

RECORDING REQUESTED BY:)
)
FIDELITY NATIONAL TITLE COMPANY)
)
WHEN RECORDED MAIL TO:)
)
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)
ONE AMERICA PLAZA)
)
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SAN DIEGO, CA 92101-3362)

Space Above for Recorder's Use

DECLARATION OF RESTRICTIONS
FOR
CANTERA

(A Condominium Common Interest Development)

This Declaration of Restrictions requires alternative dispute resolution for certain disputes, without litigation in a court or jury trial. See Article XVI.

See Section 15.22 for a Notice of Non-Adversarial Procedures under Civil Code Section 912(f).

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DECLARATION OF RESTRICTIONS FOR CANTERA

THIS DECLARATION OF RESTRICTIONS FOR CANTERA is made this 1st day of December, 2023, by HIGH STREET 34 LP, a California limited partnership ("**Declarant**"). This Declaration is made with reference to the following:

RECITALS:

A. **The Real Property.** Declarant is the owner of the real property located in the City of La Mesa, County of San Diego, California, described in Parcel 1 of EXHIBIT "A" and the Easement set forth in Parcel 2 of EXHIBIT "A".

Lot 1 of CITY OF LA MESA TRACT NO. 16-01, according to Map thereof No. 16519, in the City of La Mesa, County of San Diego, State of California, filed with the County Recorder of San Diego County, California, on July 22, 2022.

("**Real Property**").

B. **The Project.** Declarant plans to construct a residential condominium project (the "**Project**") on the Real Property. The Project will consist of thirty-two (32) detached condominium units on a single lot if completed as planned. Declarant intends to establish a condominium project under the provisions of the California CIVIL CODE.

C. **Association.** Each Condominium shall have appurtenant to it a membership in CANTERA COMMUNITY ASSOCIATION, a California nonprofit mutual benefit corporation ("**Association**"), which will be the management body for the Project and the owner in fee of the Association Property. The Association will also maintain the Association Property in the Project.

D. **Condominiums.** Each Condominium will include the following interests and such other interests as may be set forth in the initial deed conveying the Condominium: a Residential Unit, an appurtenant undivided interest in the Common Area (the undivided interest will be equal to the reciprocal of the number of Residential Units), Exclusive Use Areas, and an easement for ingress and egress over portions of the Association Property.

E. **The Condominium Plan.** The Condominium Plan will be filed for record with the Office of the County Recorder of San Diego County, California. The Condominium Plan will show the location and dimensions of the Residential Units, the Common Area, , Exclusive Use Areas and the Association Property. The Common Area will consist of certain air space above the Residential Units within the Real Property. The Association Property will consist of the remainder of the Real Property. The improvements to the Association Property will include common driveways and parking spaces, open space and common recreational facilities, common area lighting and fencing, utilities, on- and off-site drainage facilities, storm water pollution prevention facilities, Best Management Practices (BMPs), on-site sanitary sewer, landscaping and irrigation, perimeter fencing and walls, private fire hydrants, a group mailbox and monument signage.

F. **Type of Project.** This Project will be a condominium Common Interest Development.

G. **Common Plan of Restrictions; Binding On Future Owners.** Before selling or conveying any interests in the Real Property, Declarant desires to subject the Real Property in accordance with a common plan to certain covenants and restrictions for the benefit of Declarant and any and all present and future owners of the Real Property.

H. In preparing this Declaration, Brian D. Greenberg, Esq., represented Declarant and not any Owner or the Association. For interpretation of this Declaration or for advice concerning it, an Owner or the Association should contact separate legal counsel.

NOW, THEREFORE, Declarant hereby declares that the Real Property shall be held, sold and conveyed subject to the following easements, restrictions and covenants, which are enforceable equitable servitudes as described in California CIVIL CODE Section 5975 and which are for the purpose of establishing a general plan for protecting the value and desirability of, and which shall run with the Real Property and be binding on all parties having any right, title or interest in the Real Property, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof. The provisions of this Declaration shall both benefit and burden the Real Property.

ARTICLE I

DEFINITIONS

Section 1.1. "Articles" shall mean and refer to the Articles of Incorporation of the Association as they may from time to time be amended.

Section 1.2. "Association" shall mean and refer to CANTERA COMMUNITY ASSOCIATION, a California nonprofit mutual benefit corporation, its successors and assigns.

