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1-11-08 AS INST. # 08-63812  
OFFICIAL RECORDS OF LOS ANGELES  
COUNTY  
L.T.C.  
BY Arlene Kassis

2360035-61

Space Above For Recorder's Use

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
BREAKWATER VILLAGE  
HOMEOWNERS ASSOCIATION  
(TRACT NO. 60638)  
A SENIOR CITIZEN HOUSING DEVELOPMENT

ARTICLE XXIII OF THIS DECLARATION INCLUDES A WAIVER OF THE RIGHT TO A JURY TRIAL AND THE USE OF AN ALTERNATE DISPUTE RESOLUTION PROCESS IN THE EVENT OF CERTAIN DISPUTES BETWEEN DECLARANT AND ANY OWNER AND/OR THE ASSOCIATION. PLEASE READ THOSE PROVISIONS CAREFULLY AND CONSULT LEGAL COUNSEL IF YOU HAVE QUESTIONS.

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Exhibit "A"

Exhibit "B"

Exhibit "C"

Subordination Agreement

DECLARATION OF ESTABLISHMENTS  
OF COVENANTS, CONDITIONS AND RESTRICTIONS

BREAKWATER VILLAGE  
HOMEOWNERS ASSOCIATION  
REDONDO BEACH, CALIFORNIA

THIS DECLARATION is made this 4<sup>th</sup> day of December, 2007, by ANASTASI DEVELOPMENT COMPANY, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY (hereinafter referred to as "Declarant") with reference to the following:

RECITALS

1) On the date of the recordation of this Declaration in the office of the County Recorder for Los Angeles County, State of California, Declarant owns that certain real property, commonly known as 2750 Artesia Blvd., Redondo Beach, California, and more particularly described in Exhibit "A" attached hereto.

2) Said real property will be improved with one hundred ninety one (191) Condominium Units, and with the property, improvements and all appurtenances and facilities thereof shall hereinafter collectively be referred to as the "Property" and "Annexation Property".

3) It is the desire and intention of Declarant to sell and convey interests in the Project to various individuals and subject to certain basic protective covenants, conditions, restrictions, limitations, easements, rights, rights of way, reservations, liens, charges and equitable servitudes between it and the acquirers or users of said Property as hereinafter set forth.

NOW, THEREFORE, pursuant to the provisions of Title 6, Part IV of Division 2 of the California Civil Code, Declarant hereby declares that the property, improvements, appurtenances and facilities described herein and as shown on the Condominium Plan, to be recorded in connection with the Project, shall be held, conveyed, divided, encumbered, hypothecated, leased, rented, used, occupied and improved only and subject to the following uniform covenants, conditions, restrictions, limitations, reservation, grants of easements, rights of way, rights, liens, charges, and equitable servitudes, all of which are hereby declared, established, expressed and agreed:

a) to be in furtherance of a plan for the subdivision and sale of individual Condominiums in a Condominium Project, as defined in Section 1351(f) of the Civil Code;



- b) to be for the benefit and protection of the Project, its desirability, value and attractiveness;
- c) to be for the benefit of the Owners of Condominiums in the Project;
- d) to run with the land and be binding on all parties having or acquiring any right, title or interest in the Project or any portion thereof;
- e) to inure to the benefit of every portion of the Project and any interest therein; and
- f) to inure to the benefit of and be binding on each successor and assignee in interest of each Owner and of Declarant.

Any conveyance, transfer, sale, assignment, lease or sublease made by Declarant or by the Association (as hereinafter defined) of a Condominium in the Project will and hereby is deemed to incorporate by reference the provisions of this Declaration including, but not limited to, covenants, conditions, restrictions, limitations, easements, rights, rights of way, reservations, liens, charges and equitable servitudes contained herein. The Provisions of this Declaration shall be enforceable by Declarant, any Owner or its or his successor in interest and shall be enforceable by the Association, its Board of Directors or any person, corporation or other entity duly authorized by the Association or its Board to enforce all or any one or more of the provisions hereof.

#### ARTICLE I DEFINITION OF TERMS

Whenever used in this Declaration, the following terms shall mean:

1. "Annexation Property" shall mean and refer to that real property to be annexed to the Project more particularly described in Exhibit "B" attached hereto and by this reference made a part hereof.
2. "Articles" shall mean the Articles of Incorporation for BREAKWATER VILLAGE HOMEOWNERS ASSOCIATION.
3. "Association" shall mean the BREAKWATER VILLAGE HOMEOWNERS ASSOCIATION, a California mutual benefit corporation, the members of which shall be Owners of Condominium Units in the Project.
4. "Board of Directors" or "Board" shall mean the Board of Directors of the Association.
5. "Bylaws" shall mean the Bylaws of the Association, as the same may be amended from time to time.
6. "City" shall mean the City of Redondo Beach, County of Los Angeles, the jurisdiction in which the Project is located.

7. "Common Area" shall mean the entire Project, excepting all Units therein granted or reserved, subject to all easements and rights of use described herein and in the document of conveyance through which each Owner acquired his Condominium.

8. "Condominium" shall mean a Condominium as defined in Sections 783 and 1351(f) of the Civil Code, consisting of an individual interest in common in a portion of a parcel of real property, together with a separate interest in space in a residential building on such real property; more particularly an estate in real property, consisting of an undivided 1/48th fractional interest in the Common Area, as set forth in the Condominium Plan recorded for the Project, together with a separate interest in a Unit as defined herein.

9. "Condominium Plan" shall mean the Plan as defined in Section 1351(e) of the Civil Code prepared, executed and recorded in connection with the Project.

10. "Declarant" shall mean ANASTASI DEVELOPMENT COMPANY, A CALIFORNIA LIMITED LIABILITY COMPANY, its successors and assigns, if such successors and/or assigns should acquire all or any portion of the Property for the purpose of sale.

11. "Declaration" shall mean this Declaration, as the same may be amended, changed or modified from time to time.

12. "Declaration of Annexation" shall mean each of those certain declaration of covenants, conditions, and restrictions or similar instruments annexing any portion of the Annexation Property and extending the plan of this Declaration to such Property

13. "Exclusive Use Common Area" shall mean those areas designated on the Condominium Plan as balconies, decks and/or parking spaces. Said areas are portions of the Common Area set aside and allocated for the restricted and exclusive use of the individual Unit. The maintenance of the interior areas of the balconies and decks shall be the responsibility of the Unit Owner to which they are appurtenant subject to the restrictions herein and to the maintenance guidelines established by Declarant and the Association. All other exclusive use areas shall be maintained by the Association.

Any shutters, awnings, window boxes, doorsteps, stoops, porches, exterior doors, door frames, and hardware incident thereto, screens and windows, or other fixtures designed to serve a single Unit, but located outside the boundaries of the Unit, are exclusive use common areas allocated exclusively to that Unit. Notwithstanding the provisions of this Declaration, internal and external wiring designed to serve a single Unit, are exclusive use areas allocated exclusively to that Unit. Subject to the consent of the Association, the Owner of the Unit shall be entitled to reasonable access to the Common Areas for the purpose of maintaining the internal and external telephone lines. The Association's approval shall not be unreasonably withheld, and may include its approval of telephone wiring upon the exterior of the Common Areas, and other conditions as the Association determines reasonable.

14. "FNMA", "FHLMC" and "VA" shall mean the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation and the United States Department of Veterans Affairs respectively.

15. "Module" shall mean Module 1 and each other Module as shown on a Condominium Plan filed with the County Recorder for the Project, and is comprised of a three-dimensional airspace volume comprising the Units and the Common Area in each such Module, the boundaries of which are shown and described on the sheets of the Condominium Plan(s). "Module" is used synonymously with "Phase" and the two words shall be considered interchangeable herein.

16. "Mortgage" shall mean a security interest encumbering a Unit in the Project or all or any other portion of the Project, including, but not limited to, a Deed of Trust.

17. "Organizational Meeting" shall mean the first meeting of members of the Association designated by the Board of Directors.

18. "Owner" shall mean the record Owner or Owners or contract vendee or vendees (if more than one) of a Condominium in the Project. Declarant shall be considered an "Owner" so long as any Condominiums remain unsold.

19. "Project" shall mean the entire parcel of real property, consisting of Common Areas or Modules that have been developed and improved and divided into Condominium estates by recordation of a Condominium Plan and made subject to this Declaration. The Annexation Property shall not be a part of the Project until annexed to the Project pursuant to Article XXI herein.

20. "Property" shall mean and include all that real property more particularly described in Exhibit "A", attached hereto, together with the Annexation Property, but the Annexation Property shall not be subject to this Declaration until Declarant annexes the Annexation Property to the Project pursuant to Article XXI and any Declaration of Annexation recorded in accordance therewith.

21. "Unit" shall mean a separate interest in space and includes that spatial element of a Condominium which is not owned in common with other Owners of other Condominiums in the Project the boundaries of which are shown and defined on the Condominium Plan(s).

## ARTICLE II DESCRIPTION OF LAND AND IMPROVEMENTS

1. Condominium Plan Best Authority. The following description is intended for information purposes only and in the event of any conflict between this description and the Condominium Plan, said Plan shall be deemed to conclusively control.

2. Property Description. The Property and Improvements consist of forty-eight (48) individual Units in Module 1 (Phase 1), a common parking garage for the entire Project and other Common Areas and amenities.

3. Description of Individual Condominiums. Each Condominium within the Project which shall be offered for sale, shall consist of a fee simple interest in and to a particular Unit, as more particularly shown and defined in the Condominium Plan, together with an undivided fractional interest as a tenant-in-common in and to the Common Area.

4. Parking. Each Unit within the Project shall receive an easement for the exclusive use of at least one (1) parking space as shown and defined on the Condominium Plan for Module 1. All of said spaces shall be assigned by Declarant at the time of sale of the individual Units. All of the parking spaces to be assigned shall be shown and described on the Condominium Plan. All parking spaces shall be used only by the Owners or their lessees. All guest parking spaces shall be so marked. No guest parking space may be assigned or designated for particular use by any person or entity.

5. Easements. Each Owner shall receive as an incident of conveyance of his Unit, a non-exclusive easement appurtenant thereto, for ingress, egress and support over, across and through the Common Area and every portion of any Unit within the Project required for the structural support of the building within which said Unit is located. In the event any portion of the Common Area encroaches on a Unit, or a Unit encroaches on any portion of the Common Area as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the Project, a valid easement for the encroachment and the maintenance thereof shall exist so long as the encroachment exists.

### ARTICLE III AGE RESTRICTIONS ON OCCUPANCY

The Project has been designed and is and will be constructed, marketed and sold in order to provide housing exclusively for Senior Citizens and as such is intended to qualify as a "Senior Citizen Housing Development" within the meaning of California Civil Code Section 51.3(c)(4). To that end, Declarant hereby declares and establishes that the following shall apply to and bind the Project and each and every Condominium within the same:

1. Applicable Definitions.

a. "Cohabitants" refers to persons living together as husband and wife or persons who are domestic partners within the meaning of California Family Code Section 297.

b. "Permitted Health Care Resident" refers to a person hired to provide live-in, long-term or terminal healthcare to a Qualifying Resident or a family member of the Qualifying Resident providing that care. The care must be substantial in nature and must provide either assistance with necessary daily activities or medical treatment or both.

c. "Permitted Occupant" means a person who is either a Permitted Health Care Resident, a Qualified Disabled Resident or a Temporary Guest.

d. "Permitted Resident" means a person who is either a Qualifying Resident or a Qualified Permanent Resident.

e. "Qualified Disabled Resident" refers to a disabled person or person with a disabling illness or injury who (i) is a child or grandchild of a Permitted Resident and (ii) needs to live with the Permitted Resident because of the disabling condition, illness or injury. A "disabled" person means a person with a disability as defined in California Civil Code Section 54(b). A "disabling injury or illness" means an illness or injury which results in a condition meeting the definition of disability as defined in California Civil Code Section 54(b).

f. "Qualified Permanent Resident" refers to a person who satisfies both of the following requirements: (i) if applicable, the person was residing with the Qualifying Resident at the Project before the death, hospitalization, or other prolonged absence or before the dissolution of marriage with the Qualifying Resident; and (ii) the person was forty-five (45) years of age or older or was either the spouse of, Cohabitant with, or was providing the primary physical or economic support to the Qualifying Resident.

g. "Qualifying Resident" means a Senior Citizen who occupies a Unit at the Project as his/her primary residence on a permanent basis.

h. "Senior Citizen" refers to a person who is fifty- five (55) years of age or older.

i. "Senior Housing Laws" refers to the following: (i) California Civil Code Section 51.3; (ii) California Government Code Section 12900 et seq. (Fair Employment and Housing Act); (iii) the Federal Fair Housing Act of 1968 (42 U.S.C. Sections 3601-3631) as amended by the Fair Housing Amendments Act of 1988 (Pub L 100-430) and by the Housing for Older Persons Act of 1995 (Pub L 104-76); and (iv) amendments thereto and rules and/or regulations now or hereafter promulgated pursuant thereto.

2. Upon commencement of occupancy of each Unit, at least one(1) resident must be a Qualifying Resident, i.e., a Senior Citizen who intends to and does reside in the Unit as his or her primary residence on a permanent basis. Subject to the other provisions of this Article, all other residents of the same Unit must be either a Qualified Permanent Resident, a Qualified Disabled Resident or a Permitted Healthcare Resident as herein provided.

3. A Qualified Permanent Resident or a Qualified Disabled Resident may continue to reside in a Unit after the death or dissolution of marriage or upon the hospitalization or other prolonged absence of the Qualifying Resident of that Unit for as long as at least (a) eighty percent (80%) of the occupied Units in the Project are in fact occupied by a Qualifying Resident and (b) the continued occupancy by the Qualified Permanent Resident or the Qualified Disabled Resident does not reduce the percentage of occupancy of Units by

Qualifying Residents to be less than eighty percent (80%) so as to disqualify the Project as "housing for older persons" under the federal Senior Housing Laws.

4. For any person who is a Qualified Disabled Resident and the disabling condition ends and the Qualified Disabled Resident does not otherwise qualify to reside in the Unit under Section 3 above, the Board may require that the formerly disabled resident cease to reside at the Project from and after six months' written notice to vacate the Unit; provided, however, that the Board may allow the person to remain a resident for up to one (1) year after the disabling condition ends. On the other hand, the Board may take action to prohibit or terminate the occupancy by a person who is a Qualified Disabled Resident solely because of a disability if the Board, based on credible and objective evidence, finds that the person is likely to pose a significant threat to the health or safety of others that cannot be ameliorated by means of a reasonable accommodation and provided, further, that the action to prohibit or terminate the occupancy may be taken only after satisfying each of the following conditions:

a. The Board provides reasonable notice to and an opportunity to be heard for the disabled person whose occupancy is being challenged and reasonable notice to the Permitted Resident who is the parent or grandparent of that disabled person; and

b. The Board gives due consideration to the relevant, credible, and objective information provided at the hearing. The evidence shall be taken and held in a confidential manner under a closed session by the Board to preserve the privacy of the affected persons. The affected persons shall be entitled to have present at the hearing an attorney or any other person authorized by them to speak on their behalf or to assist them in the matter.

5. A Permitted Healthcare Resident may occupy a Unit during any period that the Permitted Healthcare Resident is actually providing live-in, long-term, or terminal healthcare to the Qualifying Resident for compensation. Compensation shall include provisions of lodging and food in exchange for care. A Permitted Healthcare Resident shall be entitled to continue his or her residency if the Qualifying Resident is absent from the Unit upon satisfaction of each of the following conditions:

a. The Qualifying Resident became absent owing to hospitalization or other necessary medical treatment and expects to return to the Unit within ninety (90) days from the date the absence began; and

b. The absent Qualifying Resident or an authorized person acting for the Qualifying Resident submits a written request to the Board stating that the Qualifying Resident desires that the Permitted Healthcare Resident be allowed to remain in order to be present when the Qualifying Resident returns to reside in the Unit.

