstruction Not Undertaken:** If the improvement is not required to be repaired or reconstructed in accordance with the foregoing, all available insurance proceeds shall be disbursed among the Owners of the damaged Lots and Units and their respective Mortgagees in the same proportion that the Owners are assessed, subject to the rights of the Owners' Mortgagees, after first applying the proceeds to the cost of mitigating hazardous conditions on the Project, making provision for the continuance of public liability insurance to protect the interests of the Owners until the property can be sold, and complying with all other applicable requirements of governmental agencies.

If the failure to repair or reconstruct results in a material alteration of the use of the Project from its use immediately preceding the damage or destruction as determined by the Board (a material alteration shall be conclusively presumed if repair or reconstruction costs exceed twenty-five percent (25%) of the current replacement cost of all Project improvements), the Project shall be sold in its entirety under such commercially reasonable terms and conditions as the Board deems appropriate. If any Owner or First Lender disputes the Board's determination as to a material alteration, the dispute shall be submitted to arbitration pursuant to Section 9.13.E, and the decision of the arbitrator shall be conclusive and binding on all Owners and their Mortgagees.

If, as a result of the destruction or partial destruction of the Project, and a decision is made not to repair or reconstruct the Project, the Project is sold, the sales proceeds shall be distributed to all Owners and their respective Mortgagees in proportion to their respective fair market values of their



Lots and Units as of the date immediately preceding the date of damage or destruction as determined by a qualified independent appraiser selected by the Board. For the purpose of effecting a sale under this Section 8.2.C., each Owner grants to the Association an irrevocable power of attorney to sell 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 Project as required under this Article within sixty (60) days following the date of a determination by the Board or arbitrator of a material alteration, or if within one hundred twenty (120) days following the date of damage or destruction, the Board has failed to make a determination as to a material alteration, any Owner may file an action in a court of appropriate jurisdiction for an order requiring the sale of the Project and distribution of the proceeds in accordance with this Section 8.2.B.

**D. Right of First Refusal:** Notwithstanding anything in this Declaration 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 Project under Section 8.2.C, provided this right is exercised within thirty (30) days of receipt by the Owners of a notice from the Association containing the terms and conditions of any offer it has received. Such notice shall be given by the Board to all Owners, in writing, within thirty (30) days of receipt by the Association of such offer. 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 the best offer; provided, however, that if any Board member has an ownership or other financial interest in a prospective purchaser, whether directly or indirectly, personally or an part of an entity, that Board member shall recuse itself from voting on the best offer determination. Declarant, if then a Lot Owner, is not disqualified from bidding pursuant to this Section.

**8.3. Condemnation:** If all or any part of a Lot (except the Common Area) is taken by eminent domain, the award shall be disbursed to the Owner of the Lot, subject to the rights of the Owner's Mortgagees. If the taking renders the Lot uninhabitable, the Owner shall be divested of any further interest in the Project, including membership in the Association, and the interest of the remaining Owners shall be adjusted accordingly. If all or any part of the Common Area is taken by eminent domain, the proceeds of condemnation shall be used to restore or replace the portion of the Common Area affected by condemnation, if restoration or replacement is possible, and any remaining funds, after payment of any and all fees and expenses incurred by the Association relating to such condemnation, shall be distributed among the Owners in the same proportion as such Owners are assessed, subject to the rights of Mortgagees. If necessary, the remaining portion of the Project shall be resurveyed to reflect such taking. The Association shall participate in the negotiations, and shall propose the method of division of the proceeds of condemnation, where Lots and Units are not valued separately by the condemning authority by the court. The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Area, or part of the Common Area(s).

## **ARTICLE IX. GENERAL PROVISIONS**

**9.1. Enforcement:** The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of the Governing Documents, and in such action shall be entitled to recover reasonable attorneys' fees as are ordered by the Court. Unless prohibited by law from doing so, the Association has the right to record a Notice of Violation against the Lot of an Owner who is not in compliance with the provisions of the Governing Documents. Failure by the Association or by any Owner to enforce the Governing Documents shall in no event be deemed a waiver of the right to do so thereafter. Failure by the Association to enforce the Governing Documents shall not be deemed to constitute approval of or a consent to any violation or failure to comply with the Governing Documents. The City has the right (authority), but not the obligation, to enforce the Declaration.