Section 1.3. "Association Property" shall mean all real property and easements owned by the Association from time to time for the common use and enjoyment of the Owners. It is anticipated that the Association Property will consist of the remainder of the Real Property after excluding the Residential Units and Common Area and that the improvements to the Association property will include: common driveways and parking spaces, open space and common recreational facilities, common area lighting and fencing, utilities, on- and off-site drainage facilities, storm water pollution prevention facilities, Best Management Practices (BMPs), on-site sanitary sewer, landscaping and irrigation, perimeter fencing and walls, private fire hydrants, a group mailbox and monument signage. Any pipes, wires or other utility installations which serve more than one Residential Unit but which are not owned and maintained by the City or a public utility will also be Association Property.

Section 1.4. "Board" shall mean and refer to the Board of Directors of the Association.

Section 1.5. "Bylaws" shall mean and refer to the Bylaws of the Association as they may from time to time be amended.

Section 1.6. "City" shall mean and refer to the City of La Mesa, California.

Section 1.7. "Common Area" will be shown on the Condominium Plan. The lateral boundaries of the Common Area shall be as designated on the Condominium Plan. The lower vertical boundary of the Common Area shall be one thousand feet (1000') above mean sea level, and the upper vertical boundary of the Common Area shall be one thousand fifty feet (1050') above mean sea level, as shown on the Condominium Plan. The Owners of the Condominiums shall receive an undivided ownership interest in the Common Area, with the undivided interest of each such Owner being equal to the reciprocal of the number of the total Residential Units within the Project.

Section 1.8. "Common Expenses" means and includes the actual and estimated expenses of operating the Project and any reasonable reserve for such purposes as found and determined by the Board and all sums designated common expenses by or pursuant to the condominium documents.

Section 1.9. "Condominium" shall mean and refer to a fee simple estate in:

- (a) A Residential Unit;
- (b) An undivided interest as tenant in common to the Common Area equal to the reciprocal of the total number of Residential Units within the Project;
- (c) An easement for ingress, egress and recreational use over portions of the Association Property. A membership in the Association shall also be deemed a part of each Condominium; and

Section 1.10. "Condominium Plan" shall mean and refer to the Condominium Plan recorded pursuant to California CIVIL CODE Section 4290 covering the Real Property, including such amendments thereto as may from time to time be recorded.

Section 1.11. "Declarant" shall mean and refer to HIGH STREET 34 LP, a California limited partnership. Declarant shall also refer to (a) the assigns of Declarant who are expressly assigned the rights of Declarant and (b) successors of Declarant who become successors by operation of law or by exercise of the remedies under a mortgage, deed of trust or deed in lieu of foreclosure.

Section 1.12. "Declaration" shall mean and refer to this enabling Declaration of Restrictions for Cantera, as it may from time to time be amended.

Section 1.13. "DVA" shall mean and refer to the United States Department of Veterans Affairs.

Section 1.14. "Eligible Insurer or Guarantor" shall mean and refer to an insurer or governmental guarantor who has requested notice from the Association of those matters which such insurer or guarantor is entitled to notice of by reason of this Declaration or the Bylaws of the Association and who has provided the Association with the address to which such notice is to be sent and the Condominium unit number which is encumbered by a Mortgage in which it has an interest.

Section 1.15. "Eligible Mortgage Holder" shall mean and refer to a holder of a first Mortgage on a Condominium who has requested notice from the Association of those matters which such holder is entitled to notice of by reason of this Declaration or the Bylaws of the Association and who has provided the Association with the address to which such notice is to be sent and the Condominium unit number which is encumbered by a Mortgage in which it has an interest.

Section 1.16. "Exclusive Use Area" shall mean and refer to those portions of the Association Property to which an exclusive right to use is granted to an Owner.

Section 1.17. "Member" shall mean and refer to a person entitled to membership in the Association as provided herein.

Section 1.18. "Mortgage" shall mean and refer to a mortgage or deed of trust which encumbers a Condominium.

Section 1.19. "Mortgagee" shall mean and refer to a beneficiary under a deed of trust which encumbers a Condominium as well as a mortgagee under a Mortgage.

Section 1.20. "Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of fee simple title to any Condominium, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 1.21. "Project" shall mean and refer to the Real Property.

Section 1.22. "Real Property" shall mean and refer to that real property located in the City of La Mesa, County of San Diego, California, described in Recital A above.

