

(a) Except as provided in subparagraph (b), below, the sale or transfer of any Condominium shall not affect any Assessment lien which has been duly Recorded against the Condominium prior to the sale or transfer, and the Association can continue to foreclose its lien in spite of the change in ownership.

(b) The Association's Assessment lien shall be extinguished as to all delinquent sums, late charges, interest and costs of collection incurred prior to the sale or transfer of a Condominium pursuant to a foreclosure or exercise of a power of sale by the holder of a prior encumbrance (but not pursuant to a deed-in-lieu of foreclosure). A "prior encumbrance" means any first Mortgage or other Mortgage or lien Recorded against the Condominium at any time prior to Recordation of the Association's Assessment lien (see Section 4.12, below).

(c) No sale or transfer of a Condominium as the result of foreclosure, exercise of a power of sale, or otherwise, shall relieve the new Owner of such Condominium (whether it be the former beneficiary of the first Mortgage or other prior encumbrance or a third party acquiring an interest in the Condominium) from liability for any Assessments which thereafter become due with respect to the Condominium or from the lien thereof.

(d) Any Assessments, late charges, interest and associated costs of collection which are lost as a result of a sale or transfer of a Condominium covered by subparagraph (b), above, shall be deemed to be a Common Expense collectible from the Owners of all of the Units, including the person who acquires the Condominium and his or her successors and assigns.

(e) No sale or transfer of a Condominium as the result of foreclosure, exercise of a power of sale, or otherwise, shall affect the Association's right to maintain an action against the foreclosed previous Owner personally to collect the delinquent Assessments, late charges, interest and associated costs of collection incurred prior to and/or in connection with the sale or transfer.

Section 4.12. Priorities. When a Notice of Delinquent Assessment has been Recorded, such notice shall constitute a lien on the Condominium which is prior and superior to all other liens except: (a) all taxes, bonds, assessments and other levies which, by law, would be superior thereto; and (b) the lien or charge of any first Mortgage of record (meaning any Recorded Mortgage with first priority over other Mortgages) made in good faith and for value; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to the transfer of such property pursuant to the exercise of a power of sale or a judicial foreclosure involving a default under such first Mortgage or other prior encumbrance.

Section 4.13. Unallocated Taxes. In the event that any taxes are assessed against the Common Area, or the personal property which is owned by the Association, rather than being assessed to the individual Condominium, such taxes shall be included in the Regular Assessments imposed pursuant to Section 4.02, above, and, if necessary, a Special Assessment may be levied against the Condominium in an amount equal to such taxes to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment.

ARTICLE V
ARCHITECTURAL REVIEW AND APPROVAL OF IMPROVEMENTS

Section 5.01. Requirement that Improvement Projects Be Approved. Except as otherwise expressly permitted in this Declaration, no Improvements (as defined in Section 1.23, above) shall be commenced, installed, erected, painted, repainted, remodeled, or maintained within any Unit within the Project, nor shall any alteration of any Improvement of any kind be made, until the same has been approved in writing by the Board of Directors of the Association. Without limiting the generality of the foregoing, no Owner of a Unit may install or erect any Improvement, mechanical system or fixture that either: (i) protrudes beyond the boundaries of the Owner's Unit (such as through a wall dividing two Units or through the roof of the Building containing the Owner's Unit); or (ii) is located wholly outside of the Owner's Unit (even if it is located within the Owner's Exclusive Use Common Area), without the express prior written approval of the Board of Directors. The Board may delegate its responsibilities hereunder to a duly authorized committee.

Section 5.02. Improvements Restricted Solely to Units. Owners may improve or alter any Improvements that are located entirely within the interior boundaries of the Owner's Unit so long as such Improvements and alterations do not impair the structural or acoustical integrity of the Building in which the Unit is located or any utilities or other systems servicing more than one Unit. In a condominium project, many Improvement projects within a Unit will necessitate intrusions into adjacent Building Common Area and any such work in the Building Common Area shall be at the Owner's sole expense and must be clearly shown on the Improvement plans and approved in advance and in writing by the Board. The Board may impose additional requirements and restrictions on work involving any portion of the Building Common Area in order to maintain the structural integrity of the Building and to ensure that the work does not create a nuisance or an unreasonable annoyance or inconvenience to persons in other Units in the Building. In order to ensure compliance with the limitations imposed by this Section 5.02, all Unit Improvement plans and projects must first be submitted to and approved by the Association's Board of Directors, even if the Owner believes that the project is one that is authorized by this Section. The Association's Board of Directors shall be authorized and empowered to impose reasonable restrictions on the manner in which an Owner may proceed with Improvement projects within the Owner's Unit so as to protect and preserve the quiet enjoyment of occupants of other Units in the same or neighboring Buildings and to avoid damage to, or disruption of, the Association Common Areas.

Section 5.03. Architectural Rules. The Board may, from time to time adopt, amend and repeal rules and regulations to be known as the "Architectural Rules." The Architectural Rules shall interpret and implement the provisions hereof by setting forth: (a) any standards and procedures for the Board's review and approval of proposed Improvement projects; (b) guidelines for color schemes, exterior finishes and materials and similar features which are recommended or required for use in connection with particular Improvement projects within the Project; (c) procedures for expedited approval or waiver of plan and specification requirements for minor or commonly recurring projects; and (d) the criteria and procedures for requesting variances from any property use restrictions or minimum improvement standards that would otherwise apply to the proposed Improvement under the Governing Documents. Notwithstanding the foregoing, no Architectural Rule shall be in derogation of the minimum standards required by

this Declaration. In the event of any conflict between the Architectural Rules and this Declaration, the provisions of the Declaration shall prevail. Among other things, in accordance with California Civil Code section 1378(a)(1), the Architectural Rules shall provide a fair, reasonable and expeditious procedures that the Committee must follow when making decisions on submitted Improvement plans and projects. The procedures shall include prompt deadlines for various actions and a maximum time for response to an application, consistent with Section 5.07, below.

Section 5.04. Alterations or Improvements Associated With Disabilities. A physically impaired Owner may make modifications to the Owner's Unit upon approval of the Board of Directors, in accordance with the terms, conditions and restrictions set forth in Section 1360 of the California Civil Code, as that section may be amended from time to time.

Section 5.05. Declarant and Association Exemption. No consents or approvals of the Board of Directors of the Association shall be required in connection with the exercise by the Declarant of any rights reserved in this Declaration relating to the initial construction of the Project or any subsequent construction or improvement projects undertaken by the Declarant to effect repairs to any Unit or Common Area improvement.

Section 5.06. Basis for Approval of Improvements. When a proposed Improvement is submitted to the Board of Directors for review, the Board shall grant the requested approval only if the Board, in its sole discretion, exercised in good faith, makes the following findings regarding the proposed project:

- (a) The Owner's plans and specifications conform to this Declaration and to the Architectural Rules, if any, that are in effect at the time such plans are submitted to the Board;
- (b) The Improvement will be in harmony with the external design of other structures and/or landscaping within the Project;
- (c) The Improvement, as a result of its appearance, location or anticipated use, will not interfere with the reasonable enjoyment of any other Owner of his or her property; and
- (d) The proposed Improvement(s), if approved, will otherwise be consistent with the architectural and aesthetic standards prevailing within the Project and with the overall plan and scheme of development within the Project.

While it is recognized that the Board's determination will, of necessity, be subjective to some degree, the Board shall act reasonably and in good faith and shall consider such factors as the quality of workmanship and materials proposed for the Improvement project, the harmony of its exterior design, finished materials and color with that of other existing structures, and the impact, if any, that the Improvement will have or may have on the structural integrity of the Unit or adjacent Units. The Board shall also be entitled to determine that a proposed Improvement or component thereof is unacceptable when proposed with respect to a particular Unit or Exclusive Use Common Area, even if the same or a similar Improvement/component has previously been approved for use at another location if factors such as drainage, noise or prior adverse experience with the product or design provide a reasonable basis for denial of approval of the proposed Improvement or use of a particular component of the proposed Improvement within the Unit that



is involved in the Owner's submittal. Any decision on a proposed improvement project shall be made in good faith and may not be unreasonable, arbitrary, or capricious. Furthermore, in spite of the discretion conferred on the Committee pursuant to this Article V, no decision of the Committee regarding a proposed Improvement project can be made or imposed that violates any governing provision of law (including, without limitation, the California Fair Employment and Housing Act) or a building code or other applicable law governing land use or public safety.

In approving a request for approval of an Improvement, the Board may condition its approval upon the adoption of modifications in the Owner's plans and specifications or observance of restrictions as to location, noise abatement or similar mitigating conditions applicable to the Improvement.

Section 5.07. Time Limits for Approval or Rejection.

(a) **Approval or Disapproval by the Board.** Within thirty (30) days after submission of plans and specifications satisfying the requirements of the Architectural Rules, the Board shall return one set of such plans to the applicant, with either written notice of approval or disapproval. If the proposed improvement is disapproved, the written decision of the Board shall include both an explanation of why the proposed change was disapproved and a description of the procedure for reconsideration of the Board's decision by the Board. If written suggestions of changes required for approval of the project accompany the returned set of plans, the applicant may implement such changes to the plans and within thirty (30) days resubmit plans incorporating such changes for approval to the Board, which shall not unreasonably withhold its approval so long as the Owner has complied in all material respects with the requested changes. If no written notice of approval or disapproval is received by the applicant within thirty (30) days after the Owner's plans and specifications (or revisions thereto) are submitted to the Board, the plans shall be deemed to have been approved as submitted.

(b) **Right to Seek Reconsideration by the Board.** In the event that the Board of Directors delegates its authority under this Article V to a committee and the committee denies approval of a proposed Improvement project, the applicant shall have the right to seek reconsideration of the committee's decision by the Board of Directors. Unless otherwise requested by the member-applicant, the Board's hearing of the applicant's appeal shall be conducted in open session and in accordance with California Civil Code section 1363.05. Any reconsideration by the Board does not constitute a process of dispute resolution within the meaning of California Civil Code section 1363.820.

Section 5.08. Limitation on Liability. Neither the Declarant, the Board of Directors, nor any member thereof shall be liable to any Owner for any damage, loss or prejudice suffered or claimed on account of any mistakes in judgment, negligence or nonfeasance arising out of: (a) the approval or disapproval of any Improvement plans, drawings and specifications, whether or not defective; or (b) the construction or performance of any Improvement project, whether or not pursuant to approved plans, drawings specifications so long as the Declarant, the Board of Directors or any member thereof has acted in good faith on the basis of such information as he or she possessed.

Section 5.09. Compliance With Governmental Regulations. Review and approval by the Board of Directors of any proposals, plans or other submittals pertaining to Improvements shall in no way be deemed to constitute satisfaction of, or compliance with, any building permit process or any other governmental requirements, the responsibility for which shall lie solely with the Owner who desires to construct, install, or modify the approved Improvement.

ARTICLE VI MINIMUM IMPROVEMENT STANDARDS

Although it is anticipated that construction and Improvement projects by Owners other than the Declarant will be relatively minor, this Article VI sets forth covenants and restrictions relating to typically occurring works of Improvement in the context of condominium projects:

Section 6.01. Exterior Lighting. Any exterior electrical, gas or other artificial lighting, if permitted by the Board of Directors to be installed on a Unit, shall be positioned, screened, or otherwise directed or situated, and shall be of such controlled focus and intensity, so as not to unreasonably disturb the residents or occupants of any other Unit(s), adjacent residents or the general public. Further rules regarding exterior lighting may be promulgated and enforced by the Board of Directors in accordance with Section 5.03, above.

Section 6.02. Sound Transmission Control. Each Owner must ensure that any modifications to such Owner's Unit's mechanical, electrical and plumbing systems shall limit sound/vibration transmission to any space outside of the Unit, including the Unit in the same Building, to a level below 40 dBA. The transmission of vibration shall be below the threshold of feeling. Upon completion of modifications, a test of the modifications shall be performed by the Owner's sole cost for conformance to the requirements of this Section. Testing shall be conducted in accordance with subparagraph (d), below.

(a) Floors and Ceilings. The floor ceiling assembly has been designed to limit impact and airborne sound transmission. Any changes to the floor shall not eliminate the resilient material when hard surfaces are used. The changes should not compromise the STC (Sound Transmission Class) and IIC (Impact Isolation Class) ratings and as minimum the FSTC (Field Sound Transmission Class) rating shall be not less than 50 and FIIC (Field Impact Isolation Class) rating shall be not less than 45. Upon completion of modifications a test of the modifications shall be performed at the sole expense of the Owner for conformance to the requirements of this Section. Testing shall be conducted in accordance with subparagraph (d), below.