**9.2. Invalidity of Any Provision:** Should any provision or portion of this Declaration be declared invalid or in conflict with any law of the jurisdiction where this Project is situated, the validity of all other provisions and portions hereof shall remain unaffected (or construed to give consistency of purpose and expectations in the absence of the invalid provision(s)) and in full force and effect.

9.3. **Term:** Subject to Section 9.4, the covenants and restrictions of this Declaration shall run with and bind the Project, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners of the Lots and Units, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to terminate the same upon the expiration of the expiring term or as otherwise agreed.

9.4. **Amendments:**

A. **Unilateral Amendment by Declarant:** Notwithstanding any other provisions of this Section, at any time prior to the first Close of Escrow in the Project, Declarant may unilaterally amend or terminate this Declaration by recording a written instrument which effects the amendment or termination and is signed and acknowledged by Declarant. Notwithstanding any other provisions of this Section, Declarant (for so long as Declarant owns any portion of the Project) may unilaterally amend this Declaration by recording a written instrument signed by Declarant in order to: (i) conform this Declaration to the rules, regulations or requirements of VA, FHA, DRE, Fannie Mae, Ginnie Mae or Freddie Mac; (ii) amend, replace or substitute any Exhibit for any purpose to the extent that the Exhibit affects portions of the Project that have not yet been conveyed to the Association or for which there has been no Close of Escrow, as applicable; (iii) amend, replace or substitute any Exhibit to correct typographical or engineering errors; (iv) include any Exhibit that was inadvertently omitted from the Declaration at the time of recording; (v) comply with any city, county, state or federal laws or regulations; (vi) correct any typographical errors; (vii) supplement or amend this Declaration with provisions which pertain to rights and obligations of Declarant, the Association or Owners arising under the Right to Repair Law at Division 2, Part 2, Title 7 (commencing with Section 895) of the California Civil Code; and (viii) change any exhibit or portion of an exhibit to this Declaration to conform to as-built conditions.

B. **Amendment by Members:** After sale of the first Lot, this Declaration may be amended only by the affirmative vote (in person or by proxy) or written consent of Members representing a majority of the total voting power of the Association and a majority of the affirmative votes or written consent of Members other than the Declarant, or where the two (2) class voting structure is still in effect, a majority of each class of membership and, if required, the consent of the California Department of Real Estate. However, the percentage of voting power necessary to amend a specific Section shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that Section. Any amendment must be certified in writing executed and acknowledged by the President or Vice President of the Association and recorded in the Recorder's Office of the County.

C. **Amendments Requiring Consent of Owners:** Notwithstanding anything herein to the contrary, no amendment affecting the dimensions of any Lot shall be effective without the consent of all Owners whose Lots and Units are affected by the amendment. The provisions of this Section 9.4.C may not be amended without the unanimous consent of the total voting power of the Association.

D. **Amendments Requiring City's Consent:** Notwithstanding anything to the contrary herein, no amendment affecting matters within the regulatory power of the City, including, but not limited to, any City conditions of approval, or any City rights or obligations contained herein, shall be made to this Declaration if such amendment did not receive the prior written approval of the City.

E. **Agreements Among Owners:** In any situation where agreement between or among Owners is required, agreement or consent shall not be withheld, conditioned or delayed unreasonably.

9.5. **Rights of First Lenders:** No breach of any of the covenants, conditions and restrictions contained in this Declaration, nor the enforcement of any of its lien provisions, shall render invalid the

lien of any First Lender on any Lot made in good faith and for value, but all of those 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. Notwithstanding any provision in the Governing Documents to the contrary, First Lenders shall have the following rights:

**A. Amendments:**

(1) Amendments of a material adverse nature to First Lenders require the approval of at least fifty-one percent (51%) of First Lenders (based on one (1) vote for each First Mortgage owned);

(2) any action to terminate the legal status of the Project, or to use insurance proceeds for any purpose other than to rebuild, requires approval of at least fifty-one percent (51%) of First Lenders (based on one (1) vote for each First Mortgage owned); and,

(3) Implied approval may be assumed when a Mortgagee fails to submit a response to any written proposal for an amendment within sixty (60) days after the Mortgagee actually receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

**B. Reserves:** The Association shall establish and maintain a Reserve Fund for replacements and a general operating Reserve sufficient in amount to satisfy the minimum amounts necessary to comply with any applicable requirements of FNMA, FHLMC, and FHA.