Upon written request by the Qualifying Resident or an authorized person acting for the Qualifying Resident, the Board shall have the discretion to allow a Permitted Healthcare Resident to remain for a time period longer than

ninety (90) days from the date that the Qualifying Resident's absence began if it appears that the Qualifying Resident will return within a period of time not to exceed an additional ninety (90) days.

6. Nothing in this Article shall prohibit the temporary residency of any person under the age of 55 as a guest of a Permitted Resident. As used herein, "temporary residency" shall mean occupancy of a Unit for no more than sixty (60) days in any consecutive twelve (12) month period.

7. The Project is also intended to qualify as "housing for older persons" exempt from the age restriction prohibition contained in the federal Senior Housing Laws. In order to satisfy the requirements of the federal Section Housing Laws, at least eighty percent (80%) of the occupied Units must be occupied by at least one person who is a Senior Citizen. To ensure the required occupancy of the Units, the Association shall have the following rights, powers and duties, among others, in order to ensure that the Project complies at all times and from time to time with the Senior Housing Laws:

a. to develop, publish and adhere to policies and procedures (including advertising and other sales materials and brochures describing the Project) that demonstrate an intent by the Declarant and the Association to provide housing for Senior Citizens and others who meet the requirements of this Article;

b. to develop and to enforce implementing procedures to ensure occupancy of the Units in accordance with the requirements of this Article including, for example, to verify in writing and by means of photographic identification, periodic surveys (at least once every two years) and affidavits the actual age of all occupants of each Unit and to maintain records of the same;

c. to restrict the amenities within the Project to the use and benefit of Permitted Residents only who meet the requirements of this Declaration pursuant to this Article;

d. to take and to initiate such other actions any proceedings as may be reasonable and/or necessary in order to enforce the provisions hereof and to ensure that the Project is at all times in compliance with the Senior Housing Laws including exercising any and all rights and remedies as it or they may have hereunder and/or under applicable laws such as (i) the right to require that an occupied Unit, which is not then occupied by a Permitted Resident, be vacated by all occupants and/or (ii) the right to clarify, supplement, modify and/or amend the provisions hereof by recorded instrument without the consent of any Owner in order to cause the Project and this Declaration to comply with the Senior Housing Laws.

In addition, the Association shall use all reasonable efforts to develop a programs and/or cause to be provided services which, in the Association's reasonable judgment, are specifically designed to benefit the health, safety, social, educational and/or leisure needs of Qualifying Residents.

8. The provisions in this Article III are intended to comply with requirements of the Senior Housing Laws in effect as of the date of recording of this Declaration in the Official Records of Los Angeles County. In the case of any conflict between the provisions of this Article and applicable law regulating age restrictions in senior housing developments, the applicable law shall control.

#### ARTICLE IV OWNERS ASSOCIATION

1. Association Management. The management of the Project shall be vested in the Association in accordance with the Association Bylaws as the same may from time to time be amended in accordance with this Declaration. The Owners of all Units covenant and agree that the administration of the Project shall be in accordance with the provisions of this Declaration, and the Bylaws of the Association.

2. Membership. The Owner of a Unit shall automatically, upon becoming the Owner of same, be a member of the Association until such time as his Ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership shall be in accordance with the Bylaws of the Association.

3. Transferred Membership. Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the sale or encumbrance of the Unit to which it is appurtenant, and then only to the purchaser, in the case of a sale, or Mortgagee, in the case of an encumbrance of such Unit. Any attempt to make a prohibited transfer is void. In the event the Owner of any Unit should fail or refuse to transfer the membership registered to his name the purchaser of his Unit, the Association shall have the right to record the transfer upon its books and thereupon the old membership outstanding in the name of the seller shall be null and void.

#### ARTICLE V MANAGEMENT OF OWNERS ASSOCIATION

1. First Meeting of Members. The first meeting of members of the Association shall be held no later than six (6) months after the closing of the sale of the first Unit in the Project. Said first meeting shall be conducted as set forth in the Bylaws.

In the event that the date specified for the annual meeting falls within the time period set forth above, the first meeting shall be such annual meeting. Five Directors shall be elected at the first meeting of members notwithstanding the fact the terms of sitting Directors shall not yet have expired.

2. Annual Meetings. Annual meetings of members of the Association shall be held in accordance with the provisions of the Bylaws of the Association, as they may from time to time be amended.



3. Owner Voting Rights. The Association shall have two (2) classes of membership:

a. Class A. The Association shall be all those Owners, with the exception of Declarant. Class A members shall be entitled to one (1) vote for each Unit in which they hold the required interest for membership. When more than one person holds such interest in any Unit, all of such persons shall be members. The one vote for such Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Unit.

b. Class B. Prior to the close of the first escrow, there will be only Class B members; the only member of Class B shall be Declarant, who shall be entitled to three (3) votes for each Unit in which Declarant holds the interest required for membership, provided that the class B membership shall cease and be converted to Class A membership on the first to occur of the following events, as set forth under Article II of the Bylaws to wit:

(1) A prescribed date certain which is not later than the second anniversary of the first conveyance of a Unit in issuance of the original Public Report for the most recent phase of the development; or

(2) A prescribed date which is not later than the fourth anniversary of the first conveyance of a Unit in issuance of the original subdivision public report for the first phase of the Project.

4. Election and Removal of the Board. Voting for Directors shall be by written ballot and members shall be permitted to cumulate their votes in all elections in which more than two (2) positions on the Board of Directors are to be filled. The persons receiving the largest number of votes shall be elected. The first such election of all members of the Board of Directors shall take place at the first meeting of members. Any or all Directors may be removed without cause if such removal is approved by a majority of all members; however, unless the entire Board of Directors is removed from office, no Director shall be removed prior to the expiration of his term of office if the votes cast against removal would be sufficient to elect the Director if voted cumulatively at an election at which the same total number of votes were cast and the entire number of Directors authorized at the time of the most recent election of the Director were then being elected. A Director who has been elected to office solely by the votes of members other than Declarant may be removed from office prior to the expiration of his term of office only by the vote of at least a simple majority of the voting power residing in members other than the Declarant.

5. Special Procedure. For so long as a majority of the voting power of the Association resides in the Declarant or so long as there are two (2) outstanding classes of membership of the Association, the following special voting procedure shall be used at all elections to insure that Class A members have at least minimal representation on the Board of Directors: Class A members (members other than the Declarant) shall be allowed to elect at least one (1) Director or twenty percent (20%) of the incumbents of the Board of Directors, whichever is greater. The

procedure shall be to allow the Class A members to vote by themselves until this minimal representation is achieved and thereafter the remaining Directors shall be elected in accordance with normal voting procedures.

6. Voting Proxies. Voting may be carried out either in person or by a written proxy. Proxies may be carried and voted only by those persons as designated by the Owners of a Unit in the Project and shall be valid only if signed and dated by the Owners giving the proxy.

7. Quorum Requirements for Association Meetings. At all meetings of Owners, fifty-one percent (51%) of the total voting power of the Association, present in person or by proxy, shall constitute a quorum, and a majority of those present in person or by proxy shall be sufficient for the passage of any motion or the adoption of any resolution, except as otherwise Projected (a) in the Articles of Incorporation, if the Association is incorporated; (b) in the Bylaws; (c) in this Declaration of Restrictions; and (d) in connection with amendment or repeal of this Declaration, as hereinafter set forth under Article XIV. If the required quorum is not present, another meeting may be called and the required quorum for a regular adjourned meeting shall be twenty-five and one-half percent (25-1/2%) of the total voting power of the Association. In the absence of a quorum at a meeting of members, a majority of those present in person or by proxy may adjourn the meeting to another time, but may not transact any other business. An adjournment for lack of a quorum shall be to a date not less than five (5) nor more than thirty (30) days from the original meeting date. No written notice of the adjourned date need be given unless the date is not set at the meeting. When the adjourned meeting is reconvened and if no more than one-third (1/3) of the voting power of the Association is in actual attendance, no business other than that scheduled for the earlier meeting may be transacted.

8. Written Notice of Meetings. Written notice of regular and special meetings shall be given to members by the Board of Directors not less than ten (10) nor more than ninety (90) days before the date of any meeting at which members are required or permitted to take any action. The notice shall specify the place, day and hour of the meeting and, in the case of a special meeting, the nature of the business to be undertaken. A special meeting shall be promptly called by the Board of Directors upon (a) the vote for such a meeting by a majority of a quorum of the Board of Directors; or (b) receipt of a written request by five percent (5%) of the total voting power of the Association.

9. Indemnification for Performance of Duties. Every Director, officer and member of the Association shall be indemnified by the Association against all reasonable costs, expenses and liabilities, including attorneys' fees, actually or necessarily incurred by or imposed upon him in connection with any claim, action, suit, proceeding, investigation or inquiry of whatever nature, in which he may be involved as a party or otherwise, by reason of his having been an officer or member of the Association, whether he continues in such capacity at the time of the incurring or imposition of such costs, expenses or liabilities, except in relation to matters as to which he shall be finally adjudged in such action, suit, proceeding, investigation or inquiry to be liable for performance of his duties or, in the absence of such final adjudication, any determination of such liability by the

opinion of legal counsel selected by the Association. The foregoing right of indemnification shall be in addition to and not in limitation of all rights to which such person may be entitled as a matter of law and shall inure to the benefit of the legal representatives of such person.

ARTICLE VI  
DUTIES AND POWERS OF THE ASSOCIATION

1. Administration of Project. The Owners and each of them, together with all parties bound by this Declaration, covenant and agree that the administration of the Project shall be in accordance with the provisions of this Declaration, the Bylaws and such rules and regulations as may be adopted by the Board, and amendments, changes, and modifications thereto as may come into effect from time to time. In the event of any inconsistency between the provisions of this Declaration and provisions of the bylaws or said rules and regulations, the provisions of this Declaration shall prevail.

2. Authority of Board of Directors. Prior to the Organizational Meeting and thereafter until their successors are elected, the initial Board of Directors or its duly appointed successors, shall manage the affairs of the Association. The Board of Directors, as constituted from time to time, shall at all times be responsible for the day-to-day operation and management of the affairs of the Association and shall have the sole power and duty to perform and carry out the powers and duties of the Association, as set forth herein and in the Bylaws, together with the powers and duties otherwise expressly delegated to the Board of Directors by this Declaration or the Bylaws, except for action or activity expressly set forth herein or in the Bylaws or the California Corporations Code, as requiring the vote or assent of members of the Association or a given percentage thereof. Without limiting the generality of the foregoing, the Board of Directors shall have the following powers and duties:

a. To enforce the applicable provisions of this Declaration, the Bylaws and other instruments for the management and control of the Project. The Board of Directors shall have the right to adopt reasonable rules and to amend the same from time to time relating to (i) the use of the Common Area and any recreational and other facilities situated thereon by Owners and their tenants or guests and (ii) conduct of such persons with respect to automobile parking, outside storage of boats, trailers, bicycles and other objects, disposal of waste materials, drying of laundry, control of pets and other activities which, if not so regulated might detract from the appearance of the community or offend or cause inconvenience or danger to persons residing or visiting therein. Such rules may provide that the Unit whose occupants leave property on the Common Area in violation of the rules may be assessed to cover the expense incurred by the Board of Directors in removing such property and storing or disposing thereof. The Board of Directors may provide in such rules for reasonable rental charges to be made with respect to the use of any storage areas or facilities which may exist on the Common Area, provided that such charge shall in no way impose liability on the Board of Directors or any of its members for damage or loss to property so stored, the intention being that the use of any such storage area or facility be solely at the risk of the person using the same. A copy of such rules and all

amendments thereto shall be mailed to each Owner and a copy shall be posted in one or more places on the Common Area where the same may be conveniently inspected;

b. To pay premiums, taxes and assessments which are or could become a lien on the Common Area or some portion thereof;

c. To delegate its powers to committees, officers or employees;

d. To contract for materials and/or services for the Common Area or the Association as more fully set forth in the Association Bylaws. Without limiting the foregoing, the Association shall enter into a contract with a reputable trash removal company (and shall so contract with such a company continuously during the term of this Declaration) for the regular emptying of trash containers of the Project. The trash containers shall be of adequate size for storage of all trash and debris from the Project. Such removal shall be done at least weekly, or more frequently as necessary to maintain the Project in a first-class condition;

e. To maintain the Common Area, all improvements thereon, the parkway, the Common Area landscaping, all portions of the Project not occupied by Units, and all utilities thereunder, including all mechanical pumps except those maintained by public utility companies, in good, clean, attractive and sanitary order and repair;

f. To repair and maintain the Common Area damaged by the presence of wood-destroying pests or organisms. The Association shall bear the costs of such repair and maintenance. The Association may cause the temporary removal of any occupant for such periods and at such times necessary to prompt, effective treatment of the wood-destroying pests or organisms. The cost of the temporary relocation is to be borne by the Owner of the Unit affected. Not less than fifteen (15) nor more than thirty (30) days notice of the need to temporarily vacate shall be given to occupants and to the Owners. The notice shall state: (1) the reason for the temporary relocation; (2) the date and time of the beginning of treatment; (3) the anticipated date and time of the termination of treatment; and (4) that the occupants will be responsible for their own accommodations during the temporary relocation. Notice is deemed complete if a copy is personally delivered or mailed first class to the occupants and a copy is sent to the non-occupying Owners via first class mail;

g. To operate all recreational equipment and facilities located within the Common Area, if any;

h. To repaint exterior surfaces of all buildings, fences and gates situated on the Project as such repainting is required in order to preserve the attractiveness of the community. Painting of exterior surfaces shall be deemed to include, but is not limited to, front doors, shutters, window trim, pot shelves, masonry, exterior walls, the undersides of roof overhangs and garage doors;

i. To maintain, repair and paint the roofs of any structure or building situated on the Project;

j. Notwithstanding any other provisions of this Declaration, the Board has an affirmative primary obligation to maintain the Common Areas and the exterior of the buildings and any other additions which may be subsequently authorized, as hereinafter provided, in good first-class condition, order and repair. Without limiting the generality of the foregoing, this obligation includes the maintenance of the surface of any paved area, sidewalks and parking areas on the Project in a level, smooth and evenly covered condition with the type of surfacing material originally installed thereon, or a substitute which is in all respects equal thereto in quality, appearance and durability. All landscaping, together with sufficient irrigation and irrigation improvements therefore, shall be maintained in a good first-class condition, healthy and without deterioration, free of weeds, disease-free and without waste or debris. All provisions of this Section are subject to the "Repairs and Maintenance" provisions contained in Article IX herein.

k. To pay the operating expenses of the Association, including but not limited to, expenses advanced by members of the Board of Directors, legal and accounting fees, the fees of any duly selected manager and a reasonable reserve for contingencies with respect to the Common Area.

In the event of damage to or destruction of any building, structure or other improvement situated on the Common Area, the Board of Directors shall cause the same to be repaired, replaced or rebuilt. In the event the cost of such repair, replacement or rebuilding exceeds insurance proceeds payable by reason of said damage or destruction, the amount of the difference shall be prorated among the Owners and assessed to such Owners in accordance with the provisions of Articles VII and XIII. In the event the amount of such insurance proceeds exceed the cost of such repair, replacement or rebuilding, the surplus shall be retained by the Association and shall be taken into consideration in determining the amount of the annual assessment for the next budget period;

l. To obtain all insurance policies as set forth in Article X herein.

m. To enter any privately owned Unit where necessary in connection with construction, maintenance or repair for the benefit of the Common Area or the Owners in common; provided, however, that entry shall only be made without the Owner's consent when such cannot be obtained and entry is necessary;

n. To send to each member of the Association written notice of regular and special meetings. Except in emergency situations, at least ten (10) days notice of any meeting shall be provided. The notice shall specify the time, date and place of the meeting and in the case of a special meeting, the nature of business to be undertaken;

o. To prepare, or cause to be prepared the following financial and related information which shall be regularly prepared and distributed by the Board to all members of the Association:

(1) A pro forma operating statement (budget) for the immediately ensuing fiscal year consisting of at least the following information

shall be distributed not less than forty-five (45) nor more than sixty (60) days prior to the beginning of the fiscal year:

(A) Estimated revenue and expenses on an accrual basis;

(B) A summary of the Association's reserves based upon the most recent review or study conducted pursuant to Section 8 below, which shall be printed in bold type and include all of the following:

(i) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component;

(ii) As of the end of the fiscal year for which the study is prepared: the current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain major components; and, the current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain major components;

(iii) The percentage that the current amount of accumulated cash reserves actually set aside is equal to the current estimate of the amount of cash reserves necessary as set forth in (ii) above.