(b) Walls. The party walls have been constructed for high low frequency. Any modifications to the party walls shall not decrease the air gap within the partition, reduce the number of layers of gypboard or rigidly tie the two sides of the wall. In addition to these construction requirements the performance of any changes shall not reduce the FSTC (Field Sound Transmission Class) rating to less than 55. Upon completion of modifications a test of the modification shall be performed at the sole expense of the Owner for conformance to the

requirements of this subparagraph (b). Testing shall be conducted in accordance with subparagraph (d), below.

(c) Penetrations. Any modifications to penetrations, additions, attachments and supports for electrical, plumbing, HVAC, cabinets or other modifications shall be undertaken in accordance with this Section 6.02.

(d) Required Testing. Testing shall be performed by an experienced person approved by the Board of Directors with a minimum of five (5) years of experience in noise/vibration measurements, and in addition experience with design of a minimum of five (5) residential projects. The testing results shall indicate compliance with the requirements imposed herein. Non-compliant systems or improvements shall be promptly corrected to meet requirements imposed.

ARTICLE VII ASSOCIATION AND OWNER MAINTENANCE RESPONSIBILITIES

Section 7.01. Association Maintenance Responsibilities.

(a) Association Common Area. The Association shall be solely responsible for all maintenance, repair, upkeep and replacement of all portions of the Association Common Area of the Project, including all Common Facilities. No person other than the Association or its duly authorized agents shall construct, reconstruct, refinish, alter or maintain any Improvement upon, or shall create any excavation or fill or change the natural or existing drainage of any portion of the Association Common Area. In addition, no person shall remove any tree, shrub or other vegetation from, or plant any tree, shrub, or other vegetation upon the Association Common Area without express approval of the Association.

(i) Such maintenance shall include, but not be limited to, painting, maintaining, repairing, restoring, replacing exteriors of buildings and landscaping within the Common Areas, as follows:

(ii) All project vehicle access areas, walkways, patio and barbeque areas, the water feature, perimeter fencing, the Garage Buildings, and related lighting and structural elements of the buildings, foundations, roofs, hardscape, driveways and walkways;

(iii) All common landscaped areas and related irrigation systems, walls, fences and the Project entry monumentation. All landscaping to be maintained by the Association shall be maintained in a healthy and weed-free condition. Maintenance shall include regular fertilization, mowing, irrigation, pruning and other prudent landscaping practices. The Association shall remove and replace all dying or dead vegetation as soon as reasonably practical. The Association shall take appropriate steps to maintain the irrigation of the landscaping and to prevent damage resulting from misdirected and/or excessive watering.

(iv) All common private storm drains and other private drainage facilities; and

(v) All equipment and other personal property owned by the Association.

(b) Association Maintenance of Portions of Building Common Areas. The Association shall also be responsible for painting the exterior of the Buildings containing Units and Garage Buildings, and the replacement of the exterior roofing materials on the Buildings containing Units and Garage Buildings. Painting projects shall be undertaken by the Association at a single time, so that all building exteriors are painted simultaneously as a regular Common Expense. Building roofs shall be replaced on an as-needed basis with the cost of the roof replacement for each Building containing Units and Garage Building being recovered by the Association as a Special Individual Assessment levied solely against the Owners of the Units in the Building and the Owners of the Exclusive Use Common Area garage bays in the Garage Buildings where the roof has been repaired or replaced.

Section 7.02. Owner Maintenance Responsibilities.

(a) Maintenance and Repair of Units. Each Owner shall be responsible for the maintenance, repair and replacement of, and shall keep in good and presentable condition, all elements of such Owner's Unit, including, without limitation:

(i) The interior surfaces of the Unit;

(ii) All utility systems, valves, equipment, and connections to the Condominium Unit, including, without limitation, water, gas, electrical, plumbing, air conditioning, heating, and telephone, lines, conduits and improvements, water heating equipment, and cable television wiring servicing his or her Unit and located either within or without the outside perimeter of the exterior walls, floors and ceilings thereof, extending from the Unit Owner's side of any connection valve, pipe fitting, junction box, cabinet or other joining device, so long as those systems are used exclusively by such Owner and not in common. Each Owner shall be entitled to reasonable access over the Common Area for such purposes, subject to reasonable limitations imposed by the Association;

(iii) All doors within or enclosing an Owner's Unit, including window and door frames of glass doors and windows, if any;

(iv) All appliances, whether built in or free standing within the Condominium Unit;

(v) The interior and the lock(s), if any, of the Exclusive Use Common Areas, if applicable; and

(vi) The interior surfaces of any Exclusive Use Common Area patio or porch, including regular cleaning and maintenance thereof.

(b) Exclusive Use Common Areas. Except as provided above with respect to the painting of Garage Building exteriors and the replacement of Garage Building roofs, each Owner shall also be responsible for the maintenance, repair and replacement of the Exclusive Use Common Areas appurtenant to the Owner's Unit.

Section 7.03. Association Recovery of Costs of Certain Repairs and Maintenance.

(a) **Association Maintenance Necessitated by Owner Negligence.** If the need for maintenance or repair, which would otherwise be the Association's responsibility hereunder, is caused through the willful or negligent acts of an Owner, his or her family, guests, tenants, or invitees, and is not covered or paid for by Association insurance policies or any liability insurance maintained by the responsible Owner, the cost of such maintenance or repairs shall be subject to recovery by the Association through the imposition of a Special Individual Assessment against the offending Owner in accordance with Section 4.04, above. When repairs resulting from the willful or negligent actions of an Owner, or his or her tenants, guests or invitees are covered by insurance, the Owner shall be responsible for payment of any insurance deductible.

(b) **Owner Defaults in Maintenance Responsibilities.** If an Owner fails to perform maintenance functions for which he or she is responsible, the Association may give written notice to the offending Owner with a request to correct the failure within fifteen (15) days after receipt thereof. If the Owner refuses or fails to perform any necessary repair or maintenance, the Association may exercise its rights under Section 3.07(c), above, to enter the Owner's Unit or Exclusive Use Common Area and perform the repair or maintenance so long as the Owner has been given notice and the opportunity for a hearing in accordance with Section 13.06(d), below.

Section 7.04. Cooperative Maintenance Obligations.

(a) **Cooperation with the Association.** To the extent necessary or desirable to accomplish the Association's maintenance obligations hereunder, individual Owners shall cooperate with the Association and its agents and maintenance personnel in the prosecution of its work including, when reasonably required, permitting access by the Association, its agents and contractors, to the Owner's Unit and Exclusive Use Common Areas to perform repair and maintenance work for which the Association is responsible hereunder.

(b) **Cooperation Among Owners of Units in Each Building.** There are two Units in each of the three Buildings within the Project that contain Condominium Units. The Owners of Units in each Building shall be obligated to cooperate with each other to the extent reasonably necessary for either Owner to perform repair, renovation, or replacement work within a Unit. Except in the case of an emergency that threatens immediate significant damage or destruction of a Unit or to the Building containing Units, any work within a Unit that will involve any noise or other possible interference with the quiet enjoyment of occupants of the adjacent Unit shall be performed during normal business hours (weekends and holidays excluded) unless otherwise agreed in advance by both Unit Owners (or by an Owner and the occupant of the adjacent Unit if not an Owner). See also section 7.07, below, pertaining to Party Wall maintenance obligations.

Section 7.05. Obtaining and Maintaining Utilities.

(a) **Owners' Rights and Duties.** The rights and duties of the Owners of Units within the Project with respect to sanitary sewer, water, drainage, electric, gas, television receiving, telephone equipment, cables and lines, exhaust flues and heating and air conditioning facilities, (collectively, "utility facilities") shall be as follows:

(i) Whenever utility facilities are installed within the Project, which utility facilities or any portion of those facilities lies in or upon Units owned by other than the Owner of a Unit served by those facilities, the Owners of any Unit served by those facilities shall have the right of reasonable access for themselves or for utility companies to repair, replace and generally maintain those utility facilities as and when necessary, due to failure or inability of the Board to take timely action to make such repairs or perform such maintenance.

(ii) Whenever utility facilities serving more than one Unit are installed within the Project, the Owner of each Unit served by those utility facilities shall be entitled to the full use and enjoyment of such portions of those utility facilities that service his or her Unit.

(iii) In the event of a dispute between Owners with respect to the repair or rebuilding of utility facilities, or with respect to the sharing of the cost of those facilities, 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, the binding arbitration within sixty (60) days pursuant to the rules of the American Arbitration Association, or any successor rules, or to any other generally recognized system of alternative dispute resolution. The decision of the arbitrator(s) shall be final and conclusive on the parties, and judgment on the decision may be entered in any court having jurisdiction.

(b) Association's Duties. The Association shall be responsible for maintaining in good condition and repair all utility facilities located in the Association Common Area (including water, sanitary sewer and storm drainage facilities serving either the Association Common Area or Units in the Project) except for those facilities maintained by utility companies, public, private, or municipal, and those utilities maintained by Owners as described in subparagraph (a) of this Section. The Association shall be authorized to obtain, by contract or otherwise, utility services for all Units and Common Facilities within the Project (including water, sanitary sewer and storm drainage services for the Common Area and/or the Units) and shall pay all charges for utilities supplied to the Project, except those utilities that are metered or charged separately to the Units.

(c) Easements for Utility Maintenance. Easements for utility maintenance are set forth in Section 9.02, below.

Section 7.06. Maintenance of Drainage Improvements. Each Owner shall have the duty and obligation to maintain the drainage improvements and facilities located within any Exclusive use Common Area appurtenant to such Owner's Condominium Unit free and clear of debris and any other material which may impede the flow of water, and to regularly maintain and clean such drainage improvements, as may be necessary. No Owner shall dispose or permit disposal of Hazardous Materials in any drains in the Project. If such Owner fails to maintain such drainage facilities, and, as a result of such failure, imminent danger or damage to person or property may result to the other Owners, then the Association shall have the right to access to such area for the purpose of clearing debris and other material, or otherwise maintaining or repairing such drainage improvements, so as to permit and promote the follow of drainage water. Such right of access shall be exercised only for the purpose of preventing damage to persons and/or property and shall be exercised only with reasonable care to avoid causing any damage to such areas. The

Owner shall reimburse the Association for any costs and expenses incurred in clearing such debris, conducting such maintenance, or making such repairs.

Section 7.07. Shared Owner Maintenance and Repair Responsibilities With Respect to Party Walls.

(a) **General Rules of Law to Apply.** Each wall that is built as a part of the original construction of the Units within the Development and placed on the dividing line between two Units in the same Building shall constitute a Party Wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a Party Wall shall be shared by the Owners who make use of the wall in equal proportion to such use.

(c) **Destruction by Fire or Other Casualty.** If a Party Wall is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance and repaired out of the proceeds of same, any Owner who has used the wall may restore it, and if the other Owner thereafter makes use of the wall, they shall contribute to the cost of restoration thereof in equal proportion without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(d) **Weatherproofing.** Notwithstanding any other provisions of this Section 7.07, to the extent that such damage is not covered and paid by the insurance provided for herein, an Owner who, by his or her negligent or willful act, causes the Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(e) **Right to Contribution Runs With Land.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

(f) **Arbitration.** In the event of any dispute between Owners concerning a Party Wall, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and resolution of the dispute shall be decided by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after tender of a written request for arbitration of the dispute, the Board of Directors of the Association shall select an arbitrator for the refusing party. Said arbitrators shall render a decision within thirty (30) days after appointment.

(g) **Party Wall Easements.** In all cases where a structural wall constituting a portion of a single Unit, or a structural wall constituting a common wall for two Units, is located upon the dividing line between adjacent Units, the Owner of said adjoining Unit shall have reciprocal mutual nonexclusive easements for the maintenance of said wall, the reconstruction of said wall in the event of the partial or total destruction of the same, drainage associated with said wall or the Unit of which said wall is a part, and an easement to accommodate the foundation and/or roof or eaves encroachment as depicted in the original design, plans and specifications which were

the basis for the original construction of the Unit or Units. The Owner of a Unit having a structural wall situated on the boundary line between his or her Unit and the adjoining Unit shall not attach anything to the outside of the wall which shall protrude across the boundary line into the adjoining Unit, and the Owner of the adjoining Unit upon which such a wall is situated shall not attach anything to the outside of said wall without the consent and permission of the Owner of the adjoining Unit upon which the Unit of which said wall is a part is situated.