Section 1.23. "Residential Unit" shall mean and refer to a separate interest in space as defined in CIVIL CODE Section 4185 and shall have the dimensions shown and described as such on the Condominium Plan. The dimensions of a Residential Unit are measured from the unfinished floor, walls, ceiling, except as otherwise noted herein. The Residential Unit includes all Improvements situated within its boundaries, and includes, without limitation, (i) interior walls (except interior bearing walls), (ii) the interior undercoated surfaces of bearing walls and perimeter walls, floors and ceilings, (iii) any door or window including any sliding glass doors, (iv) appliances, cabinets, interior doors, and all electrical, heating, plumbing and other utility fixtures, (v) the openings and outlets of all pipes, wires or other utility installations that are located partially within the Residential Unit and partially in the Association Property, such as electrical outlets, and that exclusively serve the Residential Unit, and (vi) all pipes, wires or other utility installations serving solely that Residential Unit, whether located in the Residential Unit or the Association Property. The following are not a part of any Residential Unit: bearing walls, columns, floors, roofs and foundations. pipes, wires or other utility installations that serve two or more Condominiums wherever located. In interpreting deeds and plans, the then existing physical boundaries of a Residential Unit, whether in its original state or reconstructed in substantial conformance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the Condominium Plan or any other recorded document regardless of settling or lateral movements of the building and regarding of minor variance between boundaries shown on the Condominium Plan or any other recorded document and those of the building.

Section 1.24. "Retail Purchaser" shall mean and refer to anyone other than a Declarant or successive Declarant who purchases a Condominium from Declarant through authority of a Final Subdivision Public Report issued by the California Department of Real Estate.

ARTICLE II

PROPERTY RIGHTS IN ASSOCIATION PROPERTY AND COMMON AREA

Section 2.1. Title to Association Property. Declarant covenants for itself, its successors and assigns, that Declarant will convey to the Association the Association Property free and clear of all encumbrances and liens, except non-delinquent taxes, non-delinquent assessments, easements, dedications, reservations, covenants, conditions and reservations (a) then of record, (b) set forth in the deed of conveyance, and (c) set forth in this Declaration. Any such conveyance shall be made prior to the conveyance of the first Condominium to a Retail Purchaser.

Section 2.2. Owners' Easements of Enjoyment. Every Owner of a Condominium shall have a right and easement of ingress and egress and the right of enjoyment in and to the Association Property. Each Owner shall also have the right to utilize any common utilities within the Common Area or the Association Property which are intended to serve the Owner's Residential Unit. These rights shall be appurtenant to and shall pass with the title of each Condominium, subject to the following provisions:

(a) The right of the Board to make rules and regulations relating to the operation and use of the Common Area and the Association Property. The Association shall have no right to restrict reasonable access to a Condominium by the persons who have the right to possession of the Condominium.

(b) The right of the Board to suspend the voting rights of an Owner:

(i) During the period of time any Association assessment against the Condominium remains delinquent; or

(ii) For a period of not more than thirty (30) days for any infraction of the Board's published rules and regulations after reasonable written notice and an opportunity for a hearing before the Board which satisfies the minimum notice and hearing requirements of California CORPORATIONS CODE Section 7341.

(c) The right of the Board, subject to the limitations stated in the Section below entitled "Approval of First Mortgagees" and subject to the restrictions stated in California CORPORATIONS CODE Section 8724, to transfer less than substantially all of the Association Property. It is specifically intended that the Board have the right to cooperate with Declarant and any Owner in adjusting the boundaries between the Common Area, the Association Property and other portions of the Project.

(d) The sole and exclusive right of the Association, acting through its Board, to operate, maintain and control the Common Area and the Association Property except as otherwise stated in this Declaration.

(e) The right of the Board to grant to third parties permits, licenses (which may be irrevocable) and easements over the Common Area, and the Association Property for utilities, roads and other purposes necessary for the proper operation of the Project or to serve other real property; and the right of the Board to convey portions of the Common Area, or the Association Property to others in connection with a boundary adjustment requested by an adjacent property owner or public entity.

(f) The right of the Board to grant easements over the Association Property pursuant to the Section below entitled "Exclusive Easements and Licenses".

(g) The right of the Association, in accordance with the Articles and Bylaws, to borrow money for the purpose of improving the Association Property and to hypothecate any or all real or personal property owned by the Association.

(h) The right of access, ingress and egress over the Association Property and the right of installation and use of utilities on the Common Area, and the Association Property for the benefit of the Condominiums.

(i) Each easement or restriction set forth in this Declaration.

(j) Declarant and its agents, employees and independent contractors shall have:

(i) a non-exclusive easement over the Association Property for the purposes of constructing homes and related improvements within the Real Property, marketing homes within the Real Property, maintaining and making repairs to the Real Property, including the Association Property. Nothing herein stated shall obligate Declarant to make such repairs; and

(ii) the right to the non-exclusive use of the Association Property and Residential Units owned or leased by Declarant for the purpose of maintaining sales offices, parking, signs and flags reasonably necessary to market the Condominiums in the Real Property.