The summary of the Association's reserves disclosed pursuant to this Section shall not be admissible in evidence to show improper financial management of an Association, provided that other relevant and competent evidence of the financial condition of the Association is not made inadmissible by this provision;

(C) A statement as to whether the Board of Directors has determined or anticipates that the levy of one or more special assessments will be required to repair, replace, or restore any major component or to provide adequate reserves therefore;

(D) A general statement setting forth the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement, or additions to those major components for which the Association is obligated to maintain;

(2) A review of the financial statement of the Association shall be prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy for any fiscal year in which the gross income of the Association exceeds Seventy-five Thousand Dollars (\$75,000.00). A copy of the review of the financial statement shall be distributed within one hundred twenty (120) days after the close of each fiscal year;

(3) In lieu of the distribution of the pro forma operating budget required by Section (1) above, the Board of Directors may elect to deliver a summary of the statements to all Members with a written notice that the budget is available at the business office of the Association or at another suitable location



within the boundaries of the Project and that copies will be provided upon request and at the expense of the Association. If any Member requests copies of the pro forma operating budget to be mailed to the Member, the Association shall provide the copy to the Member by first-class United States mail at the expense of the Association and delivered within five (5) days. The written notice that is distributed to each of the Association Members shall be in at least 10-point bold type on the front page of the summary of the statements.

(4) A statement describing the Association's policies and practices in enforcing lien rights or other legal remedies for default in payment of assessments against its Members shall be annually delivered to the Members during the sixty (60) day period immediately preceding the beginning of the Association's fiscal year.

(5) The Board shall do the following not less frequently than quarterly:

(A) Review a current reconciliation of the Association's operating accounts;

(B) Review a current reconciliation of the Association's reserve accounts;

(C) Review the current year's actual reserve revenues and expenses compared to the current year's budget;

(D) Review the most current account statements prepared by the financial institution where the Association has its operating and reserve account; and,

(E) Review an income and expense statement for the Association's operating and reserve accounts;

(6) Withdrawal of funds from the Association's reserve account shall require the signatures of either two (2) members of the Board or one (1) member of the Board and an officer of the Association who is not also a member of the Board;

(7) The Board shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components which the Association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established.

However, the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash flow requirements or other expenses, provided the Board has made a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed, and describing when and how the money will be repaid to the reserve fund. The transferred funds shall be restored to the reserve fund within one (1) year of the date of the initial transfer, except that the

Board may, upon making a finding supported by documentation that a temporary delay would be in the best interests of the Project, temporarily delay the restoration. The Board shall exercise prudent fiscal management in maintaining the integrity of the reserve account, and shall, if necessary, levy a special assessment to recover the full amount of the expended funds within the time limits required by this Section. This special assessment is subject to the limitation imposed by Section 3 of Article VII hereof. The Board may, at its discretion, extend the date the payment on the special assessment is due. An extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of an unpaid special assessment;

When the decision is made to use reserve funds or to temporarily transfer money from the reserve fund to pay for litigation, the Association shall notify the members of the Association of that decision in the next available mailing to all Members pursuant to Section 5016 of the Corporations Code, and of the availability of an accounting of those expenses related to the litigation on at least a quarterly basis. The accounting shall be made available for inspection by Members of the Association at the Association's office.

(8) At least once every three (3) years the Board shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the major components which the Association is obligated to repair, replace, restore, or maintain as part of a study of the reserve account requirements of the Project if the current replacement value of the major components which the Association is obligated to repair, replace, restore, or maintain is equal to or greater than one-half (1/2) of the gross budget of the Association which excludes the Association's reserve account for that period. The Board shall review this study annually and shall consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review.

The study required by this Section shall at a minimum include:

(A) Identification of the major components which the Association is obligated to repair, replace, restore, or maintain which, as of the date of the study, have a remaining useful life of less than thirty (30) years;

(B) Identification of the probable remaining useful life of the components identified in (A) above as of the date of the study;

(C) An estimate of the cost of repair, replacement, restoration, or maintenance of each major component identified in paragraph (A) above during and at the end of its useful life;

(D) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain each major component during and at the end of its useful life, after subtracting total reserve funds as of the date of this study;



(E) As used in this Section, "reserve accounts" means moneys that the Association's Board has identified for use to defray the future repair or replacement of, or additions to, those major components which the Association is obligated to maintain; and "reserve account requirements" means the estimated funds which the Association's Board has determined are required to be available at a specified point in time to repair, replace, or restore those major components which the Association is obligated to maintain;

p. To establish and collect regular assessments, to defray expenses attributable to Ownership, use and operation of the Common Area and facilities with said assessments to be levied against each Owner, including Declarant;

q. To establish and collect special assessments for capital improvements or other purposes on the same basis as regular assessments;

r. To file lien(s) against a Unit or Units because of non-payment of assessments duly levied and to foreclose said lien(s);

s. To receive complaints regarding violations of this Declaration, the Bylaws or other instruments for the management and control of the Association; to hold hearings to determine whether or not to discipline members of the Association who violate said management documents; to suspend the use privileges and voting rights of members who violate said management documents after hearing on the alleged violation has been held pursuant to the Bylaws;

t. To acquire and hold tangible and intangible personal property for the benefit of the Owners, and to dispose of the same by sale or otherwise;

u. To solicit bids for contracts of repairs in accordance with the terms of this subsection. With respect to each contract made by the Board of Directors for repainting exterior surfaces of building(s) and car storage spaces, and each contract for work and/or materials related to the maintenance, repair, rebuilding or replacement of any building, structure or other improvement situated on the Common Area in which the amount to be paid by the Board of Directors exceeds \$500.00, the Board of Directors shall secure at least three (3) bids from licensed contractors and must accept the lowest bid so obtained. If the amount of the contract exceeds \$1,000.00, the Board of Directors shall, regardless of the nature of the work involved, secure at least three (3) bids from licensed contractors and may accept either of the two lowest bids, and shall, in addition, require the contractor so chosen to furnish a bond assuring completion of the work and payment of all labor and materials bills for which a lien on the common Area or any Unit could be claimed. The Board of Directors shall require, from each contractor which it engages, satisfactory evidence that adequate worker's compensation and liability insurance is carried with respect to employees and activities of such contractor. In cases where a completion bond is not required, the Board of Directors shall require labor and material releases from the contractor prior to making payment to same unless the Board of Directors deems such requirements to be impractical or unnecessary to afford protection against liens;

v. To grant permits, licenses and easements over the Common Areas for utilities, roads and other purposes necessary for proper operation of the Project;

w. To institute, defend, settle or intervene on behalf of the Association, subject to compliance with Section 1354 of the Civil Code, in litigation, arbitration, mediation, or administrative proceedings in matters pertaining to: (1) enforcement of the governing instruments; (2) damage to the Common Areas; (3) damage to the separate interests, Units, which the Association is obligated to maintain or repair; or (4) damage to the separate interests, Units, which arises out of, or is integrally related to, damage to the Common Areas or Units that the Association is obligated to maintain or repair.

## ARTICLE VII COVENANT FOR MAINTENANCE ASSESSMENTS

1. Creation of Lien. Declarant, for each Unit owned by it within the Project, hereby covenants, and each Owner of any Unit within the Project, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association: (a) regular monthly assessments or charges; (b) special assessments for capital improvements; and (c) emergency assessments. Such assessments shall be fixed, established and collected from time to time, as hereinafter provided. The regular, special and emergency assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and a continuing lien on the Unit against which each such assessment is made. Such liens shall be created and enforced in accordance with the provisions of this Article VII. Each such assessment, and all other assessments levied in accordance with this Declaration, together with late charges, interest, costs, penalties and reasonable attorney's fees, shall also be the joint and several personal obligation of each person who was the Owner of such Unit when the assessment was made.

2. Basic Maximum Amount of Regular Monthly Assessments.

a. The Owner of each Unit shall be obligated to pay to the Homeowners Association an initial monthly maintenance charge as stated in the Final Subdivision Public Report issued by the Department of Real Estate. As and when the Association's budget shall increase or decrease, as herein provided, such assessments shall be adjusted so that the Owner of each Unit bears the same relative proportion of the total budget as that initially borne. Regular assessments to defray expenses attributable to the Ownership, operation and furnishing of common interests by the Association shall ordinarily be levied against each Owner according to the ratio of the number of Units owned by the Owner assessed to the total number of Units subject to assessments. An Owner shall also bear the same relative proportion of any special assessment levied pursuant to Section 3 hereof.

b. The Board of Directors may not, without the approval of Owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporation Code and

Section 7613 of the Corporations Code, impose a regular assessment per Unit that is more than twenty percent (20%) greater than the regular assessment of the Association's preceding fiscal year. For purposes of this Section, quorum means more than fifty percent (50%) of the Owners of the Association.

However, annual increases in regular assessment for any fiscal year shall not be imposed unless the Board has complied with Section 2.o.(8) of Article VI with respect to that fiscal year, or has obtained the approval of Owners, constituting a quorum, as provided in (b) above.

c. The Association shall, upon demand, furnish to any Owner liable for assessments, a certificate signed by an officer of the Association setting forth whether the assessments on a specified Unit have been paid and the amount of delinquency, if any. A charge of Ten Dollars (\$10.00) per certificate may be made by the Board of Directors for the issuance of said certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

3. Special Assessments. In the event regular monthly assessments described above are insufficient for any reason, the Board of Directors may not, without the approval of Owners as prescribed above for increases in regular assessments, levy special assessments to defray costs of any action or undertaking on behalf of the Association which in the aggregate exceeds five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. Every special assessment shall be levied upon the same basis as that prescribed for the levying of regular assessments except that: (i) a special assessment against Owners in the Project to raise funds for the rebuilding or major repair of the structural Common Area housing Units of the Project shall be levied upon the basis of the ratio of the square footage of the floor area of the Unit to be assessed to the total square footage of floor area of all Units to be assessed; and (ii) special assessments do not apply where an assessment against a member is a remedy utilized by the Board to reimburse the Association for costs incurred in bringing the member and his Unit into compliance with the provisions of this Declaration.

4. Special Assessments for Emergencies. Increases in assessments are not limited in the case of emergency situations which are any of the following: (1) an extraordinary expense required by court order; (2) an extraordinary expense necessary to repair or maintain the Project, or any part of it for which the Association is responsible where a threat to safety of persons is discovered; or (3) repairs to or maintenance of the Project for which the Association is responsible that could not have been reasonably foreseen by the Board of Directors in preparing and distributing the pro forma operating budget pursuant to Section 2.o.(1) of Article VI. However, prior to imposition or collection of the emergency assessment, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Members with the notice of assessment.

5. Reserves For Capital Expenditures. Reserves for capital expenditures may be established to defray the cost of construction, replacement or repair which materially adds to the value or appreciably prolongs the life of capital improvements upon or related to portions of the Common Area, including but not limited to capital reserves for painting, roof replacement, carpeting, patio furniture replacement and the construction, replacement or said repair of such other Common Area capital improvements as the Board of Directors may establish. These reserves shall be funded by capital assessments which shall be made on a monthly basis. The purpose of the reserves is to preserve and enhance the value of each member's interest in the Common Area.

All assessments for such capital reserves shall be received from the members, as trustors, and held in trust in one or more separate bank trust accounts or such other trusts as may be established from time to time by the Board of Directors, and shall be used only for the construction, replacement or said repair of the capital improvements for which such reserves are established. The documents creating the trust or trusts shall name the members as beneficiaries, each owning an interest in proportion to his contribution; shall name the Association as trustee, who shall serve without compensation; and shall provide for the administration of the trust or trusts and the investment, reinvestments and disbursement of trust funds in accordance with this paragraph. The capital assessments shall not be commingled with any other assessment funds of the Association.

Upon the transfer of his Ownership interest in a Unit, no member shall be entitled to the return or refund of any portion of the capital assessment which he has paid prior to such transfer, but is to sell his interest in the trust at its face value to the purchaser, who will become a successor beneficiary.

Instead of establishing separate trust accounts for such capital reserves, the Board of Directors may, on the advice of legal counsel, elect either (i) to treat all such reserves for capital expenditures remaining unexpended at the end of any given fiscal year as contributions to the capital of the Association in accordance with Section 118 of the Internal Revenue Code and regulations promulgated thereunder, or (ii) to adopt such other means of administering such reserves as may be determined on the advice of legal counsel for the Association.

6. Payment of Assessments By Declarant. On the first day of the month following the close of escrow of the first Unit in the Project, Declarant shall be obligated to pay the monthly maintenance charge and assessments hereinbefore provided, for each unsold Unit.

7. Date of Commencement of Assessments. Regular assessments shall be paid by each Owner in equal monthly installments in advance, on the first day of each month beginning on the first day of the month following conveyance of the first Unit to an individual Owner. Special emergency assessments and assessments for capital expenditures shall be paid within thirty (30) days of receipt of a request to pay same. Declarant shall pay assessments for all unsold Units commencing on the first day of the month following conveyance of the first Unit to an individual Owner.

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

8. Maintenance Fund. Assessment charges so collected shall be promptly deposited in a commercial bank account in a bank to be selected by the Board of Directors or by the manager, if any. Such account shall be clearly designated in the name of the Association. The Board of Directors or the manager, as the case may be, shall be responsible to the Owners for the maintenance of accurate records thereof at all times. No withdrawal shall be made from said account except to pay for the charges and expenses for the common benefit of all Owners.

9. Effect of Non-Payment of Assessments. Every Owner, including Declarant, shall be deemed to covenant and agree to pay the regular and special assessments provided for herein and further agree to the enforcement of such assessments in the manner provided for herein.

a. Both regular and special assessments which each Owner is obligated to pay shall be a debt of each Owner at the time each assessment becomes due and shall be in delinquency fifteen (15) days thereafter if not paid in full. If an assessment is delinquent, the Association may recover all of the following: (1) reasonable costs incurred in collection of the delinquent assessment, including reasonable attorney's fees; (2) a late charge not exceeding ten (10%) percent of the delinquent assessment or Ten Dollars (\$10.00), whichever is greater; and (3) interest on all sums imposed in accordance with this Section, including the delinquent assessment, reasonable costs of collection, and late charges, at an annual percentage rate not to exceed twelve (12%) percent interest, commencing thirty (30) days after the assessment becomes due.

b. At least thirty (30) days prior to recording a lien upon a separate interest of the Owner of record to collect a debt that is past due as set forth hereinbelow, the Association shall comply with Civil Code Section 1367.1, subsections (a) and (b).

All delinquent assessments shall be and become a lien on the Unit of the delinquent Owner upon the recordation of a Notice of Delinquent Assessment, as provided in Section 1367 of the California Civil code. The Notice of Delinquent Assessment shall not be recorded unless and until the Board of Directors or a person designated by it shall have delivered to said delinquent Owner, not less than fifteen (15) days prior to the recordation of said Notice of Delinquent Assessment, a written Notice of Default and a demand on the defaulting Owner to cure the same within said fifteen (15) day period. Upon failure by the delinquent Owner to cure within the stated time, the Notice of Delinquent Assessment may be recorded. Not less than ten (10) days nor more than thirty (30) days from the filing of said Notice of Delinquent Assessment, the Board may file of record a Notice of Default and thereafter may cause the Unit of said delinquent Owner to be sold in the same manner as provided in Section 2924, et seq., of the California civil Code, or through judicial foreclosure. However, the lien created by said recorded Notice shall expire and be null and

void unless within thirty (30) days after recordation of said Notice of Delinquent Assessment the Board of Directors records a Notice of Default as hereinabove provided.