ARTICLE VIII USE OF PROPERTY AND RESTRICTIONS

In addition to such restrictions as may be established by law or made a part of the Association Rules (consistent with this Declaration) from time to time promulgated by the Board of Directors, the following restrictions are hereby imposed upon the use and enjoyment of the Project (including, without limitation, the individual Units):

Section 8.01. Single Family Residential Use. The use of any Unit in the Project is hereby restricted to Single Family Residential Use; provided, however, that nothing in this Declaration shall prevent an Owner from leasing or renting his or her Unit on a nightly or longer basis, subject to Section 2.06, above. In addition, Units owned by Declarant may be used as models, sales offices and construction offices for the purposes of selling the Units within the Project until all of the Units owned by Declarant are sold. Each Unit Owner and any tenant or lessee residing in a Unit shall comply with all building and safety codes of the City.

Section 8.02. Prohibition of Noxious Activities.

(a) No noxious or offensive activities shall be carried on within or conducted upon any portion of the Property nor shall any things be done within any Unit that shall be or become an unreasonable annoyance or nuisance to other Owners or residents within the Project.

(b) Without limiting any of the foregoing, no Owner shall permit noise of any sort (including, but not limited to, barking dogs, stereo amplifier systems, television sets, and power tools) to emanate from an Owner's Unit or any portion of the Association Common Area that would unreasonably disturb the quiet enjoyment of other residents. Excessive noise levels may be determined in the sole discretion of the Board which may, but shall not be obligated to, rely on the City Ordinances or other applicable governmental regulation dealing with such matters.

(c) The Board may, in its sole discretion, prohibit maintenance within the Project of any animal that constitutes a nuisance (whether due to its size, viciousness, unreasonable noise or otherwise) with respect to any other Owner(s) or residents.

Section 8.03. Temporary Structures. No structure of a temporary character, trailer, mobile home, camper, tent, shack, or other outbuilding shall be used on the Project at any time as a residence, either temporarily or permanently.

Section 8.04. Household Pets. The following restrictions regarding the care and maintenance of pets within the Property shall be observed by each Owner and resident:

(a) No more than two (2) common household pets may be kept in any Unit and in no event shall any pet be maintained for breeding or commercial purposes. The limitation of two (2) pets per household shall not apply to caged birds that are maintained within a Unit or to fish maintained in an aquarium, subject to the limitations set forth in Section 8.11, below. No other animals, livestock, or poultry of any kind shall be kept, bred or raised in any Unit.

(b) Dogs shall only be allowed within the Association Common Area when they are leashed and otherwise under the supervision and restraint of their Owners.

(c) No household pet shall be left chained or otherwise tethered in front of a Unit or at any other location within the Common Area. Pet owners shall be responsible for the prompt removal and disposal of pet wastes deposited by their pets within the Project.

(d) Each person bringing or keeping a pet within the Project shall be solely responsible for the conduct of the owner's pets. The Association, its Board, officers, employees and agents shall have no liability (whether by virtue of this Declaration or otherwise) to any Owners, their family members, guests, invitees, tenants and contract purchasers for any damage or injury to persons or property caused by any pet.

(e) The Board of Directors shall have the right to establish and enforce additional rules and regulations and imposing standards for the reasonable control and keeping of household pets in, upon and around the Property to ensure that the same do not interfere with the quiet and peaceful enjoyment of the Property or the Project by the other Owners and residents.

Section 8.05. Signs. Subject to the provisions of California Civil Code sections 712 and 713, no sign or billboard of any kind shall be displayed to the public view on or from any Unit, except (i) such signs as may be used by Declarant in connection with the development, marketing and sale of Units in the Project; (ii) one (1) "for sale" or "for lease" sign of reasonable size (reasonably defined as not more than one and one half (1 ½) by two (2) feet); and (iii) political signs of reasonable dimension so long as the political sign(s) are removed from the view of neighboring Units within twelve (12) hours following conclusion of the election to which the sign pertained. Signs that fall into categories (ii) and (iii) may only be posted within the Unit and shall not be posted in any part of the Common Area or nailed to the exterior of Buildings containing Units.

Section 8.06. Business Activities. No business or commercial activities of any kind whatsoever shall be conducted in any Unit or garage bay; provided, however, the foregoing restriction shall not apply to the activities, signs or activities of the Association in the discharge of its responsibilities under the Governing Documents or the Declarant's activities in connection with the development, sale and marketing of the Project. Furthermore, no restrictions contained herein shall be construed in such a manner so as to prohibit any Owner from: (a) maintaining his or her personal library in his or her Unit; (b) keeping his or her personal business records or accounts therein; (c) handling his or her personal or professional telephone calls or correspondence therefrom; (d) leasing or renting his or her Unit in accordance with Section 2.06, above; or (e) conducting any other activities on the Owner's Unit otherwise compatible with residential use, which are permitted under applicable zoning laws or regulations, so long as any such activity does not involve exterior signage. The uses described in (a) through (e), above, are

expressly declared to be customarily incidental to the principal residential use of the Unit and not in violation of this Section.

Section 8.07. Garbage. No rubbish, trash, or garbage shall be allowed to accumulate within any Units or within any portion of the Association Common Area (other than the area that is designated for the maintenance of trash containers). Any trash that is accumulated by an Owner outside the interior walls of a Unit shall be stored entirely within appropriate covered disposal containers and facilities located within the designated garbage area within the Association Common Area. Any extraordinary accumulation of rubbish, trash, garbage or debris (such as debris generated upon vacating of premises or during the construction of modifications and Improvements) shall be removed from the Project to a public dump or trash collection area by the Owner or tenant at his or her expense. The Association shall be entitled to impose reasonable fines and penalties for the collection of garbage and refuse disposed in a manner inconsistent with this Section.

Section 8.08. Discharge of Toxic or Noxious Materials. No person shall discharge any toxic or noxious liquids or materials into the Project's sewer system, storm drain in such concentrations as to be detrimental to or endanger the public health, safety, welfare, violate any law, subject any Owner to liability under state and/or federal law for any clean-up, or cause injury or damage to neighboring property.

Section 8.09. Storage. Storage of personal property by Owners or tenants within the Project shall only be permitted entirely within the Owner's/tenant's Unit or within the garage bay that is an Exclusive Use Common Area appurtenant to the Unit, so long as such storage does not preclude the parking of vehicles in each parking bay in the Garage Buildings of the Project. No personal property shall be stored outside of a Unit or garage bay and no front porch shall be used for storage purposes, including, but not limited to, the storage of bicycles. Roll-out trash containers shall be maintained and stored in the trash enclosure area that has been designed for that purpose within the boundaries of the Project.

Section 8.10. Window Coverings. All window coverings shall be of an off-white color, or with off-white backing, harmonious with and not in conflict with the color scheme of the exterior wall surface of the Condominium and the Project. Window coverings shall be subject to the approval of the Board of Directors in accordance with Article V, above. Tinting of windows is prohibited.

Section 8.11. Water Beds and Aquariums. No water beds shall be permitted in any Condominium. No Owners can maintain in her or her Condominium any aquarium or other similar container holding ten (10) or more gallons of water. Each Owner acknowledges that substantial damage to other Units, Association Property and/or Common Area may occur as a result of a violation of this restriction, and any Owner violating such restriction shall be responsible for the resulting damage.

Section 8.12. Sound and Vibrations. No Owners shall attach to the walls or ceilings of any Unit any fixtures or equipment that may cause sounds, vibrations or noise or unreasonable annoyance to the Owners of the other Units or the Common Area. Each Unit shall comply with the state of California's Noise Insulation Standards and Section 6.02, above.

Section 8.13. Clotheslines. No exterior clothesline shall be erected or maintained and there shall be no drying or laundering of clothes outside of Units in the Project.

Section 8.14. Antennas and Similar Devices. No alteration to or modification of a central radio and/or television antenna system or cable television system, whichever is applicable, if developed by the Declarant or a cable television franchisee and as maintained by the Association or said franchisee, shall be permitted. No Owner shall construct, install and/or operate a radio and/or television antenna, satellite dish, or other signal reception or transmission device or related equipment in the Association Common Area of the Project that are exterior to the Owner's Unit, including without limitation, within any patios or porches 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 within or on any patio or porch, the Board shall consider and give great weight to considerations of aesthetics, safety within the Project, uniformity of appearance, potential structural damage, the potential for water leaks in the Project, interference with the broadcast reception of other neighboring residents, and the requirements of any 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 1376 and 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 1376 and the FCC Regulations.

Section 8.15. Machinery and Equipment. No power tools, machinery or equipment of any kind shall be placed, operated or maintained within or adjacent to any Unit or within the Association Common Area except (i) such machinery or equipment that is usual or customary in connection with the use, maintenance or repair of a private Condominium Unit; or (ii) machinery or equipment that is used by the Association and its maintenance personnel in the performance of the Association's duties to maintain the Association Common Areas.

Section 8.16. Diseases and Pests. No Owner shall permit any thing or condition to exist within his or her Unit which shall induce, breed, or harbor infectious plant diseases, rodents, mold, or noxious insects.

Section 8.17. Parking and Vehicle Restrictions. The Project includes three (3) two-car Garage Buildings and one parking bay in each of the Garage Buildings has been allocated on the Condominium Plan as Exclusive Use Common Area of a particular designated Unit. The following restrictions shall apply to the use and enjoyment of those garage bays and to the parking of vehicles within the Project:

(a) All garages shall be maintained in a neat and orderly condition. The garages in the Project are to be used for the parking of one (1) standard passenger vehicle or truck that can fit entirely in the garage bay with the garage door in a closed position. Parking is limited within the Project and for that reason no Owner or resident shall permit or cause boats, recreational vehicles, motor homes, or trailers, to be parked within the Project. No garage bay shall be converted to living quarters or work shops or used for other purposes, such as storage, which will preclude the parking of a vehicle in the bay.

(b) No motor vehicle shall be constructed, reconstructed or repaired within the Project and no dilapidated or inoperable vehicle, including vehicles without wheel(s) or an engine, shall be stored in the Project; provided, however that the provisions of this Section shall not apply to emergency vehicle repairs.

(c) The Board shall have the authority to tow at the Owner's expense, any vehicle parked or stored in violation of this Section. The Board shall post such notices or signs within the Association Common Area as may be required by California law to effectuate this towing provision.

(d) The Board shall have the authority to promulgate such further rules and restrictions regarding parking and vehicles within the Project as may be deemed prudent and appropriate.

Section 8.18. Activities Affecting Insurance. Nothing shall be done or kept within any Unit or Exclusive Use Common Area or Common Area which will increase the rate of insurance relating thereto without the prior written consent of the Association and no Owner shall permit anything to be done or kept within his or her Unit, Exclusive Use Common Area or Association Common Area which would cause any Improvements to be uninsurable against loss by fire or casualty or result in the cancellation of insurance on any Unit or any part of the Association Common Area.

Section 8.19. Variances. Upon application by any Owner, the Board of Directors shall be authorized and empowered to grant reasonable variances from the property use restrictions set forth in this Article, if specific application of the restriction will, in the sole discretion of the Board either cause an undue hardship to the affected Owner or fail to further or preserve the common plan and scheme of development contemplated by this Declaration. Any request for a variance shall be distributed by the Board, in writing, to all other Owners of Units in the Project and action on the variance shall be taken at a meeting of the Board that is open to attendance by all Owners.

Section 8.20. Enforcement of Property Use Restrictions. The objective of this Declaration shall be to promote and seek voluntary compliance by Owners and tenants with the property use restrictions contained herein. Accordingly, in the event that the Association becomes aware of an architectural or property use infraction that does not necessitate immediate corrective action under Section 13.06, below, the Owner or tenant responsible for the violation shall receive written notice thereof and shall be given a reasonable opportunity to comply voluntarily with the pertinent Governing Document provision(s). Such notice shall describe the noncomplying condition, request that the Owner or tenant correct the condition within a reasonable time specified in the notice, and advise the Owner or tenant of his or her right to be heard on the matter.

ARTICLE IX EASEMENTS

Section 9.01. Vehicular and Pedestrian Easements. Each Owner and the Association shall have and is hereby granted a nonexclusive easement for vehicular ingress and egress purposes and pedestrian ingress and egress over and along the paved vehicular access area that is located between Building 1 and 2 within the Association Common Area.