These rights of Declarant may be exercised until close of escrow to Retail Purchasers of all Condominiums planned for the Real Property. However, the use of the Association Property by Declarant and its agents shall not unreasonably interfere with the use thereof by the Class A Members of the Association. Declarant shall repair any portion of the Association Property which may be damaged by Declarant.

Section 2.3. Power of Attorney to Correct Errors. The Association is hereby given a power of attorney to act on behalf of the Owners and their Mortgagees to correct errors in any Condominium Plan by executing on behalf of the affected Owners and Mortgagees an amendment to the Condominium Plan and an instrument to effect any conveyances or partial reconveyances necessary to correct such errors. The power hereby given to the Association is limited as follows:

(a) The power may be exercised only to correct errors in a Condominium Plan as evidenced by a written statement which describes the error(s) and which is signed by the engineer who prepared the Condominium Plan or by Declarant. The power hereby given may not be utilized for any other purpose.

(b) The power may not be exercised on behalf of an Owner or his or her Mortgagee if the Owner's Residential Unit would be reduced in size by reason of the correction.

The power hereby given is coupled with an interest and may not be revoked by an Owner but may be revoked by a Mortgagee. Any such revocation by a Mortgagee shall be by means of its signed statement of revocation recorded with the County Recorder of San Diego County.

Section 2.4. Delegation of Use. Subject to the restrictions stated in this Declaration, any Owner may delegate, in accordance with the Bylaws and the rules and regulations of the Board, the Owner's right of enjoyment to the Common Area, and the Association Property to persons who reside in the applicable residence. Each Owner shall be responsible to the Association for any damage to the Common Area, and the Association Property caused by such Owner or persons to whom Common Area, or Association Property rights have been transferred.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

Section 3.1. Each Owner Is A Member. Each Owner of a Condominium shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Condominium. Each Owner is obligated promptly, fully and faithfully to comply with and conform to this Declaration and the Bylaws and the rules and regulations adopted from time to time by the Board and officers of the Association. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of the Condominium 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 Condominium. Any attempt to make a prohibited transfer is void. In the event the Owner of any Condominium should fail or refuse to transfer the membership registered in the Owner's name to the purchaser of his Condominium, the Association shall have the right to record the transfer upon its books and thereupon the old membership outstanding in the name of the seller shall be null and void.

Section 3.2. Classes of Voting Membership. The Association shall have two classes of voting membership:

(a) *Class A.* Class A Members shall be all Owners of the Condominiums with the exception of Declarant, and shall be entitled to one (1) vote for each Condominium owned. When more than one person holds an interest in any Condominium, all such persons shall be Members. The vote for such Condominium shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Condominium.

(b) *Class B.* The Class B Member(s) shall be the Declarant and shall be entitled to three (3) votes for each Condominium owned.

Section 3.3. Termination of Class B Membership. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) The date the total outstanding votes held by Class A members equal the total outstanding votes held by the Class B member; or

(b) Two (2) years following the date of the first conveyance of record by Declarant of a Condominium to a Retail Purchaser pursuant to a Final Subdivision Public Report issued by the California Department of Real Estate.

Section 3.4. Commencement of Voting Rights. Voting rights shall be attributable to a Condominium commencing on the date the Association's regular assessments have commenced against the Condominium.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION

Section 4.1. Covenant for Assessments. The Declarant, for each Condominium owned, covenants, and each Owner of any Condominium by acceptance of a deed to the Condominium, whether or not so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (a) regular assessments, which shall include an adequate reserve fund for periodic maintenance, repair and replacement of the Common Area, and the Association Property, (b) special assessments, and (c) those other assessments provided for in this Article. The regular and special assessments, together with interest, costs, late charges and reasonable attorney's fees, shall, except as stated in the Section below entitled "Non-Lien Assessments (Compliance)", be a charge and continuing lien upon the Condominium against which each such assessment is made, the lien to become effective upon recordation of a notice of assessment. Each such assessment, together with interest, costs, late charges and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such Condominium at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them; however, the assessment shall remain a lien on the Condominium.

Section 4.2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of all the residents in the entire Project, for the improvement and maintenance of the Common Area, and the Association Property for the common good of the Project, to reimburse the Association for the costs incurred in bringing an Owner into compliance with the Bylaws, this Declaration and the rules and regulations adopted by the Board, and for those other purposes described in this Declaration. The regular assessments shall be determined at least annually by the Board to meet the expenses of the Association, including the establishment of reserve accounts, based upon the annual budget adopted by the Board pursuant to the Bylaws. A special assessment is an assessment the Board, in its discretion, determines necessary if the Association's available funds are or will become inadequate to meet the estimated expenses of the Association for a fiscal year. The Board may levy the entire special assessment immediately or levy it in installments over a period the Board determines appropriate. In addition, a special assessment against a particular Owner only may be levied by the Board as set forth in the Section below entitled "Non-Lien Assessments (Compliance)".