A monetary penalty imposed by the Association as a disciplinary measure for failure of a Member to comply with the provisions of this Declaration, the Bylaws or the Rules and Regulations or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Common Areas and facilities for which the Member was allegedly responsible or in bringing the Member and his Unit into compliance with these 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 accordance with the provisions of Section 2924, 2924(b) and 2924(c) of the Civil Code. The provisions of this Section do not apply to charges imposed against an Owner consisting of reasonable late payment penalties for delinquent assessments and/or charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorney's fees) in its efforts to collect delinquent assessments.

c. If any action is filed by the Board of Directors to enforce the provisions of this Article, any judgment rendered against the delinquent Owner shall include all costs and expenses and reasonable attorney's fees necessarily incurred in prosecuting such action.

10. Homestead Waiver. Each Owner does hereby waive to the extent of any liens created pursuant to this Article, the benefit of any homestead of exemption law of California in effect at the time any assessment becomes delinquent or any lien is imposed pursuant to the terms hereof.

11. Curing Delinquencies. A delinquent Owner may cure a lien created by past due assessments by paying or causing to be paid all delinquent assessments set forth in the Notice of Delinquent Assessment filed and recorded in accordance with this Article, all other assessments which have become due and payable with respect to the Unit following the date of recordation of the Notice of Delinquent Assessment, all costs and reasonable attorney's fees and all late charges and interest which have accrued thereon. Such payment will be timely only if made before the execution of a contract for the sale of the delinquent Owner's Unit or the filing of documents necessary to initiate judicial foreclosure, whichever comes first. If a cure is timely effected, the Board of Directors shall cause to be filed and recorded a further notice stating the satisfaction and release of the lien created by the Notice of Delinquent Assessment. A fee in the sum of Fifteen Dollars (\$15.00) covering the cost of preparation and recordation of the Notice of Release and Satisfaction of Lien created by the Notice of Delinquent Assessment shall be executed by any officer of the Association or by any authorized representative of the Board of Directors. For the purpose of this paragraph, the term "costs" shall include costs and expenses actually incurred or expended by the Association in connection with the cost of preparation and recordation of the Notice of Delinquent Assessment and in efforts to collect the delinquent assessments so cured by the lien created by said Notice of Delinquent Assessment and shall also include a reasonable sum for attorney's fees actually incurred.

12. Subordination of Assessment Lien. Any lien created or claimed under the provisions of this Declaration, is expressly made subject and subordinate to the rights of the beneficiary of any first deed of trust or first Mortgage in the entire Project or on any Unit therein, made in good faith and for value, and no such lien shall in any way defeat, invalidate or impair the obligation or priority of such first deed of trust or first Mortgage, unless the beneficiary thereof shall expressly subordinate his interest, in writing, to such lien.

13. Rights of Board of Directors, Waiver By Owners. Each Owner hereby vests in and delegates to the Board of Directors or its duly authorized representatives, the right and power to bring all actions at law or lien foreclosures, whether judicially, by power of sale or otherwise, against any Owner or Owners for the collection of delinquent assessments in accordance herewith and hereby expressly waives any objection to the enforcement of the obligation to pay assessments as set forth herein.

14. Rate of Assessment. Both regular and special assessments shall be determined on a pro-rata basis based on square footage of the Units, all as set forth in the Budget Worksheets reviewed by the Department of Real Estate. The Initial Assessment Schedule for Phase 1 is set forth in Exhibit "C" attached hereto.

15. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the Members thereof, their guests and invitees and, in particular, shall be used for the purpose of improving, protecting, operating and maintaining the Common Area and facilities, improvements, landscaping and structures located thereon and providing for the acquisition and maintenance of the Common Area and the Units, and otherwise providing for the ability of the Board of Directors to perform each and every one of the powers and duties of said Board of Directors.

16. Approval of the City. Any amendment which would defeat the obligation of the Association to maintain the Common Area in a first class condition and in a good state of repair, or which would defeat the assessment procedure to insure said maintenance, must be first approved in writing by the local governing agency, if such local governing agency has such a provision pursuant to its Municipal Code.

17. Capitalization of the Association. To insure that the Association will have the funds to meet unforeseen expenditures or to purchase any additional equipment or services, the Declarant shall establish a working capital fund equal to at least two (2) months' estimated common assessments for each Unit. Any amounts paid into this fund shall not be considered as advance payments of regular assessments. Each Unit's share of the working capital fund shall be collected at the time the sale of the Unit is closed and then shall be transferred to the Association for deposit into a segregated fund. Within six (6) months after the close of escrow of the first Unit in each Phase of the Project, Declarant shall pay each unsold Unit's share of the working capital fund to the Association. Declarant shall then be reimbursed for this payment from the funds collected at the time of closing of escrow on each Unit. The working capital fund shall not be used by



Declarant to defray any of its expenses, reserve contributions, or construction costs or to make up any budget deficits while it is in control of the Association.

ARTICLE VIII  
USE RESTRICTIONS

1. Single Family Residential Use. All Units in the Project shall be used solely as a single family residence for senior citizens as set forth in Article III hereof. No part of the Property or Condominiums therein shall ever be used or caused to be used or allowed or authorized in any way, directly, or indirectly, for any business, commercial, manufacturing; mercantile, storing, vending, or other such nonresidential purposes, except Declarant, its successors or assigns, may use the Units owned by it as models, and display and sales offices subject to the time limitation included in Section 4 below. However, this restriction shall not prohibit any Owner from: (a) conducting a Home Occupation type of use as permitted by local zoning ordinances; (b) maintaining a personal office including the keeping and storing of records of all types therein; (c) handling his personal or professional telephone calls or correspondence therefrom. Such uses are expressly declared to be customarily incidental to the principal residential use and not in violation of any provisions of this Article VIII.

2. Maintenance of Unit. The Owners shall maintain the interiors of their Units in good repair and shall have the exclusive right, at their sole cost and expense, to paint, repaint, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, windows and doors bounding their respective Units and all permanent fixtures, appliances and equipment of their Unit as well as patios and balcony areas. However, nothing in this paragraph shall be construed as permitting interference with, or damage to the structural integrity of any building. No structural alterations to the interior of any building and no alterations, painting, or changes readily visible from the exterior of the Units shall be made by any Unit Owner without the prior written consent of the Board. If an Owner fails to so maintain his Unit or make repairs thereto in such manner as may be deemed necessary in the judgment of the Board of Directors to preserve and protect the attractive appearance and value of the Project, the Board of Directors shall give written notice to such Owner stating with particularity the work of maintenance or repair which the Board of Directors shall find to be required and requesting that same be carried out within a period of sixty (60) days from the date such notice is given. If such Owner fails to carry out such maintenance or repair within a period specified in the notice, the Board of Directors shall cause such work to be done and shall assess the cost thereof to such Owner, such assessment to be due and payable within thirty (30) days after the Board of Directors gives written notice thereof. Notwithstanding the foregoing, if the circumstances requiring the maintenance or repair, or any applicable law or ordinance, or the existence of any hazardous or dangerous conditions, require that such work be performed within less than sixty (60) days, the Board of Directors shall be required to give only such notice of the work required to be performed, including no notice in case of emergency, as the circumstances permit. The assessment for cost of the work shall include all court costs and reasonable attorney's fees, together with interest on all such total cost incurred from the date incurred until reimbursed in full as the lesser of (a) the rate of



twelve percent (12%) per annum or (b) the maximum annual rate permitted under all applicable law (collectively, "Cost").

3. Owner Structural Change. No Owner shall, at his own expense or otherwise, make any alteration, addition or modification to the building in which his Unit is located or to any part or portion of the Common Area without the prior written approval of the Board of Directors. With respect to the installation of awnings, sunshades, screen doors and other minor installations to any individual Unit, the prior written consent of the Board of Directors shall be exercised with a view toward promoting uniformity and thereby enhancing the attractiveness of the Project as a whole.

4. Signs. The Owner of a Unit or his agent, may display a sign of customary and reasonable dimension, advertising his Unit for sale or lease, which sign shall be of a professional type and of dignified appearance, and shall be placed in some appropriate location as determined by the Board of Directors, on the Common Area open to public view. The Owner or his agent may include advertising on the sign that indicates; (a) the property is for sale, lease or exchange; (b) the agent's or Owner's name; and (c) the address and telephone number of the agent or Owner. Such sign may also be the sign of a licensed real estate broker engaged by an Owner for the purpose of selling or leasing his Unit. Nothing herein contained shall prohibit or restrict in any way Declarant's right to construct such promotional signs or other sales aids on or about the portions of the premises which it shall deem reasonably necessary in conjunction with its original sales program for a period not to exceed three (3) years after issuance of the First Subdivision Public Report or close of the last escrow, whichever is later. Notwithstanding the foregoing, no promotional signs, flags or banners shall be displayed on, in or around the Project except one (1) building identification sign, not to exceed twenty (20) square feet in area, without the prior written consent of the Board of Directors, further subject to all applicable laws and ordinances of the City and all other applicable laws.

5. Offensive Activity. No Owner shall permit or suffer anything to be done or kept on the Project which shall increase the rate of insurance thereon, or which shall obstruct or interfere with the rights of Owners, their families, guests or invitees, or annoy them by unreasonable noises or otherwise; nor shall he commit or suffer any immoral or illegal act to be committed thereon. Each Owner shall comply with all applicable ordinances and statutes and with requirements of local and/or State Boards of Health with respect to the occupancy and use of his Unit.

6. Owner Liability. Each Owner shall be liable to the Board of Directors and to all other Owners for any damage to the Common Area or to any equipment or improvements thereon, which may be sustained by reason of the negligence or willful misconduct of said Owner or of his family members, relatives, guests or invitees both minor and adult, to the extent that any such damage shall not be covered by insurance. Said Owner shall be assessed by the Board of Directors for the cost of repair or replacement thereof, together with costs and attorneys' fees, such assessment to be due and payable within thirty (30) days after written notice thereof. In the case of joint Ownership of a Unit, the liability of such Owners shall be joint and several. In the event of personal injury or property damage sustained

by any one person while physically within the Unit or private balcony, patio or yard areas, as applicable, and in the further event any other Owner shall be sued or a claim made against him for said injury or damage, the Owner(s) of the Unit(s) in which said injury or damage occurs shall fully indemnify and hold harmless any such other Owners against whom such claim shall be made, and shall further defend any such other Owners, at their own expense in the event of litigation of such claim, provided that such protection shall not extend to any other Owner whose own negligence may have caused or contributed to the cause of any such injury or damage, and provided further that such expense is not covered by the public liability insurance purchased by the Association as provided herein.

7. Common Area Improvements. No fence, hedges or walls shall be erected and maintained in the Common Area except such as are installed in accordance with the initial construction of the buildings located thereon or approved in writing by the Board of Directors and further, no building, fence, structure or wall shall be constructed on any of the open spaces unless approval therefore has been specifically obtained from the appropriate department of the local governing agency.

8. Parking Restrictions. No automobile, trailer, camper, boat or similar-type vehicle shall be permitted to remain on any portion of the Common Area, except for those areas designated by the Board as "guest parking" for a period not to exceed twenty-four (24) hours. No Unit Owner shall park his vehicle, or allow his guests and/or tenants to park their vehicles, in any space other than that assigned to the Owner and any space designated as "guest parking" spaces, if any. The guest parking spaces, as designated by the Board of Directors, shall be clearly identified as such by signs plainly visible from each such parking space, which signs the Association shall permanently maintain. The guest parking spaces shall not be assigned for the exclusive or particular use of any Owner, tenant, or resident of the Project, or any other person, but shall remain available for the nonexclusive use of all guests, invitees or licensees of or upon the Project. The Project contains a "No Parking Fire Lane - Tow Away Zone per California Vehicle Code 22500.1 and 22658(a)". Said areas so designated shall be marked in such a way (signs or red curbs) so the Association may enforce no parking provisions.

The Board shall have the authority to tow away and store any vehicle or similar equipment parked in violation of the above restrictions or in violation of the California Vehicle Code, whether the same shall belong to any Owner or a member of his family or any relative, guest, or invitee of any Owner. Charges for such towing and storing shall be assessed against any Owner who shall violate such restrictions and also against any Owner whose family members, relatives, guests or invitees may violate the same. Neither the members of the Board nor the Association shall be liable for any damage incurred by the Owner of the vehicle or for any damage to the vehicle because of its removal in compliance with this Section unless such damage resulted from the negligence of the Board.

9. Rubbish. Trash, rubbish, trash bins and trash receptacles shall not be permitted to remain on any portion of the Common Area other than the designated trash enclosure area(s), except on the day(s) scheduled for trash collection.

10. Pets. No animals, livestock, reptiles or poultry shall be kept in any Unit except that usual and ordinary domestic dogs, cats, fish and birds (in inside bird cages) may be kept as household pets within any Unit, provided they are not kept, bred or raised for commercial purposes or in unreasonable quantities. As used herein, "unreasonable quantities" shall be determined by the Board of Directors, but in no event shall such term be construed so as to permit the maintenance of more than two (2) animals (dogs and/or cats) per Unit. The Association shall have the right to prohibit maintenance of any animal which constitutes, in the opinion of the Board of Directors, a nuisance to any other Owner. Animals belonging to Owners, occupants or their licensees, tenants or invitees within the Project, must be kept either within an enclosure, an enclosed patio or balcony, or on a leash being held by a person capable of controlling the animal. The enclosure must be so maintained that the animal cannot escape therefrom and shall be subject to approval of the Board of Directors. If any animal belonging to an Owner is found unattended out of the enclosure and not being held on a leash by a person capable of controlling the animal, such animal may be removed by Declarant so long as Declarant owns any interest in any portion of the Project, or other occupant or Owner within the Project, or a person designated by them to do so, to a pound under the jurisdiction where the Project is located and subject to the laws and rules governing the same, or to a comparable animal shelter. Further, each Owner shall be absolutely liable to each and all remaining Owners, their families, guests, and invitees for any unreasonable noise or damage to person or property caused by any animals brought or kept within the Project by an Owner or by members of his family, tenants or guests. It shall be the absolute duty and responsibility of each Owner to clean up after his animals which have used any portion of the Common Area. Notwithstanding the foregoing, nothing herein contained shall be construed in such a manner as to permit the maintenance of any animal contrary to any ordinance of the local governing agency.

11. Association Maintenance and Decoration Authority. The Board of Directors or its duly appointed agent, including the manager, if any, shall have the exclusive right to paint, decorate, repair, maintain and alter or modify the exterior walls, balconies, railings, exterior door surfaces, roofs and all installations and improvements on the Common Area, and no Owner of a Unit shall be permitted to do or have done any such work. The prior written approval of the Board of Directors shall be required for installation of any awnings, sunshades or screen doors. The restrictions set forth herein shall not apply to the initial construction of the buildings or improvements made thereto by Declarant.

12. Exploration of Minerals. No oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted on or in the Project, or within five hundred (500) feet below the surface of the Project and no derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted on any portion of the Project.

13. No Hanging Laundry. No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of the Common Area or any balconies or patios constituting a part of any Unit.

14. Balcony Restrictions. No portion of any balcony shall be enclosed in any manner whatsoever, nor shall any structure, shade screen, awning, or other devices be attached thereto. An Owner shall not be permitted to install any deck covering of any kind or nature on his balcony. Further, nothing shall be placed, stored, used, or maintained on an Owner's balcony of a permanent nature, other than typical patio chairs and tables and a barbecue. No objects may be placed on the handrails of balconies or hung from any part of a balcony and no penetration may be made in the balcony deck or the overhang ("ceiling") of a balcony. Notwithstanding the foregoing, plants may be maintained on the Owner's balcony or on the floor of the balcony.

15. Sound Systems. Sound system loudspeakers shall not be rigidly attached to the ceilings, walls, shelves or cabinets, so as to introduce vibrational energy into the structure. Suitable mounting and/or vibration isolation shall be incorporated to preclude such occurrence.

16. Impact Noise. It is mandatory, for the mutual interest and protection of all Owners, lessees and other occupants within the Project, to recognize that acoustical privacy is achieved only through mutual understanding and compliance with certain limitations and restrictions. Each Owner hereby acknowledges that total noise insulation from an adjacent occupancy in a manner comparable to a single-family residence is impossible to attain. Each Owner understands that there will usually be some audio awareness of one's neighbors, depending upon the situation.