Section 9.02. Utility Easements Granted by Association or the Declarant. The Declarant, for so long as the Declarant owns any portion of the Property, or the Association shall have the power to grant and convey to any third-party easements and rights-of-way in, on, over or under the Association Common Area for the purpose of constructing, erecting, operating or maintaining lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public Improvements or facilities, subject to prior written approval thereof by the City. Each Owner, in accepting a deed to a Condominium, expressly consents to such easements and rights of way and authorizes and appoints the Association as attorney-in-fact of such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. An easement is hereby created and reserved for installation, maintenance and use of horizontal and vertical utility lines, ducts and appurtenances thereto in areas adjoining ceilings, walls, columns and interior spaces between columns, within the Units. No removal, repair or modification of these lines is permitted without specific written authorization from the Association. The location of the facilities described in this Section, and hence the location of the easement to accommodate such facilities, shall be set forth in the final "as-built" plans for each Building. As used in this Declaration, the term "as-built" plans shall mean and refer to the drawings indicating the precise locations of utility runs, which drawings are prepared to show the final as-built locations thereof to the extent they deviate from or were not shown on prior plans for any portion of the Project.

Section 9.03. Maintenance Easements. An easement is hereby granted to the Declarant and the Association, their officers, agents, employees, and to any management company or contractor selected by the Declarant or the Association to enter in or to cross over the Association Common Area and the exterior of Buildings within the Project (but not the interior of any Unit) to perform the Association's duties of maintenance and repair of the Association Common Areas and Common Facilities and the limited maintenance obligations of the Association with respect to Building exteriors and roofs.

Section 9.04. Easements in Favor of Declarant in the Common Area and Easements Reserved in Favor of the Declarant. For a period of ten (10) years following the close of escrow in the first sale of a Building in the Project, the Declarant shall have an easement for ingress to, and egress from, the Common Areas for the purpose of completing improvements thereon or for the performance of necessary repair work to any Buildings, Association Common Areas or Units.

Section 9.05. Easements for Drainage. There are hereby created, granted and reserved over the Project easements for drainage according to the established patterns for drainage created

by the approved grading plans for the Project, as well as according to the actual, natural and existing patterns for drainage.

Section 9.06. Other Easements. Each Unit and its Owner, the Association and the Declarant, as the case may be, is hereby declared to be subject to all the easements, dedications and rights-of-way granted or reserved in, on, over and under the Project and each Unit as shown on the Condominium Plan.

Section 9.07. Priority of Easements. Wherever easements granted to the City are, in whole or in part, coterminous with any other easements, the easements in favor of the City shall have and are hereby granted priority over said other easements in all respects.

ARTICLE X INSURANCE

Section 10.01. Required Insurance Coverage. The Association shall, at the discretion of the Board of Directors, purchase, obtain and maintain, with the premiums therefor being paid out of Common Funds, the following types of insurance, if and to the extent they are available at a reasonable premium cost:

Section 10.02. Fire and Casualty Insurance. The Association shall obtain and maintain a master or blanket policy of fire and casualty insurance, written on all risk, replacement cost basis, on all Residence Improvements within the Development and on any Common Areas and Common Facilities. The insurance shall be kept in full force and effect at all times and the full replacement value of the insured property shall be redetermined on an annual basis. Depending on the nature of the insured property and the requirements, if any, imposed by institutional Mortgagees having an interest in such property, the policies maintained by the Association pursuant to this Section shall contain an agreed amount endorsement or a contingent liability from operation of building laws endorsement or the equivalent, an extended coverage endorsement, vandalism, malicious mischief coverage, a special form endorsement and a clause to permit cash settlements for full insurable value in case of partial destruction. The policies required hereunder shall name as insured the Association, all Owners and all Mortgagees as their respective interests may appear. The policies may contain a loss payable endorsement in favor of the trustee described in Section 10.05 below.

(a) Public Liability and Property Damage Insurance. To the extent such insurance is reasonably obtainable, a policy of comprehensive public liability and property damage insurance naming as insured parties the Association, each member of the Association Board of Directors, any manager, the Owners and occupants of Units, and such other persons as the Board may determine. The policy will insure each named party against any liability incident to the ownership and use of the Common Areas and including, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than One Million Dollars (\$1,000,000.00) covering all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, liability for nonowned and hired automobiles, liability for property of others and any other liability or risk customarily

covered with respect to common interest development projects similar in construction, location, facilities and use.

(b) Director's and Officer's Liability Insurance. To the extent such insurance is reasonably obtainable, the Association shall maintain individual liability insurance for its directors and officers providing coverage for negligent acts or omissions in their official capacities. The minimum coverage of such insurance shall be at least One Million Dollars (\$1,000,000.00).

(c) Additional Insurance and Bonds. To the extent such insurance is reasonably obtainable, the Association may also purchase with Common Funds such additional insurance and bonds as it may, from time to time, determine to be necessary or desirable, including, without limiting the generality of this Section, demolition insurance, flood insurance, and workers' compensation insurance. The Board shall also purchase and maintain fidelity bonds or insurance in an amount not less than one hundred percent (100%) of each year's estimated annual operating expenses and shall contain an endorsement of any person who may serve without compensation. The Board shall purchase and maintain such insurance on personal property owned by the Association and any other insurance that it deems necessary or desirable.

Section 10.03. Coverage Not Available. In the event any insurance policy, or any endorsement thereof, required by Section 10.01 is for any reason unavailable, then the Association shall obtain such other or substitute policy or endorsement as may be available which provides, as nearly as possible, the coverage hereinabove described. The Board shall notify the Owners of any material adverse changes in the Association's insurance coverage.

Section 10.04. Copies of Policies. Copies of all insurance policies (or certificates thereof showing the premiums thereon have been paid) shall be retained by the Association and shall be available for inspection by Owners at any reasonable time.

Section 10.05. Individual Fire and Casualty Insurance Limited. Except as provided in this Section, no Owner can separately insure his or her Residence or any part of it against loss by fire or other casualty covered by the Association's blanket insurance carried under Section 10.01(a). If any Owner violates this provision, any diminution in insurance proceeds otherwise payable pursuant to the provisions of section 10.01(a) that results from the existence of such other insurance will be chargeable to the Owner who acquired such other insurance, and the Owner will be liable to the Association to the extent of any diminution. An Owner can insure his or her personal property against loss. In addition, any Improvements made by an Owner within his or her Unit may be separately insured by the Owner, but the insurance is to be limited to the type and nature of coverage commonly known as "tenant's Improvements." All such insurance that is individually carried must contain a waiver of subrogation rights by the carrier as to other Owners, the Association, and any institutional first Mortgagee of such Unit.

Section 10.06. Trustee. All insurance proceeds payable under section 10.01, above, and subject to the rights of the Mortgagees under section 10.07, below, may, in the discretion of the Board of Directors, be paid to a trustee to be held and expended for the benefit of the Owners, Mortgagees and others, as their respective interests shall appear. Said trustee shall be a commercial bank in the County that agrees in writing to accept such trust.

Section 10.07. Adjustment of Losses. The Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried pursuant to Section 10.01, above. The Board is granted full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insured.

Section 10.08. Distribution to Mortgagees. Subject to the provisions of Article XVI ("Mortgagee Protections"), any Mortgagee has the option to apply insurance proceeds payable on account of a Unit in reduction of the obligation secured by the Mortgage of such Mortgagee.

Section 10.09. Policies Obtained by the Declarant. It is contemplated that the Declarant may contract for the insurance coverage contemplated by this Article prior to or concurrently with obtaining financing for the development of the Development, and any such obligations or commitments for the payment of premiums or expenses with respect thereto shall become an obligation of the Association, shall be treated as a Common Expense, and shall be paid out of the Common Funds as provided herein.

Section 10.10. Annual Review of Association Insurance and Disclosure to Members. The Board shall review the adequacy of all insurance, including the amount of liability coverage and the amount of property damage coverage, at least once every year. At least once every three years, the review shall include a replacement cost appraisal of all insurable Common Area Improvements without respect to depreciation. The Board shall adjust the policies to provide the amounts and types of coverage and protection that are customarily carried by prudent owners' associations operating in similar common interest developments in the greater Sacramento region. In accordance with California Civil Code section 1365(e), annually the Association shall distribute to its Members a summary of the Association's property, general liability, and flood insurance (if any), such distribution to be made within sixty (60) days prior to the beginning of the Association's fiscal year.

Section 10.11. Board's Authority to Revise Insurance Coverage. The Board shall have the power and right to deviate from the insurance requirements contained in this Article X in any manner that the Board, in its reasonable business discretion, considers to be in the best interests of the Association. If the Board elects to materially reduce the coverage from the coverage required in this Article X, the Board shall make all reasonable efforts to notify the Members of the reduction in coverage and the reasons therefor at least (30) days prior to the effective date of the reduction. The Association, and its directors and officers, shall have no liability to any Owner or Mortgagee if, after a good faith effort, the Association is unable to obtain any insurance required hereunder because the insurance is no longer available; or, if available, the insurance 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.

ARTICLE XI
DAMAGE OR DESTRUCTION OF ASSOCIATION COMMON FACILITIES AND/OR
UNITS

Section 11.01. Restoration Defined. As used in this Article XI, the term “restore” shall mean repairing, rebuilding or reconstructing Improvements damaged or destroyed as a result of a fire or other casualty to substantially the same condition and appearance in which they existed prior to fire or other casualty damage.

Section 11.02. Insured Casualty. If any Building Common Area, or Association Common Area Improvement is damaged or destroyed from a risk covered by the insurance required to be maintained by the Association pursuant to Article X, and the insurance proceeds are sufficient to cover the loss, then the Association, to the extent permitted under existing laws and except as otherwise authorized under this Article XI, shall restore the Improvement to the same condition as it was in immediately prior to the damage or destruction. The Association shall proceed with the filing and adjustment of all claims arising under the existing insurance policies. The insurance proceeds shall be paid to and held by the Association or an insurance trustee selected under the provisions of Section 10.08, above. If the insurance proceeds exceed the costs of restoration, the excess proceeds shall be paid into reserves and held for the benefit of the Association.

Section 11.03. Inadequate Insurance Proceeds or Uninsured Loss. If the insurance proceeds are insufficient to restore the damaged Improvement or the loss is uninsured, the Board shall add to any available insurance proceeds all reserve account funds designated for the repair or replacement of the damaged Improvement. If the total funds then available are sufficient to restore the damaged Improvement, the Improvement shall be restored. If the aggregate amount of insurance proceeds and such reserve account funds are insufficient to pay the total costs of restoration, a Special Assessment shall be levied by the Board up to the maximum amount permitted without the approval of the Members in accordance with the limitations set forth in this Declaration and by law. If the total funds then available are sufficient to restore the damaged Improvement, the Improvement shall be restored. Any Special Assessment levied to cover a shortfall in available repair proceeds shall be allocated among the Condominiums without regard to the extent of damage or destruction to the individual Condominiums.

If the total funds available to the Association are still insufficient to restore the damaged Improvement, then the Board first shall attempt to impose an additional Special Assessment pursuant to Section 11.04 below and, second, use a plan of alternative reconstruction pursuant to Section 11.05 below. Any Special Assessment levied to cover a shortfall in available repair proceeds shall be allocated among the Condominiums without regard to the extent of damage or destruction to the individual Condominiums. If the Members do not approve such actions, then the provisions of Section 11.06 shall apply.

Section 11.04. Additional Special Assessment. If the total funds available to restore the damaged Association Common Area Improvement or Building Common Area Improvement as provided in Section 11.03 are insufficient, then a meeting of the Members shall be called for the purpose of approving a Special Assessment to make up all or a part of the deficiency (“Additional Special Assessment”). If the amount of the Additional Special Assessment approved by the Members and the amounts available pursuant to Section 11.03, above, are insufficient to restore the damaged Improvement or if no Additional Special Assessment is approved, the Association shall consider a plan of alternative reconstruction in accordance with Section 11.05.

Section 11.05. Alternative Reconstruction. The Board shall consider and propose plans to reconstruct the damaged Improvement making use of whatever funds are available to it pursuant to Section 11.03 and Section 11.04 above ("Alternative Reconstruction"). All proposals shall be presented to the Owners. If two-thirds of the voting power of the Owners whose Condominiums were materially damaged as determined by the Association ("Affected Owners") and a majority of the voting power of the Members, including the Affected Owners, agree to any plan of Alternative Reconstruction, then the Board shall contract for the reconstruction of the damaged Improvement in accordance with the plan of Alternative Reconstruction making use of whatever funds are then available to it. If no plan of Alternative Reconstruction is agreed to, then the provisions of Section 11.06 shall apply.