**C. First Lenders Rights Confirmed:** Any First Lender who comes into possession of the Lot by virtue of Foreclosure of the Mortgage, or any purchaser at a Foreclosure, will take the Lot free of any claims for unpaid Assessments and fees, late charges, fines or interest levied in connection with such claims, against the Lot which accrue more than six (6) months prior to the time such First Lender or purchaser at a Foreclosure takes title to the Lot, except for fees or costs related to the collection of the unpaid Assessments, claims for a pro rata share of such Assessments or charges to all Lots and Units including the mortgaged Lot, and except for Assessment Liens as to which a Notice of Delinquent Assessment has been recorded prior to the Mortgage.

**D. Distribution of Proceeds of Insurance, Condemnation or Termination:** No provision of the Governing Documents gives an Owner, or any other party, priority over any rights of First Lenders in the case of a distribution to Owners of proceeds of termination or any insurance proceeds or condemnation awards for losses to or taking of Lots and Units and/or Common Area.

**9.6. Limitation of Restrictions on Declarant:** Declarant is undertaking the work of construction of a planned development and incidental improvements upon the Project. The completion of that work and the sale, rental, and other disposal of the Lots and Units and Residences is essential to the establishment and welfare of the Project as a residential community. In order that work may be completed and the Project be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

**A.** Prevent Declarant, its contractors, or subcontractors from doing on the Project or any Lot, 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 the Project (except within Lots and Units owned by others), such structures as may be reasonable and necessary for developing the Project as a residential community and disposing of the same by sale, lease or otherwise; or,

**C.** Prevent Declarant from conducting on the Project (except within Lots and Units owned by others) its business of completing the work and of establishing a plan of residential ownership and of disposing of the Project in Lots and Units by sale, lease or otherwise; or,

**D.** Prevent Declarant from maintaining or displaying such sign(s), pennants ,

banners and flag(s) anywhere in the Project (except within Lots and Units owned by others) as may be necessary for the sale, lease or disposition thereof for the duration of Declarant's marketing; or,

E. Subject Declarant to the architectural control provisions of Article VI for the construction of any Residence or other improvements on the Project.

The foregoing rights of Declarant shall terminate upon sale of Declarant's entire interest in the Project, and, until then, this Section shall not be amended without Declarant's consent. So long as Declarant, or its successors and assigns, owns one (1) or more of the Lots and Units described herein, Declarant, or its successors and assigns, shall be subject to the provisions of this Declaration.

Declarant shall make reasonable efforts to avoid disturbing the use and enjoyment of Lots and Units and the Common Area by their Owners, while completing any work necessary to said Lots and Units or Common Area.

**9.7. Termination of Any Responsibility of Declarant and Acceptance of Obligations by the Association:** In the event Declarant shall assign or convey all of its rights, title and interest in and to the Project to any successor Declarant, then and in such event, Declarant shall be relieved of the performance of any further duties or obligations under this Declaration arising after such conveyance, and such successor Declarant shall thereafter be obligated to perform all such duties and obligations of the Declarant. The obligations of Declarant to the City contained in the conditions of approval for the Project, which obligations are intended to be on-going after Declarant has sold its interest in the Project, shall become the obligations of the Association, and the Association shall indemnify Declarant against any liability arising out of the performance or non-performance of those obligations after Declarant has sold its interest in the Project and/or turned over the maintenance and management of the Project to the Association.

**9.8. Owners' Compliance:** Each Owner or Occupant of a Lot shall comply with the provisions of this Declaration, and to the extent they are not in conflict with the Governing Documents, and the decisions and resolutions of the Association or the Board, as lawfully amended from time to time. Failure to comply with any such provisions, decisions, or resolutions shall be grounds for an action (1) to recover sums due, (2) for damages, (3) for injunctive relief, (4) for costs and attorneys' fees, (5) for other relief as is permitted by law, or (6) any combination of the foregoing.

In the event of a violation of the Governing Documents, the Association may if permitted by applicable law, record a Notice of Violation against the Lot of the non-complying Owner. Upon recording a Notice of Violation, the Association shall have complete discretion in deciding whether, when and how to proceed with enforcement, and any delay after recording a Notice of Violation shall not give rise to a defense of waiver or estoppel in favor of a non-complying Owner. The Association may take action to enforce compliance against a subsequent Owner who acquires a Lot with a recorded Notice of Violation. The right of the Association to record a Notice of Violation shall be in addition to all other rights and remedies the Association may have at law or under the Governing Documents.

All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in the Governing Documents shall be deemed to be binding on all Owners, their successors and assigns.