17. Floor Coverings. In order to ensure better sound attenuation within the Condominium building, carpeting and padding shall be required in all floor areas of living rooms, dining rooms and bedrooms of a Unit which areas are directly above the ceiling of a lower Unit unless otherwise approved by the Architectural Committee or originally installed by the Declarant. If approved by the Board, the alternative materials must be underlain with a sound attenuating material, which, if installed as per manufacturer's recommendations, will minimize impact noise. The Board may, prior to the installation thereof, inspect and approve the sound attenuation standards and other potential adverse noise and structural effects of the installation and maintenance of such flooring materials.

18. Restrictions Applicable to Guests, Etc. The use of any Unit, and/or the Common Area, or any portion thereof, by any guest, invitee, lessee, sublessee, etc., of any Owner shall be subject to all of the provisions of this Declaration, including without limitation all of the use restrictions imposed under this Article VIII, the Bylaws of the Association and the rules and regulations of the Association, and the Association may proceed directly against such guest, invitee, lessee, sublessee, etc., in the enforcement of the provisions of this Declaration, the Association Bylaws and/or the Association's rules and regulations.

19. Children. Each Owner shall be accountable to the remaining Owners, their families, visitors, guests, and invitees, for the conduct and behavior of minor children and children residing in or visiting his Unit.

20. Screening of Equipment. All electrical, mechanical, or other equipment, except video or television antenna, on any roof of any building in the Project, shall be completely screened, to the satisfaction of the local governing agency, so as not to be visible from any portion of the Project or any other point outside of the Project, with the exception of that equipment installed as part of the initial construction of the Project.

21. Video and Television Antenna. Pursuant to Civil Code Section 1376, the Association may impose reasonable restrictions on the installation or use of a video or television antenna, including a satellite dish, that has a diameter or diagonal measurement of 36 inches or less. Any antenna or dish exceeding 36 inches shall be prohibited. Reasonable restrictions mean those restrictions that do not significantly increase the cost of the video or television antenna system including all related equipment, or significantly decrease its efficiency or performance.

22. Leasing Restrictions. Any lease or rental agreement shall be in writing and subject to the requirements of this Declaration, the Bylaws and the rules and regulations of the Association. No Unit shall be leased or rented for less than thirty (30) days nor in violation of Section 1 of this Article VIII.

#### ARTICLE IX REPAIRS AND MAINTENANCE

1. Inspection and Maintenance Guidelines. The Board shall adopt inspection and maintenance guidelines for the periodic inspection and maintenance of the Common Area and Improvements and landscaping, including, but not limited to, foundations, siding, trim, roofs, window caulking, downspouts, utility equipment and sanitary sewer and storm drainage facilities maintained by the Association, Exclusive Use Common Area patios and balconies, streets, parking areas, walkways, recreational facilities and the irrigation system. In the event Declarant provides any maintenance manuals to the Association, the Association shall comply with the requirements of any such maintenance manuals. The Board shall periodically and at least once a year review and update the inspection and maintenance guidelines. The Board shall take all appropriate steps to implement and comply with the inspection and maintenance guidelines, and shall keep records of such implementation and compliance, a copy of which shall be provided to Declarant upon request.

2. Right of Entry. The Association shall have the right to enter any Unit constructed thereon in connection with any maintenance, repair, or construction in the exercise of the powers and duties of the Association. In addition, in the case of an emergency threatening damage to persons or property, the Association and Owners shall have the right to enter any Unit in order to abate such conditions. No person entering a Unit pursuant to this Section shall be deemed guilty of a trespass thereby.

ARTICLE X  
INSURANCE

All insurance policies purchased by the Board of Directors for the mutual benefit of all Owners, shall contain a provision that each Owner will receive a notice from the insurance carrier that said policy is in effect and that each Owner will receive thirty (30) days notice prior to cancellation or termination of said policy, for any reason whatsoever.

Neither Declarant nor its agents nor the Board of Directors shall enter into any insurance contract which binds the Association in excess of one (1) year unless said contract is approved by the majority of the Association members, except that the Board of Directors may contract for prepaid casualty and/or liability insurance policies not to exceed three (3) years duration if such policies permit short rate cancellation by the insured.

1. Fire Insurance. The Board of Directors shall carry fire insurance with extended coverage endorsement or other form of coverage providing protection equal to or greater than one hundred percent (100%) of the current replacement cost (as determined by appraisal or such other method as shall be deemed appropriate by the Board of Directors and be acceptable to the insurance carrier and reviewed at least annually), of all buildings, structures and other improvements, including furnishings and equipment related thereto, situated on the Common Area, excluding trees, shrubs and other foliage if the Board of Directors so elects. Claims based on such insurance shall be payable to the Board of Directors;

2. Casualty Insurance. Further, the Board of Directors shall carry a blanket policy or policies of casualty insurance with a special form all-risk coverage endorsement for one hundred percent (100%) of the current replacement cost of the Common Area and Units (or such other blanket fire and casualty insurance which gives substantially equal or greater protection) insuring the Board of Directors, the Association, the Owner or Owners of each Unit hereunder and their Mortgagee(s) as their respective interests may appear, against loss due to fire and/or other casualty customarily insured against by homeowners. Such policy or policies may provide (shall provide if a Unit Mortgage is purchased by FNMA) for separate protection of each Unit to the full insurable replacement cost thereof and a separate loss-payable endorsement in favor of the Mortgagee(s) of each Unit, if any, and shall contain provisions to the extent possible which protect against any reduction in the amount of the proceeds payable as a result of any fire or similar insurance independently carried by any Owner of, or in respect to, any Unit. Further, the policy shall require the insurer to notify in writing the Owners Association or insurance trustee and each first Mortgage holder at least the (10) days before it cancels or substantially changes the Project's coverage.

3. Public Liability Insurance. The Board of Directors shall also carry a policy or policies insuring the Association, the Board of Directors and each and all of the Owners and management agent, if any, against any liability to the public or to the Owners or any other person resulting from or incident to the Ownership, management and use of the Project by the Association, the Board of Directors, the



Owners, their invitees and tenants and members of the public, the liability limits of which shall not be less than \$2,000,000 for Projects consisting of 100 or fewer Units and \$3,000,000 for Projects consisting of more than 100 Units covering all claims for death, personal injury and property damage arising out of a single occurrence, such limits to be reviewed annually by the Board and increased at the discretion of the Board. The policy shall provide coverage for any legal liability that results from lawsuits related to employment contracts in which the Association is a part. The policy shall provide for at least ten (10) days written notice to the Association before the insurer can cancel or substantially modify it. Similar notice shall also be given to each holder of a first Mortgage on an individual Unit in the Project.

4. Errors and Omissions Insurance. The Board of Directors shall obtain such errors and omissions insurance or other insurance as it deems advisable insuring the Board of Directors and each Member thereof, against any liability for any act or omission in carrying out their obligations hereunder or resulting from their membership on the Board of Directors or any committee thereof. The minimum amount of such insurance shall be \$500,000.00. The premiums for insurance purchased pursuant to the forgoing shall be payable out of the maintenance fund.

5. Worker's Compensation Insurance. The Board of Directors shall carry worker's compensation insurance covering all persons employed by it in the performance of its responsibilities under this Declaration, and may obtain fidelity bonds for such of its employees as it may deem advisable.

6. Flood Insurance. Further, the Board of Directors shall purchase and carry flood hazard insurance in the maximum amount available in the event the area in which the Project is located is designated by the Office of Housing and Urban Development as an area having special flood hazards.

7. Blanket Insurance by Declarant. In order to facilitate the provision and maintenance of adequate and proper insurance, it is contemplated that Declarant may contract for blanket insurance coverage, covering the entire Project prior to or concurrently with the financing of such sales and any obligations or commitments for the payment of premiums or expenses otherwise incurred by Declarant under any such blanket policy or coverage, whether or not the same is also a personal obligation of the purchaser(s) of any Units, shall become an obligation of the Board of Directors and shall be paid out of the maintenance fund.

8. Insurance by Owners. The Owner of any Unit may purchase such fire and casualty insurance as he may deem advisable for his own account and at his own expense, except that carrying of any insurance individually by an Owner shall not relieve him of the obligation to pay such portion of assessments as may be made from time to time for casualty insurance carried or contracted for by the Board of Directors for the benefit of the entire Project. No such insurance coverage or terms of any such policy shall defeat or contravene the purposes and intent of Article XIII (Destruction of Improvements) hereof.

9. Fidelity Bond. The Board shall obtain a Fidelity Bond which covers members of the Board, officers and employees of the Association, and employees of any manager or Managing Agent, whether or not such persons are compensated for their services, naming the Association as to insured, written in an amount not less than a sum equal to three (3) months aggregate assessments on all Units plus reserve funds;

10. Provision of Information to Members of the Association. All members of the Association shall be provided with the following information:

a. A summary of the Association's property, general liability, earthquake and flood insurance policies, all as applicable, which shall be distributed within sixty (60) days preceding the beginning of the Association's fiscal year, that includes all of the following information about each policy: (i) the name of the insurer; (ii) the type of insurance; (iii) the policy limits of the insurance; and (iv) the amount of deductibles, if any.

b. The Association shall, as soon as reasonably practical, notify its Members by first-class mail if any of the policies have lapsed, been canceled, and are not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductibles, for any of these policies. If the Association receives any notice of the non-renewal of a policy described above, the Association shall immediately notify its members if replacement coverage will not be in effect by the date the existing coverage will lapse.

c. To the extent that any of the information required to be disclosed pursuant to Section (a) above is specified in the insurance policy declaration page, the Association may meet its obligation to disclose that information by making copies of that page and distributing it to all of its Members.

d. The summary distributed pursuant to Section a. above shall contain, in at least 10-point boldface type, the following statement: "This summary of the Association's policies of insurance provides only certain information, as required by subdivision (e) of Section 1365 of the Civil Code, and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance. Any Association member may, upon request and provision of reasonable notice, review the Association's insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the Association maintains the policies of insurance specified in this summary, the Association's policies of insurance may not cover your property, around your Unit, or personal injuries or other losses that occur within or around your Unit. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association members should consult with their individual insurance broker or agent for appropriate additional coverage."

11. Anti-Suit Protection. Pursuant to Civil Code Section 1365.9, any cause of action in tort against any Owner of a separate Unit arising solely by reason of



an Ownership interest as a tenant in common in the Common Area of the Project shall be brought only against the Association and not against the individual Owners of the separate Units if the Association has maintained and has in effect for this cause of action, one or more policies of insurance which include coverage for general liability of the Association and the coverage is at least in minimum amounts as set forth in Section 3 above.

ARTICLE XI  
GENERAL PROVISIONS

1. Association Entry for Emergency Repair. The Board of Directors shall have the authority to designate one or more qualified repairmen or other persons, to enter on and within any individual Unit for the purpose of making emergency repairs therein or for necessary maintenance or repair of portions of the Common Area, or to abate any nuisance being conducted or maintained in said Unit in order to protect the property rights and best interests of the remaining Owners. Notice of said entry shall be given at least twenty-four (24) hours in advance to the Owner or Unit occupant. In the event an emergency makes such notice unreasonable, no notice before entry is required.

2. Continuing Liability for Assessments. No Owner may exempt himself from liability for his specified contribution to the maintenance fund by waiver of the use or enjoyment of the Common Area or by abandonment of his Unit.

3. No Racial or Religious Restrictions. No Owner shall execute or file of record any instrument which imposes a restriction of the sale, lease or occupancy of his Unit on the basis of race, color, creed, sex or religion.

4. Books and Records of the Association. Declarant shall establish reasonable arrangements for the inspection of the Association's books and records.

a. Commencing not later than ninety (90) days after the close of escrow of the first Unit in the Project, copies of the documents listed below, as soon as readily obtainable, shall be delivered by Declarant to the Board of Directors of the Association at the office of the Association, or at such other place as the Board of Directors of the Association shall prescribe. The obligation to deliver the documents listed below shall apply to any documents obtained by the Declarant no matter when obtained, provided, however, such obligation shall terminate upon the earlier of (i) the conveyance of the last Unit covered by a Subdivision Public Report or (ii) three (3) years after the expiration of the most recent Subdivision Public Report, for the Project:

- (1) The recorded subdivision map or maps for the Project;
- (2) The recorded Condominium Plan and all amendments thereto;

- (3) Any deeds and easements executed by Declarant conveying the Common Area or other interest to the Association, to the extent applicable;
  - (4) The recorded Declaration of Covenants, Conditions and Restrictions for the Project, including to the extent applicable all amendments and annexations thereto;
  - (5) The Association's filed Articles of Incorporation, if any, and all amendments, thereto;
  - (6) The Association's Bylaws and all amendments thereto;
  - (7) All architectural guidelines and all other rules regulating the use of an Owner's Unit in the Project or use of the common Area which have been promulgated by the Association;
  - (8) The plans approved by the local agency or County where the Project is located for the construction or improvement of facilities that the Association is obligated to maintain or repair; provided, however, that the plans need not be as-built plans and that the plans may bear appropriate restrictions on their commercial exploitation or use and may contain appropriate disclaimers regarding their accuracy;
  - (9) All notice of completion certificates issued for Common Area improvements (other than residential structures);
  - (10) Any bond or other security device in which the Association is the beneficiary;
  - (11) Any written warranty being transferred to the Association for common Area equipment, fixtures or improvements;
  - (12) Any insurance policy procured for the benefit of the Association, its Board of Directors or the Common Area;
  - (13) Any lease or contract to which the Association is a party;
  - (14) The membership register, including mailing addresses and telephone numbers, books of account and minutes of meetings of the members, of the Board of Directors and of committees of the Board of Directors of the Association;
  - (15) Any instrument not described above which establishes or defines the common, mutual or reciprocal rights or responsibilities of members of the Association;
- b. The membership register, including mailing addresses and telephone numbers, books of account, and minutes of meetings of the members,

of the Board of Directors and of committees of the Board, shall be made available for inspection and copying by any member of the Association, or by his duly appointed representative, at any reasonable time and for a purpose reasonably related to his interest as a member, at the office of the Association. The Board shall establish reasonable rules with respect to: (1) notice to be given to the custodian of the records by the member of the Association desiring to make the inspection; (2) hours and days of the week when such inspection may be made; and (3) payment of the cost of reproducing copies of documents requested by a member of the Association. Every member of the Board of Directors shall have the absolute right, at any reasonable time, to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a member of the Board includes the right to make extracts and copies of documents.

5. Taxes. Each Owner shall pay any real and personal property taxes separately assessed against his Unit and all utility charges separately metered or charged against his Unit, and such payment shall be made by each Owner in addition to and separately from assessments otherwise payable to the Association by such Owner.

6. Enforcement of Declaration and Bylaws.

a. Subject to the restrictions and guidelines set forth in Article XXIII, the Board of Directors acting on behalf of the Owners, and any aggrieved Unit Owner, shall be entitled to bring legal action for damages against any Unit Owner who shall become delinquent in the performance of any of the provisions hereof, the Bylaws or rules and regulations adopted by the Board of Directors for the protection of the Project, including, but not limited to, the covenant to pay assessment charges. Further, said persons shall be entitled to enjoin any violation of said documents, rules and regulations and shall be entitled to prosecute any other legal or equitable action that may be necessary to protect the Project. If any Owner, member of the Board of Directors or the Board of Directors shall deem it necessary to initiate any legal or equitable action for the protection of the Project against any Owner, then said persons shall be entitled to reasonable attorneys' fees and costs of said action from said Owner for expenses incurred in bringing or initiating the action. Any judgment rendered against any such defaulting Owner shall include costs of said action, together with reasonable attorneys' fees in an amount to be fixed by the Court. Unit Owners shall also have similar rights of action against the Association.