Section 11.06. Sale of Condominium Building. If the damaged Improvement is part of a Condominium Building (the "Damaged Building"), the damage renders one or both of the Condominium Units within the Damaged Building uninhabitable, and the Improvements will not be restored in accordance with the provisions of Sections 11.03, 11.04 and/or 11.05, the Board, as the attorney-in-fact for both of the Owners of Units in the Damaged Building, shall be empowered to sell the Damaged Building (including the land), including the Units therein, in their then present condition on terms to be determined by the Board, provided that the Board receives adequate assurances that the purchaser shall, and has the financial capability to: (i) restore the Damaged Building (either by renovation or removal and rebuilding); (ii) remove the Damaged Building and restore any remaining Improvements as may be necessary; (iii) remove the Damaged Building (including foundations), grade the area, and appropriately landscape or otherwise improve the area in any manner as may be acceptable to the Board; or (iv) perform any combination of the foregoing. Any work to be performed by the purchaser with respect to any of the foregoing shall be subject to the provisions of Article V, above.

The proceeds from the sale, together with the insurance proceeds for the Damaged Building received and any reserve funds allocated to the Damaged Building, after deducting therefrom the Association's sale expenses, including commissions, title and recording fees, legal costs, and that portion of the proceeds allocated for the removal of the Damaged Building, shall be distributed among the Owners of Units in the Damaged Building and their respective Mortgagees in proportion to the respective fair market values of the damaged Condominium Units immediately prior to the date of the event causing the damage as determined by an independent appraisal made by a qualified real estate appraiser selected by the Board.

Section 11.07. Restoration of Partition Rights. Notwithstanding anything herein to the contrary, if the damage has rendered any Condominium Unit uninhabitable and (i) within one year of the date of the occurrence of the damage, the Association has not elected to repair the damage under the provisions of Sections 11.02 through 11.05, above, or if so has not commenced and diligently pursued the repair work or (ii) the Association has not commenced and diligently pursued the sale of the Property as authorized under Section 11.06, above, the restriction against partition described in Article XII, below, as it affects the Condominiums, the Units, the Building Common Areas and/or the Association Common Areas, shall be null and void and any Owner may bring a partition action under the authority of California Civil Code section 1359 or any successor statute thereto.

Section 11.08. Rebuilding Contract. If there is a determination to restore the damaged or destroyed Improvements, the Board or its authorized representative shall obtain bids from at least two licensed and reputable contractors and shall accept the repair and reconstruction work from whomever the Board determines to be in the best interests of the Members. The Board shall have the authority to enter into a written contract with the contractor for such repair and reconstruction, and the repair and reconstruction funds shall be disbursed to the contractor according to the terms of the contract. The Board shall take all steps necessary to assure the commencement and completion of authorized repair and reconstruction at the earliest possible date. Such construction shall be commenced no later than one hundred and eighty (180) days after the event requiring reconstruction and shall thereafter be diligently prosecuted to completion. Such construction shall return the Project to substantially the same condition and appearance in which it existed prior to the damage or destruction.

Section 11.09. Authority to Effect Changes. If any Condominium Building or portion thereof is damaged or destroyed or in need of renovation or rehabilitation and the Condominium Building is repaired or reconstructed, the Condominium Building may be repaired or reconstructed in a manner that alters the boundaries of the Units, Building Common Area, Association Common Area, and/or Exclusive Use Common Areas, provided the following conditions are satisfied:

(a) the alteration has been approved by the Board, the Owners of Units in the Building, and by title holders of any first Mortgages to the extent required herein;

(b) the Board has determined that the alteration is necessary in order to comply with current building code requirements, to meet current building construction standard procedures, or to improve the conditions and quality of the damaged Condominium Building(s);

(c) the alteration does not materially change the location of any Unit or materially reduce the size of any Unit without the consent of the Unit Owner and the holders of any first Mortgages thereon. For purposes herein, a material reduction in the size of the Unit shall mean any alteration that increases or decreases the square footage of the interior floor space of the Unit by more than ten percent (10%) from the square footage as shown on the Condominium Plan;

(d) the Board has determined that any alteration that will relocate or reduce the Association Common Area or Building Common Areas will not unreasonably interfere with the rights of the Owners and occupants to use and enjoy the Association Common Area or Building Common Areas; and

(e) the Condominium Plan is amended to reflect the alteration to the Units or Common Areas.

Each Owner irrevocably appoints the Association as that Owner's attorney-in-fact and irrevocably grants to the Association the full power in the name of the Owner to effect any alteration to any Unit or Common Area as authorized above, including, but not limited to, the execution, delivery, and/or recordation of any Condominium Plans, amendments, deeds or other instruments.

Section 11.10. Dispute Resolution. Any disputes under this Article XI shall be resolved in accordance with procedures described in Sections 13.08(e) and 13.08(f) in that order.

ARTICLE XII CONDEMNATION AND LIMITATIONS ON RIGHT OF PARTITION

Section 12.01. Condominium Condemnation. If there is a total sale or taking of the Project, meaning a sale or taking (i) that renders more than fifty percent (50%) of the Condominiums uninhabitable (such determination to be made by the Board in the case of a sale and by the Court in the case of a taking) or (ii) that renders the Project as a whole uneconomical as determined by the vote or written consent of seventy-five percent (75%) of the voting power allocated to the Owners and their respective first Mortgagees whose Condominiums will remain habitable after the taking, the right of any Owner to partition through legal action as described in Section 12.03, below, shall revive immediately. However, any determination that a sale or taking is total must be made before the proceeds from any sale or award are distributed. The proceeds of any such total sale or taking of the Project, together with the proceeds of any sale pursuant to any partition action, after payment of all expenses relating to the sale, taking or partition action, shall be paid to all Owners and to their respective Mortgagees as their interests appear in proportion to the ratio that the fair market value of each Owner's Condominium bears to the fair market value of all Owners' Condominiums.

In the case of a partial sale or taking of the Project, meaning a sale or taking that is not a total taking as described above, the proceeds from the sale or taking shall be paid or applied in the following order of priority and any judgment of condemnation shall include the following provisions as part of its terms:

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

(b) to Owners and their respective Mortgagees as their interests may appear whose Condominiums have been sold or taken in an amount up to the fair market value of such Condominiums as determined by the Court in the condemnation proceeding or by an independent, qualified appraiser selected by the Board, less such Owner's share of expenses paid pursuant to the preceding subparagraph (a) (which share shall be allocated on the basis of the fair market value of the Condominium). After such payment, the recipient shall no longer be considered an Owner, and the Board or individuals authorized by the Board acting as attorney-in-fact of all Owners shall amend the Condominium Plan, the subdivision map (if necessary), and this Declaration to eliminate from the Project the Condominium so sold or taken and to adjust the undivided ownership interests of the remaining Owners in the Common Area based on the ratio that each remaining Owner's undivided interest bears to all of the remaining Owners' undivided interest in the Common Area; then

(c) to any remaining Owner and to his or her Mortgagees, as their interests may appear, whose Condominium has been diminished in fair market value as a result of the sale or taking disproportionately to any diminution in value of all remaining Condominiums but, as of a

date immediately after any announcement of condemnation, in an amount up to the disproportionate portion of the total diminution in value; then

(d) to all remaining Owners and to their respective Mortgagees, as their interests may appear, the balance of the sale proceeds or award in proportion to the ratio that the fair market value of each remaining Owner's Condominium bears to the fair market value of all remaining Owners' Condominiums as determined by the Court in the condemnation proceeding or by an independent, qualified appraiser selected by the Board.

Notwithstanding the foregoing, if the amount from the sale or taking is less than \$50,000, the Board may elect to retain the amount as a part of the Association's operating or reserve funds in lieu of making a distribution to the Owners.

Section 12.02. Suspension of Right of Partition. Except as otherwise provided in Sections 11.07 and 12.01, above, the right of partition is suspended pursuant to California Civil Code section 1359 as to the Property comprising the Project. Partition of the Project and the Property can be had only upon a showing of one or more of the factors described in subparagraph (b) of said section 1359. Nothing in this Declaration shall prevent partition of a co-tenancy in a particular Condominium. Judicial partition by sale of a single Condominium owned by two (2) or more persons and division of the sale proceeds is not prohibited by this Section 12.02, but partition of title to a single Condominium is prohibited.

Section 12.03. Distribution of Proceeds. In the event that the right of partition is revived in accordance with California Civil Code section 1359(b), the proceeds or property resulting from a partition action shall be distributed to and among the respective Owners and their Mortgagees as their interests appear in proportion to the ratio that the fair market value of each Owner's Condominium bears to the fair market value of all Owners' Condominiums, as of the date immediately preceding the date of the event giving rise to the right of the Owners to partition the Common Area, taking into consideration the appropriate ownership interests in each Common Area element.

Section 12.04. Power of Attorney. Each Owner grants the Association an irrevocable power of attorney to sell the Property for the benefit of the Owners when partition can be had pursuant to California Civil Code section 1359. Exercise of the power is subject to the approval of fifty-one percent (51%) of the voting power of the Members and their first Mortgagees.

Section 12.05. Resolution of Disputes Regarding Condemnation Proceedings or Revival of the Right of Participation. Any dispute under this Article XII shall be resolved in accordance with the procedures set forth in Sections 13.08(e) and 13.08(f), in that order.

ARTICLE XIII ENFORCEMENT OF THIS DECLARATION AND DISPUTE RESOLUTION PROCEDURES

Section 13.01. Remedy at Law Inadequate. Except for the nonpayment of any Assessment, it is hereby expressly declared and agreed that the remedy at law to recover

damages for the breach, default or violation of any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration are inadequate and that the failure of any Owner, Lessee, occupant or user of any Unit or any portion of the Common Area or Common Facilities, to comply with any provision of the Governing Documents may be enjoined by appropriate legal proceedings instituted by the Declarant, any Owner, the Association, its officers or Board of Directors, or by their respective successors in interest.

Section 13.02. Nuisance. Without limiting the generality of Section 13.01, above, the result of every act or omission whereby any covenant contained in this Declaration is violated in whole or in part is hereby declared to be a nuisance, and every remedy against nuisance, either public or private, shall be applicable against every such act or omission.

Section 13.03. Costs and Attorneys Fees. Reasonable attorneys' fees and costs shall be awarded to the prevailing party in any procedure to enforce the Governing Documents or a party's rights arising under the Governing Documents. Such enforcement procedures include an action brought in any court of competent jurisdiction as well as any alternative dispute resolution procedure implemented pursuant to the Governing Documents or pursuant to California Civil Code sections 1354 and 1369.510-1369.580 (as such sections may be renumbered or revised from time to time). In any enforcement procedure, such as mediation in which there is no agreement between all of the parties that attorneys will represent them, recoverable costs are limited to attorneys' fees and costs incurred in providing the notices required under such statute.

Section 13.04. Cumulative Remedies. The respective rights and remedies provided by this Declaration or by law shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude or affect the exercise, at the same or at different times, of any other such rights or remedies for the same or any different default or breach or for the same or any different failure of any Owner or others to perform or observe any provision of this Declaration.

Section 13.05. Failure Not a Waiver. The failure of Declarant, any Owner, the Board of Directors, or its officers or agents to enforce any of the covenants, conditions, restrictions, limitations, reservations, grants or easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter, nor shall such failure result in or impose any liability upon the Declarant, the Association or the Board, or any of its officers or agents.

Section 13.06. Enforcement Rights and Remedies of the Association (Governing Document Enforcement).

(a) **Rights Generally.** Except as otherwise provided in Section 13.07, below (Assessment Collections) or Section 13.08, below (Disputes with the Declarant) in the event of a breach or violation of any Association Rule or of any of the restrictions contained in this Declaration or any other Governing Document by an Owner, his or her family, or the Owner's guests, employees, invitees, licensees, or tenants, the Board, for and on behalf of all other Owners, may enforce the obligations of each Owner to obey such Rules, covenants, or restrictions through the use of such remedies as are deemed appropriate by the Board and available in law or in equity, including but not limited to the hiring of legal counsel, the imposition of fines and monetary penalties, the pursuit of legal action, or suspension of the Owner's voting rights as a Member of the Association; provided, however, the Association's right to undertake disciplinary action against its Members shall be subject to the due process, dispute resolution and hearing procedures set forth in this Section 13.06.

The decision of whether it is appropriate or necessary for the Association to take enforcement or disciplinary action in any particular instance shall be within the sole discretion of the Association's Board. If the Association declines to take action in any instance, any Owner shall have such rights of enforcement pursuant to California Civil Code sections 1354 and 1369.510-1369.580 or as otherwise provided by law.