**9.9. Notice:** Any notice permitted or required by the Declaration or Bylaws may be delivered personally or by mail. Notwithstanding the foregoing, if an Owner has elected pursuant to the Bylaws to receive notices from the Association by electronic transmission, then such notices may be delivered by the Association to that Owner by such electronic transmission. Furthermore, if this Declaration, the Bylaws or applicable laws allow such notice to be made by posting of the notice in the Common Area, such notice may be made and deemed delivered by such posting. If delivery is by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, first-class or registered, postage prepaid, addressed to the Person to be notified at the current address given by such Person to the Secretary of the Board or addressed to the Lot of such person if no address has been given to the Secretary, without regard to delivery refusal, if any.

**9.10. Special Provisions Relating to Enforcement of Declarant's Obligation to Complete Common Area Improvements:** Where the Project includes Common Area improvements which have not been completed prior to the close of escrow on the sale of the first Lots and Units, and where the Association is the obligee under a bond or other arrangement (hereafter "Common Area Bond") to secure performance of the commitment of Declarant to complete said improvements, the Board shall consider and vote on the question of action by the Association to enforce the obligations under the Common Area Bond with respect to any improvement for which a notice of completion has not been filed within sixty (60) days after the completion date specified for those improvements in the planned construction statement appended to the Common Area Bond. If the Association has given an extension in writing for the completion of any Common Area improvement, the Board shall consider and vote on the aforesaid question of action if a notice of completion has not been filed within thirty (30) days after the expiration of the extension. A special meeting of Members of the Association for the purpose of: (i) voting to override a decision by the Board not to initiate action to enforce the obligations under the Common Area Bond; or (ii) to consider the failure of the Board to consider and vote on the question shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such a meeting signed by Members representing five percent (5%) or more of the total voting power of the Association. At such special meeting a vote of a majority of Members of the Association other than the Declarant shall be required to take action to enforce the obligations under the Common Area Bond and a vote of a majority of the voting power of the Association, excluding Declarant, shall be deemed to be the decision of the Association, and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

On satisfaction of the Declarant's obligation to complete the Common Area improvements, the Association shall acknowledge in writing pursuant to Board resolution that it approves the release of the Common Area Bond and shall execute any other documents as may be necessary to effect the release of the Common Area Bond. The Association shall not condition its approval of the release of the Common Area Bond on the satisfaction of any condition other than the completion of the Common Area improvements as described on the planned construction statement (Department of Real Estate Form RE 611A) attached to the Common Area Bond. If the Common Area improvements have been completed, a notice of completion has been filed, and sixty (60) days have passed without the filing of a mechanics' lien claim, the Association shall authorize and direct the escrow holder holding the Common Area Bond to release the Common Area Bond. If the Association fails to authorize and direct the release of the Common Area Bond within forty (40) days after receiving a request from Declarant, Declarant may petition the Superior Court of the County for an order releasing the bond, or, at the request of either party, the issue shall be submitted to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

**9.11. Special Provisions Relating to Enforcement of Declarant's Obligation to Pay Assessments:** Where the Association is the obligee under a bond or other arrangement (hereafter "Assessment Bond") to secure performance of the commitment of Declarant to pay Assessments on Lots and Units owned by Declarant, the Board shall consider and vote on the question of action by the Association to enforce the obligations under the Assessment Bond with respect to any of Declarant's Assessments which are delinquent for thirty (30) days. A special meeting of Members of the Association for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the Assessment Bond or such a meeting to consider the failure of the Board to consider and vote on the question shall be held not less than ten (10) days nor more than twenty (20) days after receipt by the Board of a petition for such a meeting signed by Members representing five percent (5%) or more of the total voting power of the Association. At such special meeting a vote of a majority of Members of the Association other than the Declarant shall be required to take action to enforce the obligations under the Assessment Bond and a vote of a majority of the voting power of the Association, excluding Declarant, shall be deemed to be the decision of the Association, and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

Upon satisfaction of the Declarant's obligation to assure the availability of funds to pay Assessments upon unsold Lots and Units as set forth in Title 10 Cal Code of Regs § 2792.9, the escrow holder holding the Assessment Bond shall return the Assessment Bond to Declarant, after delivery to said escrow holder of Declarant's written request for release of the Assessment Bond, and

Declarant's written statement that [1] Declarant has paid, as and when due, all Regular Assessments and Special Assessments levied by the Association against Lots and Units owned by the Declarant and that [2] 80% of the Lots and Units in the Project have been conveyed by Declarant, unless pursuant to Title 10 Cal Code of Regs § 2792.9, the Association delivers to said escrow holder its written objection to the return of the Assessment Bond to Declarant within forty (40) days after delivery of notice of Declarant's request from release and the statement to the Association. The Association shall not condition its approval of the release of the Assessment Bond on the satisfaction of any condition other than the payment of Assessments.