Notwithstanding the foregoing, there shall be no purported power in the Association to cause a forfeiture or abridgment of an Owner's rights to the full use and enjoyment of his individually owned Unit because of a failure by an Owner to comply with the provisions of this Declaration, Bylaws or duly enacted rules of operation for the Common Area and facilities, except where the forfeiture or abridgment is the result of the judgment of a court or a decision arising out of arbitration or because of a foreclosure sale for failure of the Owner to pay assessments levied by the Association.

b. The Board of Directors may impose monetary penalties, and/or temporary suspensions of an Owner's rights as a member of the Association and/or other appropriate discipline for failure to comply with the governing instruments as provided for in the Bylaws.

(1) Written notice shall be given to the member at least fifteen (15) days prior to the date of expulsion, suspension, or termination;

(2) The written notice shall set forth the reasons for expulsion, suspension, or termination;

(3) The notice shall provide for a hearing to be held orally, or a written response to be heard, not less than five (5) days before the effective date of the expulsion, suspension or termination by the Board of Directors;

(4) Written notice may be given by any method reasonably calculated to provide actual notice; however, any notice given by mail must be by first class, certified, or registered, sent to the last address of the member shown on the Association records.

7. Liberal Interpretation of Declaration. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of the Project for the mutual benefit of all Owners.

8. Severability of Provisions. The provisions herein shall be deemed independent and severable and the invalidity or partial invalidity or unenforceability of any of the provisions herein, shall not affect the validity of the remaining provisions.

9. Cumulative Remedies. Each and all legal or equitable remedies provided for herein, shall be deemed to be cumulative, whether so expressly provided for or not.

10. Successor and Assigns. This Declaration shall be binding on and shall inure to the benefit of the heirs, personal representatives, successors and assigns of Declarant, and the heirs, personal representatives, grantees, lessees and assignees of the Owners.

11. Waiver of Breach of Declaration. No waiver or any breach of any of the covenants, conditions or restrictions herein contained shall constitute a waiver of any succeeding or preceding breach of the same or any other covenant, condition or restriction contained herein.

12. Joint and Several Liability. In the case of joint Ownership of a Unit, the liability of each of the Owners thereof in connection with the liabilities and obligations of Owners set forth in or imposed by this Declaration, shall be joint and several

13. Delivery of Notice and Documents. Any written notice or other document required by this Declaration, may be delivered personally or by mail. If by mail, such notice shall be deemed to be delivered and received, unless expressly provided for herein and in the Bylaws to the contrary as to the type of notice being given, forty-eight (48) hours after a copy thereof has been deposited in the United States mail, postage prepaid, addressed as follows:

a. If to an Owner other than Declarant, to the address of any Unit on the Project owned by him in whole or in part, or to the address last furnished by such Owner to the Board of Directors. Each Owner, other than Declarant, shall file in writing with the Board of Directors promptly upon his becoming an Owner, his address for the purpose of giving notice and delivery of documents and shall promptly notify the Board of Directors, in writing, of any subsequent change of address.

b. If to Declarant, whether in Declarant's capacity as an Owner or otherwise to the address provided by the Declarant to the Association for the purpose of such notice.

c. Prior to the organizational meeting, notice to the Board of Directors shall be addressed as set forth in b. above and thereafter, addressed to the Secretary of the Association. The Board of Directors shall cause the address of the Secretary to be posted at all times in a conspicuous place. Further, from and after the organizational meeting, notice of the address of the Association Secretary shall be given to each Owner within a reasonable time after the Board of Directors has received actual notice of such purchase of a Condominium.

14. Notification of Sale of Condominium. Concurrently with the consummation of the sale of any Condominium under circumstances whereby the transferee becomes an Owner thereof, or within five (5) business days thereafter, the transferor shall notify the Board of Directors in writing of such sale. Such notification shall set forth: (a) the name of the transferor and his transferee; (b) the street address or Unit number of the Condominium purchased by the transferee; (c) the transferee's mailing address; and (d) the date of sale. Prior to receipt of such notification, any and all communications required or permitted to be given by Declarant or the Board of Directors or any agent or representative thereof, shall be deemed to be duly made and given to said transferee's transferor.

15. Provision of Documents to Prospective Purchasers.

a. The Owner of a Unit shall, as soon as practicable before transfer of title to the Unit or execution of a real property sales contract therefore, as defined in Civil Code Section 2985, provide the following to the prospective purchaser:

- (1) A copy of the governing documents for the Project;
- (2) A copy of the most recent financial statement distributed pursuant to Section 2.o. of Article VI, page 14 hereinabove;

(3) A true statement in writing from an authorized representative of the Association as to the amount of the Association's current regular and special assessments and fees, as well as any assessments levied upon the Owner's Unit which are unpaid on the date of the statement. The statement shall also include true information on late charges, interest, and costs of collection which, as of the date of the statement, are or may be made a lien upon the Owner's Unit pursuant to Section 9 of Article VII hereinabove;

(4) Any change in the Association's current regular and special assessments and fees which have been approved by the Association's Board, but have not become due and payable as of the date disclosure is provided pursuant to this Section;

b. Upon written request, the Association shall, within ten (10) days of the mailing or delivery of the request, provide the Owner of a Unit with a copy of the items requested above. The Association may charge a fee for this service, which shall not exceed the Association's reasonable cost to prepare and reproduce the requested items;

c. The Association shall not impose or collect any assessment, penalty, or fee in connection with a transfer of title or any other interest except the Association's actual costs to change its records and that authorized by Section b. above;

d. Any person or entity who willfully violates this Section shall be liable to the purchaser of a Unit which is subject to this Section for actual damages occasioned thereby and in addition, shall pay a civil penalty in an amount not to exceed Five Hundred Dollars (\$500.00). In an action to enforce this liability, the prevailing party shall be awarded reasonable attorneys' fees.

e. Nothing in this Section affects the validity of title to real property transferred in violation of this Section.

## ARTICLE XII UTILITIES

1. Utility Rights. The rights and duties of the Owners with respect to lines for sanitary sewer, water, gas, electricity, telephone cables and air conditioning, shall be governed by the following:

a. Wherever sanitary sewer house connections and lines or electricity, gas, telephone, air conditioning lines or television cables are installed within the Project, which connections or any portion thereof lie in or on portions of the Project owned by others than the Owner of a Unit served by said connections, the Owners of any Unit served by said connections shall have the right, and are hereby granted an easement to the full extent necessary therefore, to enter on such portion of the Project or to have the utility companies enter thereon to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below.

b. Whenever sanitary sewer house connections and lines, facilities and/or water house connections and lines, or electricity, gas, telephone, air conditioning lines or television cables are installed within the Project, which connections serve more than one Unit, the Owners of each Unit served by said connections shall be entitled to the full use and enjoyment of such portions of said connections as serve his Unit.

c. In the event any portion of said connection, facility or line is damaged or destroyed through the negligent act or acts or failure to act, or willful misconduct of one Owner, or any of his agents, invitees, tenants, servants, guests or members of his family, so as to deprive other Owners of the full use and enjoyment of said connection, facility or line, the same shall be repaired by the Association but at the expense of the Owner who commits or whose guests, agents or family members commit such act or acts.

d. In the event any portion of such connection or line is damaged or destroyed by some cause other than the negligence or willful misconduct of one of the Owners, his family members, agents, guests, servants, tenants or invitees, (including ordinary wear and tear and deterioration from lapse of time), then in such event such connection, facility or line shall be repaired and restored by the Board of Directors, such repair and restoration to be paid out of assessments levied in accordance with this Declaration equally against all Owners.

e. In the event of a dispute between Owners with regard to the repair or rebuilding of said connection, facility or line, or with regard to the sharing of the cost thereof, then on written request of one of such Owners, addressed to the Association, the matter shall be submitted to the Board of Directors for a final and binding determination.

2. Easements. Easements through the Units and Common Area for all facilities for the furnishing of utility services, television cable service, heating and air conditioning (if any) lines within any Unit, which facilities shall include, but not be limited to, conduits, ducts, plumbing and wiring, shall be appurtenant to each Unit and all other Units and Common Area shall be subject thereto; provided that easements for such facilities shall at all times be and remain substantially in accordance with the initial construction of the Project, or the Project as reconstructed after damage or destruction pursuant to the terms of this Declaration.

3. Utility Easements Over Private Street and Other Areas. If the Project contains private streets, provisions shall be made for public utility easements in or adjacent to such private streets, adjacent to public streets or over other portions of the Project to accommodate fire hydrants, water meters, street furniture, storm drainage, sanitary sewers, water and gas mains, electrical lines and similar urban infrastructure. Provisions shall also be made for access routes necessary to assure that fire fighting equipment can reach and operate efficiently in all areas of the Project.



ARTICLE XIII  
DESTRUCTION OF IMPROVEMENTS

1. Reconstruction with Election of Owners. In the event of partial or total destruction of the improvements on the Project, a special meeting shall be called for the purpose of having the Association members vote on whether or not to repair the damage. Said meeting shall be called within forty-five (45) days of said destruction. If reconstruction is to take place, as approved by the Owners of a majority of the Units, the Board of Directors shall be required to execute, acknowledge, file and record not later than one hundred twenty (120) days from the date of said destruction, a certificate declaring the intention of the Owner to rebuild.

2. Reconstruction Assessments. If a majority of the Owners determine to rebuild, each Owner shall be obligated to contribute such funds as shall be necessary to pay his proportionate share of the reconstruction costs over and above the insurance proceeds and the proportionate share of each Owner shall be levied upon the basis of the ratio of the square footage of floor area of the Unit to be assessed to the total square footage of floor area of all Units to be assessed. In the event of failure or refusal by any Owner to pay his proportionate share after notice to him, should failure or refusal continue for a period of sixty (60) days, the Board of Directors may levy a special assessment against such Owner which may be enforced under the lien provisions contained in this Declaration.

3. Obligation of the Board of Directors. If the Owners of a majority of the Units determine to rebuild, the Board of Directors shall obtain bids from at least two (2) reputable contractors and shall award construction work to the lowest bidder. The Board of Directors shall have authority to enter into a written contract with said contractor for such reconstruction work and the insurance proceeds held by the Board of Directors shall be disbursed to said contractor according to the terms of the contract. It shall be the obligation of the Board of Directors to take all steps necessary to insure the commencement and completion of such reconstruction at the earliest possible time.

4. Determination Not to Rebuild. If the Owners of a majority of the Units elect not to rebuild:

a. Subject to the rights of Mortgages as outlined in Article XVII, any distributed proceeds available shall be distributed amongst the Owners and their respective lenders by the Board of Directors according to each Owner's interest in the Project according to the respective fair market values of the Units at the time of the destruction as determined by an independent appraiser who shall be chosen by the Board of Directors. In the event that a majority of the Owners determine, in addition to the receipt of any available insurance proceeds to sell any or all of the Project's property which is not destroyed and is marketable, the Board of Directors shall do so only after obtaining a market appraisal based on the highest and best use or value of the property to be sold and setting the asking price in accordance therewith. Proceeds from the sale of any such property shall be distributed to each of the Owners in accordance with each Owner's fractional interest in the Common Area of the Project as defined in the Condominium Plan.



If the Owners of a majority of the Units elect to rebuild, the Board of Directors shall file and record a certificate as provided in Section 1 hereinabove.

b. The Board of Directors shall have the duty, within one hundred twenty (120) days of the date of such loss, to execute, acknowledge and record a certificate setting forth the determination of the Owners not to rebuild, and shall promptly cause to be prepared and filed, such revised maps and other documents as may be necessary to show the conversion of the Project to the status of unimproved land or to show the elimination of one or more of the Units as a result of such destruction.

5. Revival of Right to Partition Condominium. Upon the recordation of such certificate, the right of any Owner to partition his Condominium through legal action shall forthwith revive.

6. Arbitration of Disputes. In the event of a dispute among the Owners with regard to the provisions of this Article XIII, any Owner may cause the same to be referred to arbitration in accordance with the then prevailing rules of the American Arbitration Association. In the event of arbitration, notice thereof shall be given to members of the Board of Directors and all Owners as promptly as possible after reference to arbitration is made, giving all Owners an opportunity to appear in such arbitration proceedings. The decision of such Arbitrator in this matter shall be final and conclusive on all Owners. The Arbitrator may include in his decision, an award for the costs and/or attorney's fees against any one or more of the parties to the arbitration.

7. Condemnation. In the event an action for condemnation is proposed or commenced by any governmental body having the right of eminent domain, the following provisions shall apply: if such action or proposed action is for the condemnation of the entire Project, or a portion thereof, upon unanimous consent of all Owners the Project may be sold to such government body prior to judgment and the proceeds of such sale shall be distributed to the Owners and their respective Mortgagees according to the relative values of the Condominium Units affected by the condemnation as determined by an independent appraiser who shall be chosen by the Board of Directors. A condemnation award affecting all or part of the structural Common Area of the Project, which is not apportioned among the Owners by court judgment or by agreement between the condemning authority and each of the affected Owners in the Project, shall be distributed among the affected Owners and their respective Mortgagees according to the relative values of the Condominium Units affected by the condemnation as determined by independent appraisal of the market value based on the highest and best use or value of the property.

#### ARTICLE XIV SUSPENSION OF THE RIGHT TO PARTITION

1. Except as provide in this Article, the Common Areas in this Project shall remain undivided, and there shall be no judicial partition thereof. Nothing in this Article shall be deemed to prohibit partition of a cotenancy in a Unit.

2. The Owner of a separate Unit may maintain a partition action as to the entire Project as if the Owners of all of the separate Units in the Project were tenants in common in the entire Project in the same proportion as their interests in the Common Areas. The court shall order partition under this Section only by sale of the entire Project and only upon a showing of one of the following:

a. More than three (3) years before the filing of the action, the Project was damaged or destroyed, so that a material part was rendered unfit for its prior use, and the Project has not been rebuilt or repaired substantially to its state prior to the damage or destruction;

b. Three fourths (3/4<sup>th</sup>) or more of the Project is destroyed or substantially damaged and Owners of separate Units holding in the aggregate more than a fifty percent (50%) interest in the Common Areas oppose repair or restoration of the Project;

c. The Project has been in existence more than fifty (50) years, is obsolete and uneconomic, and Owners of separate Units holding in the aggregate more than a fifty percent (50%) interest in the Common Areas oppose repair or restoration of the Project;

d. The conditions for such a sale, set forth in Article XIII hereinabove, have been met.

ARTICLE XV  
PROHIBITION AGAINST SEVERABILITY  
OF COMPONENT INTEREST IN UNITS

1. Prohibition of Severance. No Owner shall be entitled to sever either his Unit or any appurtenant easements thereto from his undivided interest in the Common Area for any purpose. Neither of said component interests may be severally sold, conveyed, encumbered, hypothecated or otherwise dealt with, and any violation or attempted violation of this provision shall be void and of no effect.

2. Conveyance of Entire Condominium. Subsequent to the initial sales of the Units, any conveyance of a Unit, or component interest in the Common area by the Owner of any Unit, shall be presumed to convey the entire Condominium, provided that nothing herein contained shall be construed to preclude the Owner of any Unit from creating a co-tenancy in the Ownership of said Condominium with any other person(s).

ARTICLE XVI  
TERM OF DECLARATION COMPLIANCE WITH RULE  
AGAINST PERPETUITIES AND RESTRAINT OF ALIENATION

The covenants contained herein shall run with the land and shall be binding on all parties and all persons claiming under them until January 1, 2050, after which time, the covenants shall be automatically extended for successive periods of twenty-one (21) years unless an instrument, executed by the Owners of not less

than a majority of the Condominiums, shall be recorded, canceling or terminating this Declaration.

ARTICLE XVII  
PROTECTION OF LENDERS

1. Written Notification to First Mortgages. A first Mortgagee, upon request, is entitled to written notice from the Board of Directors of any default in the performance by an individual Unit Mortgagor of any obligation under this Declaration, the Bylaws and Articles of Incorporation, if any, which is not cured within sixty (60) days. It shall be the responsibility of each Owner of a Unit to notify the Association within thirty (30) days of the close of his escrow to purchase his Unit of the name and address of the holder of his first Mortgage on his particular Unit. In addition, timely written notice shall be given of:

a. Any condemnation of casualty loss that affects either a material portion of the Project or the Unit securing its Mortgage;

b. Any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of any Unit on which it holds the Mortgage;

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

d. Any proposed action that requires the consent of a specified percentage of eligible Mortgage holders.