(b) **Schedule of Fines.** The Board may also implement schedules of reasonable fines and penalties for particular common and/or recurring offenses that merit uniform treatment (such as parking violations, late payment of Assessments and the like). Once imposed, a fine or penalty may be collected as a Special Individual Assessment in accordance with Section 4.04, above. If the Association adopts a policy imposing a fine or other monetary penalty on Members for violations of the Governing Documents of the Association (including any monetary penalty relating to the activities of a guest or invitee of a Member), the Board of Directors shall adopt and distribute to each Member, by personal delivery or first-class mail, a schedule of the monetary penalties or fines that may be assessed for those violations. Thereafter the Board shall not be obligated to distribute any additional schedules of monetary penalties or fines unless there are changes from the schedule that was adopted and distributed to the Members pursuant to this subparagraph (b) and California Civil Code section 1363(g).

(c) **Definition of "Violation".** A violation of the Governing Documents shall be defined as a single act or omission occurring on a single day. If the detrimental effect of a violation continues for additional days, discipline imposed by the Board may include one component for the violation and, according to the Board's discretion, a per diem component for so long as the detrimental effect continues. Similar violations on different days shall justify cumulative imposition of discipline. The Association shall take reasonable and prompt action to repair or avoid the continuing damaging effects of a violation or nuisance occurring within the Common Area at the cost of the responsible Owner; provided, however, that no discipline may be founded upon continuance of a violation beyond a date when the Association had knowledge that the violation existed and should reasonably have commenced action to end it.

(d) **Limitations of Disciplinary Rights.**

(i) Generally. The Association shall have no power to cause a forfeiture or abridgment of an Owner's right to the full use and enjoyment of his or her Unit due to the failure by the Owner (or his or her family members, tenants, guests or invitees) to comply with any provision of the Governing Documents or of any duly enacted Association Rule except where the loss or forfeiture is the result of the judgment of a court of competent jurisdiction, a decision arising out of arbitration or a foreclosure or sale under a power of sale for failure of the Owner to pay Assessments levied by the Association, or where the loss or forfeiture is limited to a temporary suspension of an Owner's rights as a Member of the Association or the imposition of monetary penalties for failure to pay Assessments or otherwise comply with any Governing Documents so long as the Association's actions satisfy the due process requirements of subparagraph (iii), below.

(ii) Monetary Penalties. Monetary penalties imposed by the Association: (A) for failure of a Member to comply with the Governing Documents; (B) as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to the Common Area or Common Facilities allegedly caused by a Member; or (C) in bringing the Member and his or her Unit into compliance with the Governing Documents, may not be characterized nor treated as an Assessment which may become a lien against the Member's Unit enforceable by a sale of the Unit in nonjudicial foreclosure; provided, however, that this limitation on the Association's lien rights shall not apply to charges imposed against an Owner consisting of reasonable late payment penalties to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in the Association's efforts to collect delinquent Assessments.

(iii) Hearings and Summary Enforcement Rights. No penalty or temporary suspension of rights shall be imposed pursuant to this Article unless the Member alleged to be in violation is given at least ten (10) days prior notice of the Board's intention to impose a penalty or discipline the Member (see subparagraph (iv), below). Notwithstanding the foregoing, under circumstances involving conduct that constitutes: (A) an immediate and unreasonable infringement of, or threat to, the safety or quiet enjoyment of neighboring Owners; (B) a traffic or fire hazard; (C) a threat of material damage to, or destruction of, the Common Area or Common Facilities; or (D) a violation of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether a violation has occurred (such as late payment of Assessments or parking violations), the Board of Directors, or its duly authorized agents, may undertake immediate corrective or disciplinary action and, upon request of the offending Owner (which request must be received by the Association, in writing, within five (5) days following the Association's disciplinary action), or on its own initiative, conduct a hearing on the matter.

(iv) Conduct of Hearings and Notice. Disciplinary hearings may be before the Board and shall be scheduled at a date which is at least ten (10) days, but no more than thirty (30) days, following the date that notice of the hearing is given to the Owner. The notice shall be given by either first-class mail or by personal delivery and shall set forth the date, time and location of the hearing, a general description of the violation and a notice that the Member has a right to attend the hearing and address the Board.

If the Board imposes discipline on a Member, the Board shall provide the Member with a written notification of the action taken within fifteen (15) days following the Association's action. That notice shall be given either by personal delivery or by first-class mail. In no event shall the effective date of any disciplinary action commence sooner than five (5) days following conclusion of the hearing unless: (i) the hearing merely affirms summary disciplinary action initiated pursuant to the immediately preceding paragraph; or (ii) earlier commencement is necessary to preserve the quiet enjoyment of other residents or to prevent further damage to, or destruction of, the Project or any portion thereof.

(v) Rules and Procedures. The Board, or an appropriate committee appointed by the Board to conduct and administer disciplinary hearings and related proceedings, shall be entitled to adopt rules that further elaborate and refine the procedures for conducting disciplinary proceedings. Such rules, when approved and adopted by the Board, shall become a part of the Association Rules.

(vi) Court Actions. Court actions to enforce the Governing Documents may only be initiated on behalf of the Association by resolution of the Board. Prior to the filing of any court action seeking declaratory or injunctive relief to interpret or enforce the Governing Documents (including either such action coupled with a claim for monetary damages not in excess of Five Thousand Dollars (\$5,000)), the Association shall first comply with the provisions of California Civil Code sections 1369.510-1369.580 relating to alternative dispute resolution. The Association's own notice and hearing procedures may be drafted to satisfy these statutory requirements.

Section 13.07. Assessment Collection Actions. The notice and hearing procedures set forth in Section 13.06 shall not apply to any actions by the Association or its duly authorized agents to collect delinquent Assessments. Assessment collections shall be subject to Section 4.10, above, and any other notice, hearing and/or dispute resolution requirements or procedures as may be specifically applicable by law to Association assessment collection efforts.

Section 13.08. Dispute Resolution Procedures Applicable to Declarant Disputes. With respect to the Claims involving the Parties described in subparagraph (a), below, this Section 13.08 sets forth a process of progressive dispute resolution that has as its objective the prompt resolution of disputed Claims without the necessity of resort by any Party to civil litigation.

(a) Description of Claims That Are Subject to This Section 13.08. The provisions of this Section 13.08 shall apply to the following claims, disputes or controversies (collectively "Claims") between the Association and/or any Owner or Owners, on the one hand, and the Declarant (including any director, officer, shareholder, partner, employee or agent of the Declarant) or any builder, developer, subcontractor, material supplier, individual product manufacturer, or design professional involved in the construction or design of Units or Common Facilities within the Project, on the other hand, (collectively, the potential parties on either side of such Claims shall be collectively referred to in this Section 13.08 as the "Parties"):

(i) Claims Relating to Defects in Construction. This category of Claims includes any Claims asserted by or on behalf of an Owner against any director, officer, shareholder, partner, employee or agent of the Declarant (collectively, the "Declarant Parties"),

seeking recovery of damages relating to residential construction and/or violations of the functionality standards set forth in California Civil Code sections 896-897 (those Claims are referred to herein as "Title 7 Claims") and/or any Claims by the Association that are subject to California Civil Code sections 1375-1375.1 (those Claims are referred to herein as "Calderon Claims"). See subparagraph (c), below;

(ii) Claims Covered by Warranty Contracts. This category of Claims includes any Claims asserted by or on behalf of an Owner against the Declarant or any Declarant Parties relating to alleged deficiencies in the quality of workmanship or materials in the Owner's Unit, its components, or the Project that are defined as "Covered Claims" in the Declarant's Warranty Agreement or in any warranty provided by the manufacturer of a product that is installed in the Unit, such as windows, doors, roofs, plumbing products and fixtures, fireplaces, electrical fixtures, countertops, cabinets, paint, and appliances. See subparagraph (b), below; and

(iii) Other Claims and Disputes Between an Owner and the Declarant. The third category of Claims includes any other Claim asserted by or on behalf of an Owner against the Declarant and any Declarant Parties involving any purchase agreement for the Owner's Unit executed by and between the Owner and the Declarant (including, without limitation, claims for breach of contract, fraud, or misrepresentation), Claims involving alleged breaches of the Governing Documents of Project (including, without limitations, claims alleging a breach of any covenants, conditions and restrictions or claims for fraud or breach of fiduciary duty, and any Claims involving alleged breaches of any other documents provided by the Declarant or any Declarant Parties to an Owner in connection with the purchase of a Unit in the Project. See subparagraph (e), below.

(b) Resort to Customer and Warranty Programs. If the Declarant has a customer service program in effect to respond to Owner complaints regarding matters that are identified as Claims, in subparagraph (a), above, Owners are encouraged to endeavor to resolve those Claims with the Declarant through the normal customer service procedures set forth in the customer service program or in any contractual, warranty, or other builder-generated document. As provided in California Civil Code section 910(b) any requests that an Owner makes pursuant to such warranties or customer service procedures are in addition to, and shall not constitute satisfaction of, the notice requirements identified in subparagraph (c), below. Owners are advised that if they wish to pursue Claims that are covered by any contractual warranty issued or provided by the Declarant or any manufacturer of a product or component of the Owner's Unit, the provisions of the applicable contractual warranty are not affected by the provisions of this Declaration, including this Section 13.08. In other words, if an Owner desires to enforce a contractual warranty, the notice and dispute resolution provisions of the applicable warranty must be followed, rather than the procedures set forth below.

If the Claim cannot be resolved between the Parties through the customer service program process or applicable warranty procedures, the Claim shall first be subject to the applicable non-adversarial dispute resolution procedures identified in subparagraph (c), below, and if those procedures are unsuccessful in resolving the Claim to the satisfaction of the Parties, the Claim shall be decided through the arbitration procedure set forth in subparagraph (d), below. Alternatively, Declarant, an Owner or the Association may elect to resolve such Disputes through a small claims court proceeding.

(c) Notice of Actions Against Declarant and Compliance with Applicable Non-Adversarial Pre-Litigation Dispute Resolution Procedures. Prior to the initiation of any civil litigation to resolve disputed Claims, the Parties to any Claim shall comply with the following provisions of the California Civil Code, as subsequently amended from time to time, to the extent those provisions are applicable to the Claim:

(i) California Civil Code section 1368.5 (which obligates associations to notify their members prior to filing a civil action against the Declarant or other developer for alleged damage to the Common Areas or to those portions of the Project that the Association is obligated to repair, maintain or replace);

(ii) California Civil Code sections 910 through 938 (which sets forth certain notice and non-adversarial pre-litigation dispute resolution procedures with respect to any Claims seeking recovery of damages relating to defects in residential construction); and

(iii) California Civil Code section 1375 (which sets forth certain notice and non-adversarial pre-litigation dispute resolution procedures prior to an Association's initiation of an action for damages against a builder of common interest development property).

The Notice requirements of this subparagraph (c) are in addition to any contractual notice requirements set forth in any limited warranty given to an Owner by the Declarant or any manufacturer of a product installed in the Owner's Unit. Furthermore, to the extent the provisions of California Civil Code sections 910 through 938, inclusive, are enforced and those provisions are substantially similar to provisions in California Civil Code section 1375, California Civil Code section 935 provides that the Parties shall be excused from performing the substantially similar requirements under section 1375 of the California Civil Code (see California Civil Code section 935).

(d) ARBITRATION OF DISPUTES. THIS PROCESS INVOLVES WAIVER OF THE RIGHT TO A JURY TRIAL. BY EXECUTING THIS DECLARATION AND BY EXECUTING A DEED TO ANY PORTION OF THE PROPERTY, RESPECTIVELY, DECLARANT, EACH OWNER AND THE ASSOCIATION, AGREE TO BE BOUND BY THE PROVISIONS OF THIS SUBPARAGRAPH (d).

(i) Agreement to Arbitrate. The Association, each Owner and the Declarant shall resolve any Claim not resolved as provided in subparagraph (b), above, exclusively through binding arbitration in the County. This arbitration provision shall apply to Claims of any kind or nature described in subparagraph (a), above, regardless of when the Claim first arose or the nature of the relief sought.

(ii) Rules. Claims shall be resolved in accordance with the construction industry arbitration rules of the AAA, the AAA's Supplementary Procedures for Consumer/Residential Construction Disputes (collectively, the "Rules") and the terms of this Agreement.

(iii) Preliminary Procedures. If state or federal law requires Declarant or Owner to take steps or procedures before commencing an action in court, then Declarant or Owner must take such steps or follow such procedures, as the case may be, before commencing

the arbitration. For example, any claims 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 sections 910 through 938, prior to the initiation of any arbitration or small claims court proceeding against Declarant. In addition, nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code sections 1368.4, 1375, 1375.05 or 1375.1.