If the Association delivers to the escrow holder of the Assessment Bond and to Declarant a demand for remittance of the Assessment Bond or a portion thereof, or the proceeds thereof to the escrow holder of the Assessment Bond, which demand is accompanied by a written statement signed by an officer of the Association that the Declarant is delinquent in the payment of Regular Assessments or Special Assessments which have been levied by the Association against Lots and Units owned by the Declarant, then all or some specified portion of the security as demanded shall be remitted to the Association upon the Declarant's failure to give the escrow holder within forty (40) days after receipt of delivery of the demand by the escrow holder, the Declarant's written objection to remittance of the security. Both the Declarant and the Association shall adhere and comply with the terms of escrow instructions with the escrow holder of the Assessment Bond, which shall be in the form approved by the Department of Real Estate, with respect to the holding of the Assessment Bond, the return or remittance of the Assessment Bond and other disposition of matters set forth in said escrow instructions with respect to the Assessment Bond. If the Association fails to authorize and direct the release of the Assessment Bond within the forty (40) days after receiving a request from Declarant, Declarant may petition the Superior Court of the County for an order releasing the bond, or, at the request of either party, the issue shall be submitted to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

**9.12. Fair Housing:** No Owner shall, either directly or indirectly, forbid or restrict the conveyance, encumbrance, leasing, or mortgaging, or occupancy of its Lot to any Person of a specified race, sex, sexual orientation, gender, gender identity, gender expression, age, marital status, color, religion, physical handicap, national origin, familial status, source of income or disability of that Person.

**9.13. Dispute Resolution:** The Board is authorized to resolve any civil claim or action through alternative dispute resolution proceedings such as mediation, binding arbitration, or non-binding arbitration proceedings.

**A. Claims for Declaratory Relief or Enforcement of Governing Documents:** Prior to the filing of an enforcement action, as defined in Civil Code section 5925, including a civil action solely for declaratory relief or injunctive relief to enforce the Governing Documents, or for declaratory, injunctive or writ relief in conjunction with a claim for monetary damages, the Board, or any Owner who seeks such relief, shall first endeavor to submit the matter to alternative dispute resolution in compliance with the provisions of California Civil Code sections 5925-5960. The Board shall comply with the requirements of California Civil Code section 5965 by providing Members of the Association annually with a summary of Article 3 (commencing with California Civil Code section 5925 of Chapter 10 of the California Civil Code, including the following language: "Failure of a Member of the Association to comply with the alternative dispute resolution requirements of Section 5930 of the California Civil Code may result in the loss of your right to sue the Association or another Member of the Association regarding enforcement of the Governing Documents or the applicable law".

**B. Design or Construction Defect Claims:** Actions by the Association pertaining to or based upon a claim for defects in the design or construction of improvements within the Project against the Declarant, or any architect, engineer or other consultant, or any contractor, subcontractor or materials supplier engaged by or on behalf of Declarant for the design and/or construction of the Project, or any element thereof, or otherwise defined in California Civil Code sections 896 or 897 as an Actionable Defect ("Claim"), shall be resolved and administered in accordance with California Civil Code sections 895 through 945.5, and California Civil Code section 6000, as such Sections may be amended, revised or superseded, from time to time.

If a Claim is subject to pre-litigation procedures in California Civil Code sections 910 through

938, or any successor statutes, each Owner, and the Declarant, prior to filing any civil action, arbitration or action in judicial reference regarding such Claim shall comply with the pre-litigation procedures of California Civil Code sections 910 through 938. Notices of Claims shall specify all of the matters as set forth in California Civil Code section 6150 and/or California Civil Code sections 910 through 938, as applicable, and any successor statutes or laws.

The Association and not the individual Members shall have the power to pursue any Claims for alleged construction defects in the Common Area. Any recovery by the Association with respect to any damage to or defect in the Common Area. Any recovery by the Association with respect to any damage to or defect in the Common Area shall be utilized solely for the purpose of paying for the costs of obtaining the recovery and for correcting or repairing such damage or defect.