2. Exemption from Right of First Refusal. Any first Mortgagee which comes into possession of the Unit pursuant to the remedies provided in the Mortgage, by foreclosure of the Mortgage or by deed or assignment in lieu of foreclosure, shall be exempt from any right of first refusal, or any restriction on leasing (except as provided in Article VIII, Section 22) or any similar restrictions.

3. Subordination of Assessment Lien to Mortgages. Any holder of a first Mortgage shall take the property free of any claim for unpaid assessments or charges against the Mortgaged Unit which accrue prior to the time such person comes into possession of the Unit, except for claims for a pro-rata share of such assessments or charges resulting from a pro-rata reallocation thereof to all Units in the Project including the Mortgaged Unit. The lien for assessments provided for herein shall be subordinate to the lien of any first Mortgage now or hereafter placed on the properties subject to assessment. A sale or transfer pursuant to a decree of foreclosure or trustee's sale shall not relieve such property from liability for any assessments thereafter becoming due nor from the lien of any such subsequent assessment.

4. Leasing. No Unit Owner shall lease a Unit for transient or hotel purposes. Any lease agreement between a Unit Owner and a lessee shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration and Association Bylaws and the Rules and

Regulations of the Association, and that any failure by a lessee to comply with the terms of such documents shall be a default under the lease.

5. Prior Approval of First Mortgage Holders. The Association shall give written notice to each institutional holder of a first Mortgage lien on Units in the Project of any material amendment to this Declaration and/or the Association Bylaws; including, but not limited to, any amendment which would change the percentage interests of the Unit Owners in the Project. Unless the holders of first Mortgages encumbering seventy-five percent (75%) of the Units in the Project that are then encumbered by first Mortgages have given their written approval, neither the Association nor the Owners shall:

a. By act or omission seek to abandon or terminate the Condominium regime;

b. Change the pro-rata interest or obligation of any Unit for purposes of levying assessments or charges, or allocating distributions of hazard insurance proceeds or condemnation awards; and for determining the pro-rata share of Ownership of each Unit in the Common Area;

c. Change, waive or abandon, by act or omission, any scheme of regulation or enforcement thereof pertaining to the architectural design or exterior appearance of any Units, exterior maintenance of Units, maintenance of driveways or upkeep of landscaping in the Project;

d. Partition or subdivide any Condominium;

e. Subject to the provisions of California Corporations Code Section 8724, attempt to abandon, partition, subdivide, encumber, release, hypothecate, sell or transfer, by act or omission, the Common Area; the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area by the Project shall not be deemed a transfer within the meaning of this subsection;

f. Fail to maintain fire and extended coverage on insurable Project common property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement costs); or

g. Use hazard insurance proceeds for losses to any Project common property for other than repair, replacement or reconstruction of such improvements; or

h. Amend this Declaration in any manner that would or might adversely affect the rights hereunder of the holder of a first mortgage on any Unit in the Project.

6. Examination of Books and Records. The holders of first Mortgages shall have the right to examine the books and records of the Association and shall have the right to have prepared at its own expense an audited statement of the

Association's preceding fiscal year, if one has not been prepared by the Association.

7. Taxes, Assessments and Charges. All taxes, charges and assessments which may become liens prior to first Mortgages under local law, shall relate only to the individual Units and not to the Project as a whole. First Mortgagees of Units may jointly and singly pay taxes or other charges which are delinquent and which may or have become a charge against the common property, and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for such property, and first Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

8. Reserves for Replacement. An adequate reserve fund for replacement of the Common Area facilities must be established by the Association and must be funded by regular monthly assessments, and not by special assessments.

9. No Priority Over Rights of First Mortgages. No provision herein shall give a Unit Owner or any other party priority over any rights of first Mortgagees of Units pursuant to their Mortgages in the case of a distribution to Unit Owners of insurance proceeds or condemnation awards for losses to or a taking of Units and/or the Common Area. Such first Mortgagees shall be entitled to timely written notice of such damage or destruction, if such loss or taking exceeds \$10,000.00 for the Project as a whole or damage to any single Unit exceeds \$1,000.00. Additionally, if any Unit or portion thereof, or the Common Area and facilities, or any portion thereof, is made the subject matter of any condemnation or eminent domain proceeding, no provision herein shall entitle the Owner of a Unit or any other party to priority over a first Mortgage of a Unit with respect to any distribution to such Unit of the proceeds of any award or settlement. Such first Mortgagees shall be entitled to timely written notice of any such proceedings or proposed acquisition.

10. Further Notice to Lenders.

a. Upon request, the Association shall give written notice to any first Mortgagee of all meetings of the Association. Each such first lien holder shall have the right to be represented at such meeting, but shall have no voting rights unless it has succeeded to title to one or more of the Units by foreclosure or otherwise.

b. Upon request, the Association shall deliver to each such first Mortgagee, a copy of the Association's annual audited statement within ninety (90) days after the end of the Association's fiscal year.

11. Professional Management of Project. Any agreement for professional management of the Project shall provide that management contracts may be terminated, with or without cause, upon thirty (30) days, or less, written notice and must not require the payment of any penalty. The term of any such contract shall not exceed one (1) year. In the event the Association first hires professional management and assumes self-management of the Project, each institutional

holder of a first Mortgage lien on Units in the Project shall be entitled to timely written notice thereof.

12. Conflict. If there is any conflict between any provisions of this Article XVII and any other provisions in this Declaration or Association Bylaws, the language contained in this Article XVII shall control.

13. Amending Article. Notwithstanding the foregoing, any amendment to this Article shall require the consent of the holders of first Mortgages encumbering seventy-five percent (75%) of Units in the Project that are then encumbered by first Mortgages.

## ARTICLE XVIII BREACH

1. Right of Entry. Violation of any of the covenants, conditions, restrictions, limitations, easements, rights, rights of way, reservations, liens, charges and equitable servitudes contained herein, shall give to Declarant, or its successors, or to the Association, the right to enter the property upon or as to which such violation exists and to abate and remove, at the expense of the Owner thereof, any thing or condition that may be or exists thereon contrary to the intent and meaning of the provisions of this Declaration. Such entry shall be made only after notice to said Owner as provided in Article XI, Section 1 and with as little inconvenience to said Owner as possible. Any damage caused by such entry shall be repaired by the Association. Declarant or its successors shall not thereby be deemed guilty of any manner of trespass by such entry, abatement or removal.

2. Nuisance. The result of every act or omission whereby any covenant, condition, restriction, limitation, easement, right, right of way, reservation, lien, charge and equitable servitude herein contained is violated, in whole or in part, is hereby declared to be a nuisance, and every remedy allowed at law or in equity against every such result and may be exercised by Declarant or its successors, or by the Association. Such remedy shall be deemed cumulative and not exclusive.

3. Right of Lien Holder. A breach of any of the covenants, conditions, restrictions, limitations, easements, rights, rights of way, reservations, liens, charges and equitable servitudes herein contained shall not affect or impair the lien or charge of any bona fide first Mortgage or first deed of trust made in good faith and for value on any of the Units, provided that any subsequent Owner of the Units shall be bound by this Declaration and the Association Bylaws whether such Owner's title was acquired by foreclosure, trustee's sale or otherwise.

4. Enforcement. In the event of a breach of any of the provisions of this Declaration or the Association Bylaws which is continued for thirty (30) consecutive days, the Board of Directors may enforce any and all of the terms and conditions of this Declaration. It is hereby declared that damages at law for such breach are inadequate. The restrictions provided for herein shall be enforceable equitable servitudes and shall inure to and bind all Owners of the Units.

ARTICLE XIX  
AMENDMENTS

1. Written Approval. Subject to the other provisions of this Declaration, including, without limitation, the rights of Mortgagees pursuant to Article XVII hereof, this Declaration may be amended as follows:

a. So long as there are two classes of membership, any amendment to this Declaration shall require the affirmative written assent or vote of sixty-seven percent (67%) of each Class of members of the Association. After conversion of Class B membership to Class A membership, any amendment to this Declaration shall require the affirmative written assent or vote of not less than sixty-seven percent (67%) of the total voting power of the Association and sixty-seven (67%) of the voting power of the members of the Association other than Declarant.

b. Notwithstanding the foregoing, any provision of this Declaration which expressly requires the approval of a specified percentage of the voting power of the Association for action to be taken under said provision can be amended only with the affirmative vote or written assent of not less than the same percentage of the voting power of the Association.

2. Amendments of a Material Nature. Amendments of a material nature to this Declaration shall require the written approval of Owners of Condominiums as stated hereinabove as well as the approval of holders of first Mortgages representing at least seventy-five percent (75%) of the Units subject to Mortgages. A change of any of the following would be considered material:

- a. Voting rights;
- b. Increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens, or the priority of assessment liens;
- c. Reductions in reserves for maintenance, repair and replacement of Common Areas;
- d. Responsibility for maintenance and repairs;
- e. Reallocation of interests in the general or limited Common Area, or right to their use;
- f. Redefinition of any Unit boundaries;
- g. Convertibility of Units into Common Areas or vice versa;
- h. Expansion or contraction of the Project, or the addition, annexation or withdrawal of property to or from the Project;
- i. Hazard or fidelity insurance requirements;
- j. Imposition of any restrictions on the leasing of Units;
- k. Imposition of any restrictions on a Unit Owner's right to sell or transfer his Unit;
- l. A decision by the Association of a Project that consists of fifty (50) or more Units to establish self management if professional management has been required previously by an eligible Mortgage holder;
- m. Restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in the documents;



- n. Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; or
- o. Any provisions that expressly benefit Mortgage holders, insurers or guarantors.

When Unit Owners are considering termination of the legal status of the Project for reasons other than substantial destruction or condemnation of the Project, the eligible Mortgage holders representing at least seventy-five percent (75%) of the votes of the Mortgaged Units must agree.

If an addition or amendment is not considered as a material change – such as the correction of a technical error or the clarification of a statement – this Declaration shall provide for implied approval to be assumed when an eligible Mortgage holder fails to submit a response to any written proposal for an amendment within thirty (30) days after the proposal is made.

3. VA Approval. In the event any Unit in the Project is subject to VA financing and there is a Class B membership in existence, any amendment to this Declaration shall require the prior approval of VA.

4. Amending Declaration. Any amendment to this Declaration shall not be effective for any purpose unless and until recorded in the office of the County Recorder but, shall thereafter give rise to a conclusive presumption of validity as to anyone relying thereon in good faith.

ARTICLE XX  
RIGHT OF PUBLIC ENTRY TO COMMON AREA

The City, the County, the State of California, and the Government of the United States, and any department, bureau, or agency thereof, shall have the right to immediate access to all portions of the Common Areas not assigned for the exclusive use of the Owner of a particular Unit at all times, for the purpose of preserving of the public health, safety and welfare, except in those instances where a Common Area is accessible only through a private Unit. Notice of such right of governmental agency shall be prominently displayed in the Common Area.

ARTICLE XXI  
ANNEXATION OF ADDITIONAL PHASES

1. Right to Annex.

a. Declarant has and shall have the absolute right to impose this Declaration upon any one or more Phases of the Annexation Property, and when accomplished in the manner set forth hereinafter, this Declaration shall be of the same force and effect with respect to such Phase from and after the date of such imposition as if such real property or any portion thereof, was originally subject to this Declaration. Declarant must annex any future phase of the Annexation Property to the Association prior to the sale of any Condominium Unit in that Phase. Thereafter, such Phase shall be considered a part of the Project and such

property and such improvements as may be constructed thereon shall thereafter be considered as part of the Project as those terms are used in this Declaration.

b. No property other than the Annexation Property shall be so annexed to the Project unless at least 66-2/3<sup>rd</sup>% of the total votes residing in the Association (other than votes of the Declarant) shall have first been cast in favor of such annexation by ballot or written assent and the Annexation Property shall be annexed unless at least said 66-2/3<sup>rd</sup>% of the total votes residing in the Association other than Declarant shall have first been cast in favor of such annexation by ballot or written assent, if the proposed annexation is not in substantial conformance with a detailed plan of phased development submitted to the California Department of Real Estate with the application for a Public Report for the first phase. Said Plan shall include but not be limited to the following:

(1) Proof, satisfactory to the Commissioner of the Department of Real Estate that no proposed annexation will result in an overburdening of the common facilities;

(2) Proof to the Commissioner that no proposed annexation will cause a substantial increase in assessments against existing Owners which was not disclosed in the Subdivision Public reports under which pre-existing Owners purchased their Units;

(3) Identification of the land proposed to be annexed and the total number of residential Units then contemplated by the Declarant for the overall subdivision development;

(4) Provisions requiring that the Annexation of a new phase be effected prior to the third anniversary of the issuance of the original Public Report for the immediately preceding phase;

(5) A written commitment by the Declarant to pay to the Association, concurrently with the closing of escrow for the first sale of a Unit in an annexed Phase, appropriate amounts for reserves for replacement.

## 2. Annexation Period.

a. Annexation shall be accomplished, if at all, by the filing for record in the Official Records of the County of one or more (1) Condominium Plans, and (2) Declaration of Annexation with respect to the Annexation Property, any portion thereof or such other property. In the case of Annexation by Declarant pursuant to Section 1 above, such filings must be made on or before three (3) years after the date of the issuance of the original Final Subdivision Public Report issued by the California Department of Real Estate for the immediately preceding phase of development hereunder, but in no case later than seven (7) years after the date of recordation of this Declaration

b. Nothing contained herein shall be construed to permit expressly or by implication, Declarant to sell Units in the annexed increments

without first having obtained a Final Subdivision Public Report from the Department of Real Estate.

3. Commencement of Assessments. Following annexation of any Phase of the Annexation Property, regular assessments chargeable to Units within such Phase shall commence upon the first day of the month following the month in which the conveyance by the Declarant to an Owner of the first Condominium Unit within such Phase occurs. At the time of commencement of the regular assessments, (a) the duties and obligations of the Association to maintain the Common Area and such other areas as the Association is obligated to maintain within such Phase shall commence, (b) the anticipated authorized common expenses of the Association shall be adjusted to reflect the common expenses arising from such annexation and (c) the regular assessment upon each Unit within the Project then subject to regular assessment shall be accordingly adjusted so as to apportion all of the common expenses proportionately among such Units; provided, however, no reduction in the regular assessments will occur absent the vote of a majority of the Members of the Association.

4. Voting. Following annexation and prior to the commencement of the regular assessment of Condominium Units within the Annexation Property, no vote shall be attributable thereto. Upon commencement of the regular assessment, the record Owner, including Declarant, of such Condominiums shall be entitled to the voting rights set forth in this Declaration and the Bylaws.

5. No Amendment to this Article. No amendment, revocation, or rescission of this Article may be had prior to the conveyance by the Declarant of the last Condominium within the Project without the (a) written consent of the Declarant and (b) recording of such consent in the Office of the County Recorder.

6. Interest in Common Area. Upon annexation there shall be no modification of the interests of the Owners in the Common Areas as it existed prior to such annexation. Owners of Units within the Phase to be annexed shall be entitled to receive for each Unit so owned an interest as a tenant-in-common in the Common Area within such Phase which is equal to the fraction whose numerator is one (1) and whose denominator is the number of Units within such phase.

7. Delivery of Documents. Commencing not later than ninety (90) days after the annexation of additional phases to the Project, copies of those documents listed in Article XI, Section 4.a. which are applicable to that phase, shall, as soon as readily obtainable, be delivered by Declarant to the Board of Directors at the office of the Association, or at such other place as the Board shall prescribe. The obligation to deliver said documents shall apply to any documents obtained by Declarant no matter when obtained, provided, however, such obligation shall terminate upon the earlier of: (a) the conveyance of the last Unit covered by a Subdivision Public Report, or (b) three years after the expiration of the most recent Public Report on the Project.