(iv) Arbitrator. The dispute shall be heard and determined by a single neutral arbitrator. The arbitrator shall have expertise in the area of the dispute. Selection of the arbitrator shall comply with California Code of Civil Procedure sections 1297.121 and 1297.124. The arbitrator shall be selected according to the Rules, but in no event more than sixty (60) days from the date the administrator receives the claims. If the parties cannot mutually agree upon an arbitration agency, the dispute shall be referred to the local office of the AAA.

(v) Joinder. The parties may join other parties as provided in the Rules except that an Owner may not join his or her Claims against the Declarant with the Claims of any other homeowners. The parties may include the Declarant's subcontractors and suppliers in the arbitration to the extent they involve Owner Claims.

(vi) Location. The venue of the arbitration may be in the Unit if the Owner agrees, but otherwise shall be held in the City of Sacramento unless the parties agree otherwise. The arbitration shall commence, be conducted and conclude promptly, in accordance with the Rules.

(vii) Award. The arbitrator is authorized to provide all recognized remedies available in law or equity for the Claims. The award of the arbitrator shall be in compliance with the statutes and case law of the state of California then in effect and shall be accompanied by detailed written findings of fact and conclusions of law. Any award rendered by the arbitrator may be confirmed, entered and enforced, in any court having jurisdiction.

(viii) Confidential. Except as may be required by law or for confirmation of the award, neither the parties nor the arbitrator may disclose the existence, content or results, of the arbitration hearing without the prior written consent of both parties.

(ix) Fees. The Declarant will advance the fees and costs necessary to initiate and conduct the arbitration. If the Declarant is the prevailing party in the arbitration, the arbitrator may, to the extent permitted by law and the Rules, direct Owner to reimburse Owner for up to one half of the fees the Declarant has advanced. Each party shall bear their own attorney fees and costs.

(x) Small Claims Court. The dispute resolution process set forth in this Section shall not apply to any claim that can be properly brought by Owner without legal counsel in small claims court. However, any appeal from the small claims jurisdiction to a higher court shall be governed by this Section.

(xi) Statute of Limitations. The arbitration must be filed within the applicable warranty period or within the statute of limitations applicable to the Claim.

(xii) Conflict. In the event of a conflict between the arbitration procedures set forth in the Purchase Agreement and the dispute resolution procedures set forth in this Declaration, the dispute resolution procedures set forth in this Declaration shall govern all disputes to which the Association is, or later becomes, a party. In covered disputes between the Declarant and an Owner the arbitration provisions contained in the Purchase Agreement shall control in the event of a conflict with the provisions of this Declaration.

(xiii) Severability. If the arbitrator or any court determines that any of the dispute resolution provisions of this Section are unenforceable for any reason, that provision shall be severed, and proceedings agreed to in this arbitration section shall be conducted under the remaining enforceable terms of this Section.

(e) AGREEMENT TO ARBITRATION AND WAIVER OF JURY TRIAL.

(i) AGREEMENT TO ARBITRATION OF CLAIMS. BY EXECUTING THIS DECLARATION, DECLARANT AND BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, EACH OWNER AND THE ASSOCIATION AGREE TO HAVE ANY CLAIM, AS DEFINED IN SUBPARAGRAPH (a) OF THIS SECTION 13.08, DECIDED BY NEUTRAL ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT PURSUANT TO SUBPARAGRAPH (d), ABOVE, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT, AND OWNER AND DECLARANT ARE GIVING UP ANY RIGHTS DECLARANT, OWNER AND THE ASSOCIATION MIGHT POSSESS TO HAVE THE CLAIM LITIGATED IN A COURT OR JURY TRIAL. DECLARANT, OWNER AND ASSOCIATION ARE GIVING UP THEIR RESPECTIVE JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THIS SECTION 13.08. IF DECLARANT, ANY OWNER OR THE ASSOCIATION REFUSES TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, SUCH PARTY MAY BE COMPELLED TO ARBITRATE UNDER THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT.

(ii) WAIVER OF JURY TRIAL. IN THE EVENT THE FOREGOING ARBITRATION PROVISIONS OF THIS SECTION 13.08 ARE HELD NOT TO APPLY OR ARE HELD INVALID, VOID OR UNENFORCEABLE IN THEIR ENTIRETY FOR ANY REASON, ALL CLAIMS SHALL BE TRIED BEFORE A JUDGE IN A COURT OF COMPETENT JURISDICTION WITHOUT A JURY. THE JUDGE IN SUCH COURT OF COMPETENT JURISDICTION SHALL HAVE THE POWER TO GRANT ALL LEGAL AND EQUITABLE REMEDIES AND AWARD COMPENSATORY DAMAGES. DECLARANT, BY EXECUTING THIS DECLARATION AND EACH OWNER AND THE ASSOCIATION BY ACCEPTING A DEED TO ANY PORTION OF THE PROJECT, HEREBY WAIVE AND COVENANT NOT TO ASSERT THEIR CONSTITUTIONAL RIGHT TO TRIAL BY JURY OF ANY CLAIMS, INCLUDING, BUT NOT LIMITED TO, CLAIMS RELATING TO CONSTRUCTION DEFECTS, MISREPRESENTATION OR DECLARANT'S FAILURE TO DISCLOSE MATERIAL FACTS. THIS MUTUAL WAIVER OF JURY TRIAL SHALL BE BINDING UPON THE RESPECTIVE SUCCESSORS AND ASSIGNS OF SUCH PARTIES

AND UPON ALL PERSONS AND ENTITIES ASSERTING RIGHTS OR CLAIMS OR OTHERWISE ACTING ON BEHALF OF THE DECLARANT, ANY OWNER, OR THE ASSOCIATION, OR THE SUCCESSORS AND ASSIGNS OF ANY SUCH PARTIES.

(f) Final and Binding Award. The decision of the Arbitrator or, if an Appeal is heard, the decision of the Appeal Arbitrators, shall be final and binding. A petition to confirm, vacate, modify or correct an award of the Arbitrators may be filed in any Court of competent jurisdiction in the County in which the Project is located, but the award may be vacated, modified or corrected only as permitted by the Federal Arbitration Act.

(g) Severability. In addition to and without limiting the effect of any general severability provisions of this Declaration, if the Arbitrator or any Court determines that any provisions of this Section 13.08 are unenforceable for any reason, that provision shall be severed and the proceedings agreed to in this Section 13.08 shall be conducted under the remaining enforceable terms of the Section.

(h) Application of Award. It is the Declarant's intention that the Project will be a first-class, condominium development and that each Owner's Unit will be free of construction defects. If an Owner or the Association should claim that any Claim exists with respect to the Property or the Project, including construction defects, each Owner of a Unit and the Association as to the Common Areas agree that any proceeds awarded to an Owner or the Association arising from any such Claim whether by settlement, award or otherwise, must be applied only to curing the condition, design, or construction which was the basis of the Claim.

ARTICLE XIV PROTECTION OF MORTGAGEES

Section 14.01. Assessment Lien Subordinated. Any lien created or claimed under Section 4.10(b), above, shall be subject and subordinate to the lien of any first Mortgage given in good faith and for value. No such first Mortgagee who acquires title to any Condominium, or to the Owner's interest therein, by judicial foreclosure or by exercise of power of sale contained in the Mortgage shall be obligated to cure any breach of this Declaration by a former Owner of such Condominium or shall be liable for any unpaid Assessments made against the Condominium which accrued prior to the date the Mortgagee acquired such title. No lien created or claimed under Section 4.10(b), above, shall in any way defeat, invalidate or impair the rights of any Mortgagee under any such Recorded first Mortgage.

Section 14.02. Amendment of This Declaration. Except where an amendment has been approved in accordance with Section 14.12, below, no amendment of this Declaration shall affect any of the rights of the holder of any Mortgage described in Section 14.01, above, which is made in good faith and for value, if such Mortgage is Recorded and notice of the delivery and Recordation thereof is given to the Association prior to the Recording of such amendment.

Section 14.03. Breach; Obligation After Foreclosure. No breach of any provision of this Declaration by the Association or any Owner shall impair or invalidate the lien of any Recorded Mortgage made in good faith and for value and encumbering any Condominium or the Owner's

interest therein, but all of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges and equitable servitudes shall remain provided for or against any person who acquires title to or any beneficial interest in any Condominium through foreclosure, trustee's sale or otherwise.

Section 14.04. Exchange of Information. The Association shall, at the written request of any Mortgagee, insurer or guarantor, notify such party of:

(a) Any condemnation or casualty loss that affects either a material portion of the Property or the Unit(s) securing the Mortgage;

(b) Any delinquency of sixty (60) days or more in the payment of Assessments or charges owed by the Owner(s) of the Unit(s) securing the Mortgage;

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

(d) Any proposed action of the Association that requires the consent of a specified percentage of Eligible Mortgagees (see Section 14.12(a), below, for definition of "Eligible Mortgagee").

To be entitled to receive this information, the Mortgagee, insurer or guarantor must send a written request to the Association, stating both its name and address and the number or address of the Unit(s) securing the Mortgage. Any Mortgagee of any Condominium is hereby authorized to furnish to the Board of Directors, upon written request by the Board therefor, the amount of any unpaid balance of any indebtedness secured by a lien of a Mortgage and the amount and due date of any delinquent payment or payments on such indebtedness.

Section 14.05. Certain Restrictions Affecting the Association. Notwithstanding any other provisions of this Declaration, without the prior written consent of at least sixty-seven (67%) percent of the Owners or sixty-seven (67%) percent of the first Mortgagees, such percentage to be based upon the total number of Condominiums so mortgaged with each such Mortgagee entitled to one vote for each Unit, the Association shall not:

(a) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area or any Improvements thereon (except that the granting of any easement for public utilities, or for other public purposes consistent with the intended use of the Property, shall not be deemed a "transfer" as that term is used in this subparagraph (a));

(b) Change the method provided in this Declaration for determining the Assessments or other charges which may be assessed against an Owner or the method of allocating distributions of hazard insurance proceeds or condemnation awards;

(c) By act or omission, change, waive or abandon the scheme of maintenance and repair of the Property, or the enforcement thereof, as provided in this Declaration;

(d) Fail to maintain fire and extended coverage insurance on the Common Facilities in the amount and against the risks provided in Article X, above; and

(e) Use any insurance proceeds received as a result of the occurrence of loss or damage to the Common Facilities for any purpose other than the repair, replacement or reconstruction of such Common Facilities.

Section 14.06. Right of First Mortgagees to Make Certain Payments and Right of Reimbursement Therefor. The holders of first Mortgages on the Condominiums shall have the right (but not the obligation), jointly or singly: (i) to pay taxes or other Assessments or charges which are in default and which may or have become a lien or charge against the Common Facilities; (ii) to pay overdue premiums on casualty insurance policies for the Common Facilities; and (iii) to secure and pay for new casualty insurance coverage on the Common Facilities upon the lapse of any such policy, in the amount and against the risks provided in Article X, above. Any first Mortgagee making such payment shall be entitled to immediate reimbursement therefor from the Association. Upon the request of any first Mortgagee, the Association shall, by separate instrument signed by the president or any vice president and the secretary or any assistant secretary, evidence its agreement to the provisions of this section as the same affects the Mortgage held by such Mortgagee.

Section 14.07. Right to Examine Books and Records of the Association. All Mortgagees, insurers and guarantors of any Mortgages on any Condominium shall have the right, upon written request to the Association, to:

(a) Examine current copies of the Governing Documents and the Association's books, records and financial statements during normal business hours;

(b) Require the Association to provide an audited statement for the preceding fiscal year: (i) at no expense to the requesting entity when the Property consisted of fifty (50) or more Units; and (ii) at the requesting entity's expense when the Property consisted of fewer than fifty (50) Units and no audited statement is available; and

(c) Receive written notice of all membership meetings and designate a representative to attend such meetings.

Section 14.08. Notices to First Mortgagees. The Association shall furnish to the holder of any first Mortgage on any Condominium, upon written request by the first Mortgagee, thirty (30) days prior written notice of: (a) abandonment or termination of the Association; (b) the effective date of any proposed material amendment to the Declaration; (c) any decision by the Association to terminate professional management, if any, and assume self-management of the Property; (d) any condemnation or eminent domain proceeding; and (e) any extensive damage to or destruction of any Improvements located on the Common Area.

Section 14.09. Superiority of Mortgage to Condemnation Proceeds. If any Condominium, or portion thereof, or the Common Area, or any portion thereof, is made the subject matter of any condemnation or eminent domain proceeding, the lien of any first Mortgage shall be prior and superior to the claims of the Owners of said Condominiums or Common Area with respect to any distribution of the proceeds of any condemnation award or settlement.