Section 4.3. Limitation on Regular and Special Assessments. The Board shall levy regular and special assessments sufficient to perform the obligations of the Association as provided in the Declaration and Bylaws; provided, however, except for assessment increases necessary for emergency situations:

(a) the Board may not increase the regular assessments for any fiscal year unless the Board has complied with the provisions of California CIVIL CODE Section 5605(a) (preparation and distribution of the annual budget report), and

(b) the Board may not impose a regular assessment that is more than twenty percent (20%) greater than the regular assessment for the Association's preceding fiscal year nor special assessments which in the aggregate exceed five percent (5%) of the budgeted gross expense of the Association for the fiscal year,

without the approval of Owners 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 California CORPORATIONS CODE and Section 7613 of the California CORPORATIONS CODE at which a quorum was present or participated. For purposes of this **Section 4.3**, "quorum" means more than fifty percent (50%) of the Owners. An emergency situation is any one of the following:

(1) An extraordinary expense required by an order of a court.

(2) An extraordinary expense necessary to repair or maintain the Project or any part of the Project for which the Association is responsible where a threat to personal safety in the Project is discovered.

(3) An extraordinary expense necessary to repair or maintain the Project or any part of the Project for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget under CIVIL CODE Section 5300. However, prior to the imposition or collection of an assessment under this Subsection, 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.

The term "regular assessment for the Association's preceding fiscal year" as used in this **Section 4.3** is deemed to be the regular assessment which would have existed in the absence of any subsidy of assessments agreed to be paid by Declarant. Anything in this **Section 4.3** to the contrary notwithstanding, the limitation on regular and special assessments shall comply with the laws of the State of California at the time the regular or special assessment is levied by the Association.

Notwithstanding the above stated limitation against increases in regular assessments:

(i) The Board may increase regular assessments more than 20% if such increase was shown on an Association budget approved by the California Department of Real Estate and if such increase is allowed by California law; and

(ii) Sums assessed against Owners pursuant to the Section below entitled "Non-Lien Assessments (Compliance)" shall not be considered in calculating the increases in assessments.

The due dates of assessments shall be as the Board establishes them. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Condominium have been paid. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment.

Section 4.4. Non-Lien Assessments (Compliance). The Association may also impose a special assessment against any Owner to reimburse the Association for costs incurred in bringing an Owner and the Owner's Condominium into compliance with the provisions of the Declaration, the Bylaws and Association rules and regulations, or as a penalty imposed as a disciplinary measure for failure of an Owner or occupants of the Owner's Condominium to comply with such provisions. Such special assessment may be imposed upon the vote of the Board after notice and an opportunity for a hearing which satisfy the requirements of Section 7341 of the California CORPORATIONS CODE, as set forth in the Bylaws and the Board shall meet in executive session if requested by the Owner being disciplined and the Owner shall be entitled to attend the executive session. Except to the extent such special assessment is to reimburse the Association for the cost of collecting assessments, the special assessment shall not constitute a lien on the Owner's Condominium and shall be assessed only against the Owner who is or was in non-compliance. The Association shall have lien rights with respect to charges imposed against an Owner which are reasonable late payment fees for delinquent assessments, interest and other charges to reimburse the Association for costs reasonably incurred (including attorney's fees) in its efforts to collect delinquent assessments.

Section 4.5. Schedule of Monetary Penalties. If the Association adopts a policy of imposing any monetary penalty, including any fee, on any Owner for violation of this Declaration or the rules of the Association, including any monetary penalty relating to the activities of a guest or invitee of an Owner, the Board shall adopt and distribute to each Owner, by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed for those violations, which shall be in accordance with the authorization for Owner discipline set forth in this Declaration and the Bylaws. The Board shall not be required to distribute any additional schedules of monetary penalties unless there are changes from the schedule that was adopted and distributed to the Owners pursuant to this Section.

Section 4.6. Rate of Regular Assessments. Both regular and special assessments shall be levied upon each Condominium in a uniform amount. However, this Section does not apply to the sums payable by reason of the Section above entitled "Non-Lien Assessments (Compliance)".