ARTICLE XXII  
PROTECTION OF THE PROJECT FROM LIENS

1. Association to Defend Certain Actions. In the event a lawsuit is brought against all or substantially all of the members within the Project which will or could result in any lien or encumbrance being levied against the Project, the Association shall defend such lawsuit and the costs of such defense may be a Special Assessment against all of the Members in the Project; provided, however, in the event an insurance carrier is obligated to provide such defense under a policy of insurance carried by the Association, the Association shall be relieved of the obligation to provide such defense. Nothing contained herein shall in any way limit the rights of any Member or Members to retain counsel of their choice to represent them in such lawsuit at their own expense. In the event a Member chooses to retain counsel, he shall not be relieved of liability for any Special Assessment imposed pursuant to this Article.

2. Payment of Lien. In the event a lien or encumbrance not covered by Section 1369 of the California Civil Code or any similar statute then in effect attaches to all or substantially all of the Project by reason of a judgment of otherwise, the Association shall promptly take the appropriate steps to remove such lien, including but not limited to the payment of money and the posting of a bond. The Association shall have the power to borrow money and to take such other steps as are necessary to free the Project from such liens.

3. Owners to be Specially Assessed. Simultaneously with any action taken pursuant to Section 2 above, the Association shall levy a Special Assessment against all of the Members whose Condominium Units were subject to the lien or encumbrance which caused the Association to act pursuant to said Section equal to each such Member's pro rata share of such lien or encumbrance as determined by the Board. In the event such Special Assessment is not paid within thirty (30) days of its due date, the Board may resort to all remedies of the Association for collection thereof, including those set forth in Article VII, Section 9 thereof.

4. Reimbursement by Certain Owners. In the event it shall be proven in a court of law of competent jurisdiction over the claim or claims causing the Association to take action under this Article that a judgment resulting in a lien on all or a portion of a Project was primarily due to the acts or omissions of a particular Member or Members or the families or invitees thereof, such Member or Members shall reimburse the Association for all expenses incurred by it pursuant to the provisions of this Article. Upon such reimbursement, the Association shall distribute the funds received to the member against whom Special Assessments were levied pursuant to the provisions of this Article. In the event such member or Members fail to make such reimbursement, the Association shall levy a Penalty Assessment against such Member or Members equal to such Member's pro rata share of such expenses as determined by the Board.

ARTICLE XXIII  
DISPUTE RESOLUTION

THIS ARTICLE XXIII CONTAINS PROVISIONS REQUIRING BINDING ARBITRATION FOR ALL DISPUTES WITH DECLARANT WITH NO JURY TRIAL.

1. Non-Adversarial Procedure for Statutory Construction Claims. Any claims or disputes for construction defects pursuant to California Civil Code Sections 895, et sec., with the exception of any claims brought under any warranty provided by Declarant shall, prior to the initiation of any mediation, arbitration or other proceeding, be subject to the non-adversarial procedures set forth in Civil Code Section 910 through 938 ("Non-Adversarial Procedures"). These procedures impact the legal rights of Owners with respect to the Project. According to the terms of the Civil Code, the non-adversarial procedures will not apply if Declarant does not or cannot comply with the requirements set forth therein if a claim arises. If the non-adversarial procedures provided by Civil Code Sections 910 through 938 fail to resolve any claim of construction defect, such claim shall be resolved in accordance with the procedures set forth in Section 2 below.

2. Dispute Notification and Resolution Procedures (Disputes with Declarant). Any disputes between the Association (or Owners and Declarant, or any Director, officer, partner, employee, manager, contractor, subcontractor, or agent of Declarant relating to the Declaration or the use or condition of the Project, and/or the construction and installation of any Improvements located thereon not otherwise subject to the provisions of California Civil Code Section 1375, shall be subject to the following claim resolution provisions:

a. Notice. Any person with a claim ("Claimant" herein) against Declarant or any Director, officer, partner, manager, employer, subcontractor or agent thereof (collectively the "Declarant" for purposes of this Section), shall notify the Declarant in writing of the claim which shall describe the nature of the claim and the proposed remedy ("the Claim Notice").

b. Right to Inspect and Take Corrective Action. Within a reasonable period of time after receipt by Declarant of the Notice of Alleged Defect, which period shall not exceed sixty (60) days, Declarant and the Claimant shall meet at a mutually acceptable location within or approximate to the Project to discuss the claim. Declarant shall have full access to the property that is subject to the claim for purposes of inspecting the property. The parties shall negotiate in good faith in an attempt to resolve the claim. If Declarant elects to take any corrective action, Declarant shall be provided full access to and through the Project to take and complete such corrective actions.

c. Civil Code Section 1368.4 and 1375. Nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code Section 1368.4. If the compliance with the procedures of Civil Code Section 1375 as it may be amended from time to time, requirements of Sections a. and b. above.

d. Nonbinding Mediation. If the parties cannot resolve the claim pursuant to the procedures described in Section b. above, then, if the parties agree, the matter may be submitted to nonbinding mediation pursuant to commercial mediation procedures adopted by the American Arbitration Association or any other entity offering mediation services that is mutually acceptable to the parties. No person who has any financial or personal interest in the Project may serve as the mediator, except by written consent of all parties. Within the (10) days of the selection of the mediator, each party shall submit a brief memorandum setting forth its position with regard to the issues that remain unresolved. The party's pre-mediation memorandum may not be disclosed by the mediator to the other party without consent of the party submitting the same. The mediator shall have the right to schedule a pre-mediation conference and all parties shall attend unless otherwise agreed. The mediations shall be commenced within ten (10) days following the submittal of the pre-mediation memorandum. The mediation shall be held in Los Angeles County, California, or such other place as is mutually acceptable to the parties. The mediator shall have the discretion to conduct the mediation in such manner which the mediator believes is most appropriate for concluding a settlement of the claim. The mediator may conduct joint and/or separate meetings with the parties and to make oral or written recommendations for settlement. The mediator shall not, however, have the authority to impose a settlement on the parties. Prior to the commencement of the mediation session, the mediator and all parties to the mediation shall execute an agreement pursuant to California Evidence Code 1152.5 in order to exclude any information, testimony, admission or evidence produced in conjunction with the mediation and any subsequent dispute resolution forum. The expenses for witnesses of either party shall be paid by the party producing such witnesses. If the mediation involves Declarant, the Declarant shall advance fees necessary to initiate the mediation. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the expenses of any witnesses, or the cost of any proofs of expert advice produced at the direct request of the mediator shall be borne equally by the parties unless they agree otherwise.

e. Judicial Reference. Any unresolved disputes under Section b. above shall be resolved by general judicial reference pursuant to California Code of Civil Procedure Sections 638 and 641 through 645.1, or any successor and companion statutes thereto. The parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. Declarant shall not be required to participate in the judicial reference proceeding unless it is satisfied that all necessary and appropriate parties will participate. The parties shall share equally in the fees and costs of the referee, unless the referee orders otherwise.

The general referee shall have the authority to try all issues, whether of fact or law, and to report a statement of decision to the court. The parties shall use the procedures adopted by Judicial Arbitration and Mediation Services ("JAMS") for judicial reference and selection of a referee (or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the parties), provided that the following rules and procedures shall apply in all cases unless the parties agree otherwise:



California: (1) The proceedings shall be heard in Los Angeles County,

(2) The referee must be a retired judge or a licensed attorney with substantial experience in relevant real estate matters;

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

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

(5) The parties shall be entitled to discovery, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge;

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

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

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

The statement of decision of the referee upon all of the issues considered by the referee is binding upon the Parties, and upon filing of the statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon. The decision of the referee shall be appealable as if rendered by the court. This provision shall in no way be construed to limit any valid cause of action which may be brought by any of the parties.

f. Arbitration. In the event the provisions herein for judicial reference should be ruled invalid, unenforceable or inapplicable, then all unresolved disputes shall be submitted to binding arbitration in accordance with the rules adopted by JAMS and which shall be adopted and enforced in accordance with the philosophy and intent of the Federal Arbitration Act (9 United States Code Sections 1 through 16) which encourages the use of alternative dispute resolution procedures, and federal court decisions which have found that the Federal Arbitration Act: (i) is a Congressional declaration of a federal policy favoring arbitration agreements notwithstanding state policies or substantive or procedural requirements to the contrary; (ii) requires that federal and state courts rigorously enforce agreements to arbitration; (iii) requires the scope of alternative dispute resolution agreements to be interpreted broadly in favor of alternative dispute resolution (as opposed to a court or jury trial); and (iv) requires that disputes over whether an issue is arbitrable or not be resolved in favor of arbitration. Any references to California Civil Code Sections found in any limited warranty or other



applicable alternative dispute resolution provisions shall not waive any of the rights created by the Federal Arbitration Act.

g. Exceptions to Mediation and Judicial Reference. The procedures set forth in this Article XXIII shall apply only to disputes and shall not apply to any action taken by the Association against Declarant or any Owner for delinquent assessments, or in any action involving any surety bond posted by Declarant to secure its obligations for the payment of assessments or for the completion of the Common Area or the Project. Further, nothing in this Section shall be considered to toll, stay, reduce or extend any applicable statutes of limitation; provided, however, that the Association or any Owner shall be entitled to commence a legal action which, in the good faith determination of the Board or any Owner, is necessary to serve the Association's or the Owner's rights under any applicable statute of limitations, provided that neither the Association nor any Owner shall take further steps in prosecuting the action until it has complied with the procedures set forth in Sections c. and d. herein.

h. WAIVER OF JURY TRIAL AND RIGHT TO APPEAL. DECLARANT, AND BY ACCEPTING A DEED FOR ANY PORTION OF THE PROPERTY, THE ASSOCIATION AND EACH OWNER AGREE (i) TO HAVE ANY CONSTRUCTION DISPUTE DECIDED BY NEUTRAL JUDICIAL REFERENCE PROCEEDINGS IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT; (ii) TO GIVE UP ANY RIGHTS THEY MIGHT POSSESS TO HAVE THE CONSTRUCTION DISPUTE LITIGATED IN A COURT OR JURY TRIAL; (iii) TO GIVE UP THEIR RESPECTIVE RIGHTS TO APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE APPLICABLE ARBITRATION RULES OR STATUTES. IF ANY PARTY 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.

i. Use of Award Proceeds. In order to assure that sufficient funds are available to effect the proper construction, reconstruction, rehabilitation, repair and/or replacement of improvements within the Project, in the event any litigation, mediation, arbitration, judicial reference, settlement, administrative proceeding or other form of dispute resolution ("Proceeding") results in a settlement, award or monetary judgment ("Award") in favor of the Association against any contractor, sub-contractor, architect, materialmen or any other person or entity, including Declarant, involved in the planning, development, construction, sale and disposal of the Project, or any part thereof, the Award must be utilized by the Association solely and exclusively for the construction, reconstruction, rehabilitation, repair or replacement of those improvements in the Project which were the subject of such proceeding, less costs of suit, including reasonable attorney's fees, if any, as may be determined by the judge, arbitrator, mediator, referee or another person who administered the Proceeding. Notwithstanding the foregoing, such Award proceeds may be used for such other purposes as may be determined by the vote or written assent of (i) 75% of the total voting power of the Association, other than Declarant, and (ii) 70% of the

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration on the day and year indicated hereinabove.

ANASTASI DEVELOPMENT COMPANY, LLC,  
A CALIFORNIA LIMITED LIABILITY COMPANY

BY: Wayne G. Anastasi  
Wayne G. Anastasi, Chairman

State of California )  
County of Los Angeles ) ss.

On 12/4/07 before me, Sharon H. Ruiz, a Notary Public, personally appeared Wayne G. Anastasi, personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Sharon H. Ruiz



EXHIBIT "A"

LEGAL DESCRIPTION

That portion of Lot 1 of Tract No. 60638, in the City of Redondo Beach, County of Los Angeles, State of California, as per map recorded in Book 1328, Pages 44 and 45, of Maps, in the office of the County Recorder of said County, shown and defined as Module 1 on that certain Condominium Plan recorded concurrently herewith.

EXCEPT THEREFROM, all minerals, oils, gases and other hydrocarbons by whatsoever name known that may be within or under said portion of said land, without, however, the right to drill, dig or mine through the surface thereof, as excepted in the Deed from the State of California, recorded on February 28, 1968, as Document No. 2480 in Book D-3925, Page 100, Official Records in said office of the County Recorder .

EXHIBIT "B"

ANNEXATION PROPERTY

Lot 1 of Tract No. 60638, in the City of Redondo Beach, County of Los Angeles, State of California, as per map recorded in Book 1328, Pages 44 and 45 of Maps, in the office of the County Recorder of said County.

EXCEPT THEREFROM Module 1 of the above described property as shown and described on the Condominium Plan for Module 1 recorded concurrently herewith.

EXCEPT THEREFROM, all minerals, oils, gases and other hydrocarbons by whatsoever name known that may be within or under said portion of said land, without, however, the right to drill, dig or mine through the surface thereof, as excepted in the Deed from the State of California, recorded on February 28, 1968, as Document No. 2480 in Book D-3925, Page 100, Official Records in said office of the County Recorder.

EXHIBIT "C"

INITIAL VARIABLE PRORATION SCHEDULE  
 BREAKWATER VILLAGE  
 PHASE 1

UNIT TYPE	APPROX UNIT SIZE	VARI. FACTOR	VARI. ASSESS.	EQUAL ASSESS.	TOTAL MONTH. ASSESS.	UNIT COUNT	TOTAL BUDGET
A	1,244	x .0654	81.36	+ 243.89	= 325.25	x 5	1,626.25
B	819	x .0654	53.56	+ 243.89	= 297.45	x 10	2,974.60
C	914	x .0654	59.78	+ 243.89	= 303.67	x 9	2,733.03
C1	891	x .0654	58.27	+ 243.89	= 302.89	x 6	1,817.34
D	856	x .0654	55.98	+ 243.89	= 299.87	x 3	899.61
E	916	x .0654	59.91	+ 243.89	= 303.80	x 0	--
F	1,337	x .0654	87.44	+ 243.89	= 331.33	x 3	993.99
G	782	x .0654	51.14	+ 243.89	= 295.03	x 9	2,655.27
G1	802	x .0654	52.45	+ 243.89	= 296.34	x 0	--
H	1,005	x .0654	65.73	+ 243.89	= 309.62	x 3	928.86
J	829	x .0654	54.22	+ 243.89	= 298.11	x 0	--
TOTAL							\$14,628.95

**SUBORDINATION AGREEMENT**

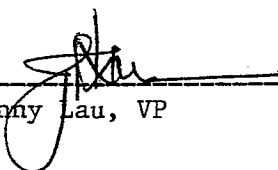
**CONSENT OF LIENHOLDER**

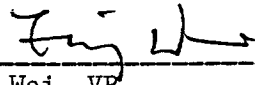
**AND SUBORDINATION OF LIEN**

The undersigned beneficiary under that certain Deed of Trust recorded June 2, 2004 as Instrument No. 04-1406751, Official Records of Los Angeles County, California hereby consents to all of the provisions contained in the attached Declaration of Covenants, Conditions and Restrictions for Breakwater Village Homeowners Association of which this Agreement is a part, and agrees that the lien of the Deed of Trust shall be junior and subordinate and subject to said Declaration.

Dated: DEC 05 2007

Lienholder: CATHY BANK

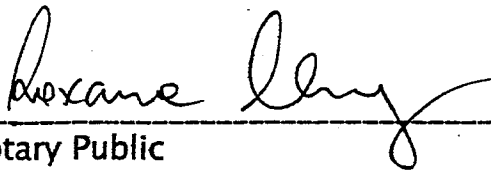
By:   
Jenny Lau, VP

By:   
Emily Wei, VP

STATE OF CALIFORNIA     )  
COUNTY OF LOS ANGELES )

On December 05, 2007, before me, Roxanne Cheung, a Notary Public, personally appeared Jenny Lau and Emily Wei personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name ~~is~~are subscribed to the within instrument and acknowledged to me that ~~he~~~~she~~they executed the same in ~~his~~~~her~~their authorized capacity(ies), and that by ~~his~~~~her~~their signature(s) on the instrument the person(s) or entity upon behalf of which the person(s) acted, executed the same.

WITNESS my hand and official seal.

  
Notary Public