If the Claim is not resolved by and pursuant to the pre-litigation procedures of California Civil Code sections 910 through 938, subject to the provisions of California Civil Code section 6000, then notwithstanding the provisions of California Code of Civil Procedure Section 1298.7, the Claim shall be resolved in accordance with the provisions of Section 9.13.D of this Declaration (Judicial Reference) and Section 9.13.E of this Declaration (Arbitration of Disputes). **WAIVER OF JURY TRIAL:** DECLARANT, AND BY ACCEPTING A DEED FOR ANY PORTION OF THE PROPERTY, THE ASSOCIATION (USE IF THE ASSOCIATION TAKES TITLE TO SOME OF THE COMMON AREA) AND EACH OWNER AGREE (i) TO HAVE ANY DESIGN OR CONSTRUCTION DISPUTE DECIDED BY JUDICIAL REFERENCE AS PROVIDED HEREIN, OR BY NEUTRAL ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT; (ii) TO GIVE UP ANY RIGHTS THEY MIGHT POSSESS TO HAVE THE DESIGN OR CONSTRUCTION DISPUTE LITIGATED IN A COURT OR JURY TRIAL. IF ANY PARTY REFUSES TO SUBMIT TO JUDICIAL REFERENCE OR TO ARBITRATION AFTER AGREEING TO THIS PROVISION, SUCH PARTY MAY BE COMPELLED TO DO SO.

**C. Notices to Members of Legal Proceedings Against Declarant.** In accordance with California Civil Code section 6150, at least thirty (30) days prior to filing any civil action, including arbitration, against Declarant or other developer of the Project for alleged damage to the Common Areas, alleged damage to the separate interests that the Association is obligated to maintain or repair, or alleged damage to the separate interests that arises out of, or is integrally related to, damage to the Common Areas or separate interests that the Association is obligated to maintain or repair, the Board shall provide written notice to each Member specifying each of the following:

- (1) That a meeting will take place to discuss problems that may lead to the filing of a civil action;
- (2) The options, including civil actions, that are available to address the problems; and,
- (3) The time and place of the meeting.

If the Association has reason to believe that the applicable statute of limitations will expire before the Association is able to give notice, hold the hearing and file the civil action, the Association may file the civil action first and then give the notice within thirty (30) days after filing of the action.

**D. Judicial Reference for Certain Disputes:** For any action by the Association or any Owner against the Declarant, any architect, engineer or other consultant, or any contractor, subcontractor or materials supplier engaged by or on behalf of Declarant for the design and/or construction of the Project, or any element thereof ("Developer Parties"), subject to the provisions of California Civil Code sections 895 through 938, California Civil Code section 6000, or any other action by the Association or any Owner against the Declarant, except as otherwise provided herein, such claim shall be submitted to Judicial Reference as hereinafter provided:

- (1) The dispute shall be submitted to binding general judicial reference pursuant to California Code of Civil Procedure Sections 638 through 645.2, or any successor statutes thereto pertaining to proceedings under judicial reference ("Judicial Reference"). The parties shall

cooperate in good faith to ensure that all necessary and appropriate parties are included in the Judicial Reference proceeding. Declarant shall not be required to participate in the Judicial Reference proceeding unless it is satisfied that all necessary and appropriate parties will participate. The parties shall share the fees and costs of the referee for the Judicial Reference proceeding as determined by the referee.

(2) The 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 (or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the parties), provided that California substantive and procedural law, without regard to conflict of law provisions, and the following rules and procedures shall apply in all cases unless the parties agree otherwise:

(a) If the Declarant is a party to the Judicial Reference, then any fee to initiate the Judicial Reference shall be paid by Declarant, provided however, that the cost of the judicial reference shall ultimately be borne as determined by the referee;

(b) The proceedings shall be heard in the County;

(c) The referee must be a neutral and disinterested party who is a retired judge or a licensed attorney with at least ten (10) years' experience in relevant real estate matters;

(d) Any dispute regarding the selection of the referee shall be resolved by JAMS or the entity providing the reference services, or, if no entity is involved, by the court with appropriate jurisdiction;

(e) The referee may require one or more pre-hearing conferences;

(f) 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) A stenographic record of the Judicial Reference proceedings shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals;

(h) The referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable;

(i) The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge;

(j) The referee shall be authorized to provide all recognized remedies available in law or equity for any cause of action that is the basis of the Judicial Reference;

(k) The statement of decision of the referee upon all of the issues considered by the referee shall be binding upon the parties, and upon filing of the statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon. The decision of the referee shall be appealable as if rendered by the court; and,

(l) If submission of a disputed matter referenced in this Section 9.13.D to Judicial Reference is not permitted under the then applicable law, then notwithstanding California Code of Civil Procedure Section 1298.7, if the dispute is not resolved through mediation, each Owner, the Association and Declarant shall resolve such dispute exclusively through binding arbitration conducted in accordance with Section 9.13.E of this Declaration.