Section 4.7. Rate of Special Assessments for Repairs. Any special assessment to raise funds for the rebuilding or major repair of a portion of the Common Area, , or the Association Property shall be levied against each Condominium in the Project against which the Association's regular assessments have commenced. Such special assessments shall be levied in a uniform amount.

Section 4.8. Date of Commencement of Assessments. The regular assessments shall commence as to all Condominiums in the Project on the first day of the month following the conveyance of the first Condominium to a Retail Purchaser. A Condominium shall not be subject to any special assessments unless and until regular assessments have commenced against that Condominium.

Section 4.9. Adjustment of Assessments; Due Dates. The Board shall fix the amount of the regular assessments against each Condominium at least thirty (30) days in advance of each fiscal year but may change the assessment amount on any subsequent occasion. Unless otherwise determined by the Board, regular assessments shall be due and payable in monthly installments on the first day of the calendar month. No notice of regular assessments shall be required except for notices of changes in assessment amount or changes in due dates. Written notice of changes in the regular assessments shall be sent by first class mail to every Owner subject thereto not less than thirty (30) nor more than sixty (60) days prior to the change in assessments becoming due.

Section 4.10. Model Homes. Conveyance of a Condominium which is being used by Declarant for model home, sales office, design center, construction office or similar purposes (any of which uses are referred to in this Section as "**Model Home**") shall not commence the regular assessments against such Condominiums or other Condominiums until:

- (a) discontinuance of use of such Condominium as a Model Home; or
- (b) conveyance of any non-Model Home Condominium,

whichever first occurs. During the period of time commencing on the first day of the month after conveyance of a Condominium being used by Declarant as a Model Home and ending on the date regular assessments commence against such Condominium, Declarant shall be solely responsible to maintain all portions of the Project in which a Condominium is being used as Model Home. The Board shall have the right to inspect the areas being maintained by Declarant pursuant to this Section to determine that such maintenance meets reasonable standards.

Section 4.11. Effect of Non-Payment of Assessments; Remedies of the Association. Any assessment made in accordance with the Declaration shall be a debt of the Owner of a Condominium at the time the assessment is due. Any assessment not paid within thirty (30) days after the due date shall bear interest from thirty (30) days following the due date at the rate of twelve percent (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the assessment and, in addition thereto or in lieu thereof, may foreclose the lien against the Condominium in accordance with the requirements of California law, as more particularly described below in the last paragraph of this Section.

In collecting delinquent assessments, the Association shall comply with the requirements of California law, including without limitation, California Civil Code Sections 5650 *et seq.* As of the date of this Declaration, such laws require that, among other things, before the Association records a lien against the Owner's Condominium, the Association: (i) notify the delinquent Owner of certain matters, and (ii) offer and, if requested by the Owner, participate in, dispute resolution procedures pursuant to the Association's "meet and confer" program required in California Civil Code Sections 5900 *et seq.* Before the Association may place a lien upon a Condominium to collect a debt which is past due, the Association shall notify the Owner in writing by certified mail of the fee and penalty procedures of the Association, provide an itemized statement of the charges owed by the Owner, including items on the statement which indicate the principal owed, any late charges and the method of calculation, any attorney's fees and the collection practices used by the Association, including the right of the Association to the reasonable costs of collection. Any payments toward such a debt shall be first applied to the principal owed, and only after the principal owed is paid in full shall such payments be applied to interest or collection expenses.

Any assessment not paid within fifteen (15) days after the due date shall be delinquent. Except as otherwise provided in **Section 4.4** above, the amount of any delinquent assessment plus costs of collection, late charges, penalties, interest and attorney's fees, shall be and become a lien upon the Condominium when the Association causes to be recorded with the County Recorder of San Diego County, California, a Notice of Delinquent Assessment. The Notice of Delinquent Assessment shall state the amount of the delinquent assessment and the other charges as may be authorized by the Declaration, a description of the Condominium against which the assessment has been made, the name of the record owner of the Condominium and, in order for the lien to be foreclosed by non-judicial foreclosure, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice of Delinquent Assessment shall be signed by the person designated by the Association for that purpose or, if no one is designated, by the President of the Association, and mailed in the manner set forth in CIVIL CODE Section 2924b to all record owners of the Owner's interest in the Properties no later than ten (10) calendar days after recordation of the Notice of Delinquent Assessment. Upon payment of the delinquent assessment and charges in connection with which the Notice of Delinquent Assessment has been recorded, or other satisfaction thereof, the Association shall cause to be recorded a further notice stating the satisfaction and the release of the lien in compliance with the requirements of California law, including without limitation, California Civil Code Section 5685.