Section 14.10. Superiority of Mortgage to Insurance Proceeds. In the event of any substantial damage to or destruction of the Improvements constituting the building structure of any Condominium, or on any part of the Common Area, the lien of any first Mortgage shall be prior and superior to the claims of the Owners of said Improvements with respect to any distribution of any insurance proceeds relating to such damage or destruction.

Section 14.11. Declaration to Conform With Mortgagee Requirements. It is the intent of this Article that this Declaration, the Articles of Incorporation, the Bylaws and the Property in general shall now and in the future meet all requirements of any institutional Mortgagee intending to secure its Mortgage by a Unit or necessary to purchase, guarantee, insure or subsidize any Mortgage of a Unit by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association or the Veterans' Administration.

Section 14.12. Approval of Material Amendments or Termination.

(a) Material Amendments. In addition to the approvals required by Section 17.01 and Section 17.02, below, Eligible Mortgagees who represent at least fifty-one (51%) percent of the votes of Units that are subject to Mortgages held by Eligible Mortgagees must approve any amendment to this Declaration of a material nature. An Eligible Mortgagee is the beneficiary of a first Mortgage who has requested the Association to notify it of any proposed action that requires the consent of a specified percentage of Eligible Mortgagees. A change to any of the following would be considered as material:

- (i) voting rights;
- (ii) assessments, assessment liens or the priority of assessment liens;
- (iii) reserves and responsibility for maintenance, repair and replacement of the Common Area;
- (iv) reallocation of interests in the general Common Area or the Exclusive Use Common Areas, or rights to their use;
- (v) redefinition of any Unit boundaries;
- (vi) convertibility of Units into Common Area and vice versa;
- (vii) annexation or deannexation of property to or from the Project;
- (viii) insurance or fidelity bonds;
- (ix) leasing of Units;
- (x) imposition of any restrictions on an Owner's right to sell or transfer his or her Unit;

- (xi) a decision by the Association to establish self-management when professional management had been required previously by the Governing Documents or by an Eligible Mortgagee;
- (xii) restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in the Governing Documents;
- (xiii) any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; or
- (xiv) any provisions that expressly benefit Mortgagees, insurers or guarantors.

(b) Termination. In addition to the approvals required by Article XVII, below, Eligible Mortgagees who represent at least sixty-seven (67%) percent of the votes of Units that are subject to Mortgages held by Eligible Mortgagees must approve any proposed termination of the legal status of the Project for reasons other than substantial destruction or condemnation of the Property.

(c) Implied Approval. Each Eligible Mortgagee which receives notice of a proposed amendment or termination of this Declaration by certified or registered mail, with a "return receipt" requested, shall be deemed to have approved the amendment or termination if the Eligible Mortgagee fails to submit a response to the notice within thirty (30) days of receiving the notice.

ARTICLE XV NOTICES

Section 15.01. Mailing Addresses. Any communication or notice of any kind permitted or required herein shall be in writing and may be served, as an alternative to personal service, by mailing the same as follows:

- | | |
|------------------------|---|
| If to Declarant: | Plaza 26, LLC, a California limited liability company, 2640 Broderick Street, San Francisco, California 94123 (or to such other address as Declarant may from time to time designate in writing to the Association) |
| If to any Owner: | To the street address of his or her Unit, or to such other address as the Owner may from time to time designate in writing to the Association. |
| If to the Association: | Plaza 26 Condominium Association, at the principal office of the Association or to such other address as the Association may from time to time designate in writing to the Owners. |

Section 15.02. Personal Service Upon Co-Owners and Others. Personal service of a notice or demand to one of the co-owners of any Condominium, to any general partner of a

partnership which is the Owner of Record of any Condominium, or to any officer or agent for service of process of a corporation which is the Owner of Record of any Condominium, shall be deemed delivered to all such co-owners, to such partnership, or to such corporation, as the case may be.

Section 15.03. Deposit in United States Mails. All notices and demands served by mail shall be by first-class or certified mail, with postage prepaid, and shall be deemed delivered seventy-two (72) hours after deposit in the United States mail in the County.

ARTICLE XVI NO PUBLIC RIGHTS IN THE PROPERTY

Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any portion of the Property or the Project to the general public or for any public use or purpose whatsoever.

ARTICLE XVII AMENDMENT OF DECLARATION

Section 17.01. Amendment Before Close of First Sale. Before the close of escrow for the first sale of a Unit in the Property to a purchaser other than Declarant, this Declaration and any amendments to it may be amended in any respect or revoked by the execution by Declarant and any Mortgagee of record by an instrument amending or revoking the Declaration. The amending or revoking instrument shall make appropriate reference to this Declaration and its amendments and shall be recorded in the Official Records of Sacramento County.

Section 17.02. Amendment After Close of First Sale. After the close of escrow for the first sale of a Condominium Unit in the Project to a purchaser other than Declarant, this Declaration may be amended or revoked in any respect upon compliance with the following provisions:

(a) Member Approval Requirements. Any amendment shall be approved by the vote or assent by written ballot of the holders of not less than sixty-six and two-thirds percent (66 2/3%) of the Voting Power of each class of Members. If a two-class voting structure is no longer in effect in the Association because of the conversion of Class B membership to Class A membership, as provided in the Association's Bylaws, any amendment thereof will require the vote or assent by written ballot of both: (i) sixty-six and two-thirds percent (66 2/3%) of the total voting power of the Association; and (ii) the vote of sixty-six and two-thirds percent (66 2/3%) of the total Voting Power held by Members other than the Declarant. Notwithstanding the foregoing, the percentage of the voting power necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause. Any vote to amend any provision of this Declaration shall be conducted in accordance with the procedures pertaining to the use of secret ballots that are set forth in Section 7.05, subparagraphs (c) through (i), of the Association Bylaws.

Section 17.03. Other Required Consents and Approvals.

(a) Approval by the Declarant. The following provisions of this Declaration may only be amended with the prior written consent of the Declarant so long as the Declarant owns any Condominiums in the Project: Sections [ADD SECTIONS].

(b) Approval by the City of Sacramento. The following provisions of this Declaration may only be amended with the prior written consent of the City of Sacramento, acting by and through its Community Development Department: [ADD LIST OF SECTIONS REQUIRED BY CONDITIONS OF APPROVAL, IF ANY]

(c) Mortgagee Approval. Mortgagee approval of any proposed material amendment shall be required in accordance with Section 14.12, above.

Section 17.04. Effective Date of Amendment. The amendment shall be effective upon the Recordation of an instrument setting forth the terms thereof duly certified and executed by the president and secretary of the Association. If the consent or approval of any governmental authority, Mortgagee, or other person, firm, agency or entity is required under this Declaration with respect to any amendment or the revocation of any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained.

Section 17.05. Business and Professions Code Section 11018.7. All amendments or revocations of this Declaration shall comply with the provisions of the California Business and Professions Code section 11018.7 to the extent said section is applicable.

Section 17.06. Reliance on Amendments. Any amendments made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith.

**ARTICLE XVIII
COVENANTS IN FAVOR OF LOCAL JURISDICTION**

Section 18.01. Local Jurisdiction. The local governmental entity with primary jurisdiction over this residential planned development is the City of Sacramento, a chartered city and municipal corporation in the State of California. The Association shall, at all times, abide by all City ordinances, statutes and resolutions as well as the laws of the State of California.

Section 18.02. Special Covenants. The following covenants shall be binding upon the Association and all Members in favor of the City:

(a) Association Maintenance Responsibility. That the Association shall be responsible for maintenance of the Project, and shall cause all improvements therein, to be maintained in good condition and in accordance with the custom and practice generally applicable to comparable condominium projects located within the City of Sacramento;

(b) Compliance with Applicable Laws. That the Association and successors shall comply with all laws pertaining to the Project Improvements, including workers' compensation laws;

Section 18.03. Utilities; Utility Service Agreement. The Project will be serviced by various public, quasi public and private utility systems. Each Owner acknowledges that the utility systems on the Property, from the point beyond where the public or private utility company determines is its "point of service" is a private utility system, to be owned and maintained by the Association or the Owners as provided herein. To the extent that the Owners are not able to be directly billed by the utility providers for public, quasi public and/or private utility services, and shall allocate the costs of such services based either upon: (a) its reading of the submeters, if any, for each Unit, Or (b) the Association's equitable proration of the costs of such services among the Owners based upon the usage formulas consistent with the general engineering and utility practices, as provided in the Budget for the Project. Notwithstanding anything to the contrary set forth in this Declaration, each Owner acknowledges that, with respect to the water, sewer and storm drain utilities servicing the Project, to the extent that such Utility Service Agreement conflicts with this Declaration, the Utility Service Agreement shall govern.

ARTICLE XIX GENERAL PROVISIONS

Section 19.01. Term. The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges and equitable servitudes contained in this Declaration shall run with, and shall benefit and burden the Condominiums and the Common Area as herein provided, and shall inure to the benefit of and be binding upon the Owners, the Association, its Board of Directors, officers and agents, and their respective successors in interest, for the term of eighty (80) years from the date of Recordation of this Declaration. After the expiration of the initial term, the term of this Declaration shall be automatically extended for successive periods of ten (10) years each unless, within six (6) months prior to the expiration of the initial 80-year term or any such 10-year extension period, a written instrument, approved by Owners entitled to vote and holding at least a majority of the voting power of the Association, terminating the effectiveness of this Declaration, is Recorded.

Section 19.02. Limitation of Restrictions on Declarant. The sale, rental and other disposal of Units by the Declarant is essential to the establishment and welfare of the Project and the Owners of Units therein. Accordingly, for a period of three (3) years following sale of the first Unit within the Project or until the Declarant no longer owns any Units within the Project, whichever occurs first, nothing in this Declaration shall be interpreted or construed to prevent the Declarant, its contractors, subcontractors or representatives from:

(a) Doing within the Project or any Condominium whatever is reasonably necessary or advisable in connection with the completion of the Project; or

(b) Erecting, constructing and maintaining within the Project (except within Units owned by others), such structures as may be reasonably and necessary for the conduct of its

business and establishing Plaza 26 as a residential condominium Project and disposing of the Condominium Units by sale, lease or otherwise; or

(c) Conducting within the Project (but not within any Units owned by others) its business of completing the development and of establishing a plan of Condominium ownership and of disposing of the Units within the Project by sale, lease or otherwise (including use of one (1) or more Condominiums as a sales office).

(d) Maintaining or displaying such sign(s), pennants and flag(s) within the Project (other than Units owned by others or Exclusive Use Common Areas appurtenant to such Units) as may be necessary for the sale, lease or disposition thereof;

(e) Construction of any improvements within the Project.

The foregoing rights of the Declarant shall terminate upon sale of the Declarant's entire interest in the Project.

Section 19.03. Termination of Any Responsibility of the Declarant. In the event the Declarant shall convey all of its right, title and interest in and to the Project to any successor Declarant, then and only in such event, the 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 the Declarant to the City contained in the conditions of approval for the Project, which obligations are intended to be on going after the Declarant has sold its interest in the Project, shall become the obligations of the Association, and the Association shall indemnify the Declarant against any liability arising out of the performance or nonperformance of those obligations after the Declarant has sold its interest in the Project and/or turned over the maintenance and management of the Project to the Association.

Section 19.04. Construction.

(a) Restrictions Construed Together. All of the covenants, conditions and restrictions of this Declaration shall be liberally construed together to promote and effectuate the fundamental concepts of the development of Plaza 26 as set forth in the Recitals of this Declaration. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce that provision in a subsequent application or any other provision hereof.

(b) Restrictions Severable. Notwithstanding the provisions of subparagraph (a) above, the covenants, conditions and restrictions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

(c) Singular Includes Plural. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter, as the context requires.

(d) Captions. All captions or titles used in this Declaration are intended solely for convenience of reference and shall not affect the interpretation or application of that which is set forth in any of the terms or provisions of the Declaration.

(e) Exhibits. All Exhibits to which reference is made herein are deemed to be incorporated herein by reference, whether or not actually attached.

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(f) References to State Statutes. Any references in this Declaration to State statutes shall be to the referenced statute as in effect on the date that this Declaration is Recorded in the Official Records of the County. In the event that any referenced statute is subsequently amended or superseded, all such references shall thereupon mean and refer to the referenced statute as so amended, modified or superseded, so long as the amended statute continues to regulate or pertain to the same subject matter.

Dated: _____, 2007.

DECLARANT:

PLAZA 26, LLC,
a California limited liability company

By: _____

Name: _____

Its: _____

EXHIBIT "A"
Legal Description of the Property