(3) Judicial Reference shall only proceed for any matter that is subject to the requirements of California Civil Code sections 5925-5960 after the parties have attempted to reasonably comply with the alternative dispute resolution requirements set forth in California Civil Code



sections 5925-5960, as same may be amended from time to time.

(4) Notwithstanding the foregoing, any dispute under Sections 9.10 and 9.11 of this Declaration between the Declarant and the Association regarding the question of satisfaction of the conditions for exoneration or release of the Assessment Bond or Common Area Bond or other security shall, at the request of either party, be submitted to arbitration pursuant to Section 9.13.E of this Declaration.

E. Arbitration of Disputes: If a dispute is the subject of binding arbitration under this Declaration, the following shall apply:

(1) costs and fees of the arbitration, including ongoing costs and fees of the arbitration shall be paid as agreed by the parties, and, if the parties cannot agree, as determined by the arbitrator; provided, however, if the Declarant is a party to the arbitration, then any fee to initiate arbitration shall be paid by Declarant, but the cost of arbitration shall ultimately be borne as determined by the arbitrator;

(2) a neutral and impartial individual with at least ten (10) years' experience in real estate construction arbitration shall be appointed to serve as arbitrator, with the arbitrator to be selected by mutual agreement of the parties. If the parties are unable to agree on an arbitrator within fifteen (15) days after any party initiates the arbitration, a neutral and impartial arbitrator shall be selected by JAMS. In selecting the arbitrator, the provisions of §1297.121 of the California Code of Civil Procedure shall apply. An arbitrator may be challenged for any of the grounds listed in §1297.121, or in §1297.124 of the California Code of Civil Procedure;

(3) venue of the arbitration shall be in the County;

(4) the arbitration shall commence in a prompt and timely manner in accordance with (i) the Commercial Rules of JAMS, or if the rules do not specify a date by which arbitration is to commence, then (ii) by a date agreed upon by the parties, and if they cannot agree as to a commencement date, (iii) a date determined by the arbitrator. The arbitrator shall apply California substantive and procedural law without regard to conflict of law principles in rendering a final decision.

The arbitrator shall have the power to grant all legal and equitable remedies and award compensatory damages. When the arbitrator is prepared to make the award, the arbitrator shall first so inform the parties, who shall have ten (10) days to attempt to resolve the matter by a binding agreement between them. If the parties resolve the matter, the arbitrator shall not make any award. If the parties do not so resolve the matter within the ten (10) day period, the arbitrator shall make the award on the eleventh day following the arbitrator's notice of being prepared to make the award;

(5) the arbitration shall be conducted in accordance with the Commercial Rules of JAMS;

(6) the arbitration shall be conducted and concluded in a prompt and timely manner;

(7) the arbitrator(s) shall be authorized to provide all recognized remedies available in law or equity for any cause of action that is the basis of arbitration. The arbitrator(s) shall not have the power to commit errors of law or legal reasoning, and the award may be vacated or corrected on appeal to a court of competent jurisdiction for any such error;

(8) a judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction or application may be made to such court for judicial acceptance of the award and an order of enforcement.

(9) Preliminary Procedures. If state or federal law requires an Owner, the Association or Declarant to take steps or procedures before commencing an action in arbitration, then the Owner, the Association or Declarant must take such steps or follow such procedures, as the case may be, before commencing the arbitration. For example, any claim or Disputes pursuant to California Civil Code section 895 et seq., as hereafter amended may be subject to the non-adversarial

procedures set forth in California Civil Code section 910 through 938, prior to the initiation of any arbitration. In addition, nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code sections 6150, 6000 and 6100;

(10) Participation by Other Parties. An Owner, the Association and Declarant, to such 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;

(11) Federal Arbitration Act. Because many of the materials and products incorporated into the Residence are manufactured in other states, the development and conveyance of the Property evidences a transaction involving interstate commerce and the Federal Arbitration Act (9 U.S.C. §1 et seq.) now in effect and as it may be hereafter amended will govern the interpretation and enforcement of the arbitration provisions set forth herein; and,