The assessment lien may be enforced by sale by the Association after failure of the Owner to pay the assessment and expiration of thirty (30) days following the recording of a lien created pursuant to this Section, subject to the requirements of California law, including without limitation, California Civil Code Section 5700 *et seq.* (As of the date of this Declaration, such laws provide that foreclosure is only available for delinquent regular or special assessments totaling one thousand eight hundred dollars (\$1,800) or more.) The sale shall be conducted in accordance with the provisions of Sections 2924, 2924b and 2924c of the California CIVIL CODE applicable to the exercise of powers of sale in mortgages or in any other manner permitted by law. The Association shall have the power to purchase the Condominium at the foreclosure sale and to hold, lease, mortgage and convey the Condominium. Suit to recover a money judgment for unpaid assessments, rent and attorney's fees shall be maintainable without foreclosing or waiving the lien.

Section 4.12. Subordination of the Lien to First Deeds of Trust and First Mortgages.

The lien of the assessments, interest, costs, attorney's fees and late charges shall be subordinate to the lien of any first Mortgage upon any Condominium. Sale or transfer of any Condominium shall not affect the assessment lien. However, the sale or transfer of any Condominium pursuant to judicial or non-judicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. However, the Association may treat as Common Expenses, assessable against all the Condominiums, any unpaid assessments for which lien rights have terminated. No sale or transfer shall relieve such Condominium from lien rights for any assessments thereafter becoming due.

Section 4.13. Estoppel Certificate. The Association shall furnish, upon demand by any person, a certificate signed by an officer of the Association setting forth whether the assessments on a specified Condominium have been paid. A properly executed certificate of the Association as to the status of assessments on a Condominium is binding upon the Association as of the date of its issuance.

Section 4.14. Non-Use. No Owner shall be exempt from personal liability for assessments levied by the Association, nor shall any Condominium be released from the liens and charges of assessments because of the non-use of the Common Area, or the Association Property nor because of abandonment of the Condominium.

Section 4.15. Taxation of Association. In the event that any taxes are assessed against the Common Area, , the Association Property or the personal property of the Association, rather than against the individual Condominiums, the taxes shall be added to the regular assessments and, if necessary, a special assessment may be levied against the Condominiums in an amount equal to the taxes, to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment.

Section 4.16. Payment of Assessments By Declarant. Except as specifically stated otherwise in this Article, Declarant shall pay all assessments levied by the Association against any Condominium owned by Declarant at the same time, in the same manner and in the same amount as any other Owner.

Section 4.17. Capitalization of Association. Upon conveyance to a Retail Purchaser of a Condominium from Declarant, the Retail Purchaser shall contribute to the capital of the Association an amount equal to two times the then regular monthly assessment for that Condominium as determined by the Board. This amount shall be deposited by the Retail Purchaser into the purchase and sale escrow and disbursed therefrom to the Association at close of escrow. Amounts paid pursuant to this Section are not advance payments of assessments and are in addition to and not in lieu of regular and special assessments of the Association. The capital contributions will be the Association's funds and may not be used by Declarant to defray its expenses, construction costs or assessments. This Section shall not apply to any resales of any Condominium.

Section 4.18. Uncompleted Facilities. The Board shall exclude from assessments that portion which is for the purpose of defraying expenses and reserves directly attributable to the existence of an Association Property, Common Area or improvement that is not complete at the time the assessments commence. Any such exemption from assessments attributable to an Association maintained facility shall be in effect only until the earliest of the following events:

- (a) The improvement has been completed as evidenced by the recordation of a Notice of Completion; or
- (b) The improvement has been installed and placed into use.

ARTICLE V

POWERS AND DUTIES OF ASSOCIATION

The Association shall have those powers and duties set forth in its Bylaws or the Articles.

ARTICLE VI

USE OF CONDOMINIUMS

Section 6.1. Residential Purposes. Each Condominium shall be improved, used and occupied for private, single-family dwelling purposes only, and shall be not be used for any commercial purposes. However, the provisions of this Section shall not preclude professional or administrative occupations or similar home office use without external evidence thereof, for so long as (a) such occupations are conducted in conformance with all applicable governmental ordinances, (b) such occupations are merely incidental to the use of the Residential Unit as a residence, and (c) the patrons or clientele of such professional or administrative occupation do not regularly visit or conduct business on the Residential Unit. Declarant may use any of the Condominiums owned by Declarant as model homes, design centers, construction offices and sales offices until all the Condominiums in the Project are sold and conveyed by Declarant to Retail Purchasers.