(12) ARBITRATION OF DISPUTES. BY EXECUTING THIS DECLARATION, DECLARANT AND BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, EACH OWNER AND THE ASSOCIATION SHALL BE DEEMED TO HAVE AGREED TO HAVE ANY DISPUTE RELATING TO OR BASED UPON A CLAIM FOR DEFECTS IN DESIGN OR CONSTRUCTION OF IMPROVEMENTS WITHIN THE PROJECT DECIDED BY JUDICIAL REFERENCE AS PROVIDED IN SECTION 9.13.D, AND TO HAVE ANY DISPUTE RELATING TO OR BASED UPON CLAIMS FOR DECLARATORY RELIEF OR ENFORCEMENT OF THE GOVERNING DOCUMENTS DECIDED BY NEUTRAL BINDING ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT, AND AS PROVIDED IN SECTION 9.13.E. DECLARANT, THE ASSOCIATION AND EACH OWNER ARE GIVING UP ANY RIGHTS DECLARANT, THE ASSOCIATION AND EACH OWNER MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A JURY TRIAL. DECLARANT, THE ASSOCIATION AND EACH OWNER ARE GIVING UP JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "JUDICIAL REFERENCE FOR CERTAIN DISPUTES" PROVISION (SECTION 9.13.D), AND THE "ARBITRATION OF DISPUTES" (SECTION 9.13.E) PROVISION. IF DECLARANT, THE ASSOCIATION OR ANY OWNER REFUSES TO SUBMIT TO JUDICIAL REFERENCE OR ARBITRATION, DECLARANT, THE ASSOCIATION OR SUCH OWNER MAY BE COMPELLED TO SUBMIT TO JUDICIAL REFERENCE OR ARBITRATION UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE.

9.14. City Provisions: Any changes to the Declaration must be reviewed and approved by the City. Disbanding of the Association shall require an amendment to the development permit. The Association shall provide a deposit for the City's time in monitoring the site and street on collection days to see what impact the workspaces have on the neighborhood, the traffic, and the containment of the trash/recycling and organics using totes. Owners of live/work Lots and Units are to obtain and maintain a City business license in order to utilize their workspaces. Permitted uses in the workspaces shall be consistent with the City's Home Occupation Ordinance, currently Chapter 19.120 of the Municipal Code and shall be subject to the following performance standards:

A. Traffic: Ensure that pedestrian, automobile, or truck traffic, or parking demand is not significantly above normal levels for that zone.

(1) Deliveries to and from the premises restricted per the Municipal Code.

B. Employment: Ensure that traffic is not significantly above normal levels for that zone.

(1) Workspace activities shall be carried on by members of the household occupying the dwelling, with not more than one additional Person employed on the premises who is not a resident thereof. This shall not exclude the employment of domestic servants, gardeners, janitors, or other Persons concerned in the operation or maintenance of the dwelling, whether living on the premises or not.

C. Utility Service: Maintain residential scale of utility services to limit workspace

activity to an incidental use.

(1) Workspace activity requiring a water meter above the size customary to a residence in that zone is prohibited.

(2) Electrical panel restricted to size customary to a residence in that zone.

D. **Business Vehicle:** Restrict number, size, and keeping of vehicles to reduce parking demand and maintain residential streetscape.

(1) No more than one vehicle primarily used for business purposes may be parked per site.

(2) Size limited to passenger auto, pickup truck, or similar van.

E. **Guest Parking Area:**

(1) There is no dedicated guest parking provided.

(2) Signage restricting the usage of the spaces shall be reviewed by the City and installed prior to final occupancy.

F. **Storage:** Ensure that stored materials do not take up required parking space or accumulate in yards. Storage outside of an enclosed structure is prohibited

**9.15. Mergers or Consolidations:** In a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the covenants, conditions and restrictions established by this Declaration governing the Project, together with the covenants and restrictions established on any other property, as one (1) plan.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this Declaration this \_\_\_\_ day of \_\_\_\_\_, 2015.

647 N. Santa Cruz Ave, LLC.,  
a California limited liability company

By: \_\_\_\_\_  
Its: \_\_\_\_\_

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT - CIVIL CODE SECTION 1189

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

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 2015 before me, \_\_\_\_\_

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

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

WITNESS my hand and official seal

\_\_\_\_\_

(SEAL)