Section 6.2. Lease of Condominium. Each Owner shall have the right to lease the Owner's Condominium provided that such lease is in writing. Each tenant shall be bound by and obligated to the provisions of this Declaration, the Bylaws and the rules and regulations of the Board, and a tenant's failure to do so shall be deemed a default under the lease. No Owner shall lease a Condominium for transient or hotel purposes. Any such lease which is either for a period of less than thirty (30) days or pursuant to which the lessor provides any services normally associated with a hotel shall be deemed to be for transient or hotel purposes. Should the Board so request an Owner to do so, the Owner shall forward an executed copy of a lease to the Owner's Condominium to the Board together with the telephone number and street address of the residence of the Owner. Other than as provided in this Section, there shall be no restriction on the right of any Owner to lease a Condominium.

Section 6.3. Use Not to Impair Insurance. No Condominium shall be occupied, improved or used for any purpose or in any manner which shall cause such Condominium or any Condominium to be uninsurable against loss by fire or the perils of the extended coverage endorsement to the California Standard Fire Policy form, or cause any such policy or policies representing such insurance to be canceled or suspended, or the company issuing the same to refuse renewal thereof or to increase the premium therefor.

Section 6.4. Animals. No animals, with the exception of certified service animals, i.e. dogs, fowls, reptiles, insects or poultry shall be kept by any person within any Condominium or elsewhere within the Project, except that not more than one (1) of each kind of common domesticated household pets, such as dogs, cats or birds, may be kept within each Residential Unit. No animals shall be kept, bred or raised within the Project by any person for commercial purposes or in unreasonable quantities. Each person bringing or keeping a pet within the Project shall be liable pursuant to the laws of the State of California to third persons for any damage to persons or property caused by the pet brought on or kept within the Project by such person. The Board shall have the right to require the removal from the Project of any pet which, in the Board's opinion, constitutes an unreasonable annoyance to any Condominium occupant and no pet shall be allowed within the Common Area, or the Association Property except as permitted by the Board.

Section 6.5. Nuisance. No Condominium shall be used in such manner as to obstruct or interfere with the enjoyment of occupants of other such areas or annoy them by unreasonable noise or otherwise, nor shall any nuisance be committed or permitted to occur in any portion of the Project. For example, each Owner shall take reasonable steps to prevent the accidental triggering of the house or car alarm(s), if any, used by the Owner or the occupants of his or her Condominium. The Board shall have the right to adopt rules and regulations regarding such alarms, including rules which pertain to the length of time that such alarms may be programmed to continue ringing.

Section 6.6. Sign Control. An Owner may place one (1) sign of reasonable and customary dimensions in the window of the Owner's residence or near the driveway to the Owner's residence to advertise the Condominium for sale or rent. No other signs may be placed anywhere in the Project without the prior written permission of the Board. All signs must conform with applicable City ordinances. No signs shall be erected or displayed anywhere in the Project except signs placed by authority of the Board. Anything contained in this Declaration to the contrary notwithstanding, Declarant shall have the right to install and maintain in any Condominium owned or leased by it, on the Common Area, , and the Association Property during the sales period set forth in the Section above entitled "Residential Purposes", such signs, poles, flags, banners and advertisements as it deems appropriate in connection with its sales program for the sale to the public of Condominiums.

Section 6.7. Outside Antennae. No exterior radio antenna, television antenna, "C.B." antenna, satellite dish, earth receiving station or other antenna, transmitting or receiving device of any type shall be erected or maintained on any Residential Unit without the approval of the Board; provided, however, that the Board shall not impose any requirement which precludes reception of an acceptable quality signal from or unreasonably delays, prevents or unreasonably increases the costs of the installation, maintenance or use of any antenna that is designed to receive direct broadcast satellite service, including direct-to-home satellite services, that is one meter or less in diameter. In addition, the Board shall not impose any requirements in violation of applicable law or regulations, including those promulgated by the Federal Communications Commission ("FCC") from time to time. In this regard, current FCC regulations would prohibit any unreasonable interference with or burden upon an Owner's installation or maintenance of (a) an antenna that is designed to receive video programming services via multipoint distribution services, including multichannel distribution services, instructional television fixed services and local multipoint distribution services and that is one meter or less in diameter or diagonal measurement; or (b) an antenna that is designed to receive television broadcast signals.

Section 6.8. No Owner Modification to Association Property, Common Area or . Except as otherwise specifically provided in this Declaration, no Owner shall have the right to alter, paint, decorate, remodel, landscape or adorn any part of the Common Area, or the Association Property without the written consent of the Board.

Section 6.9. No Offensive Activity; Quiet Enjoyment. No Owner shall permit or suffer anything to be done or kept within the Project which will obstruct or interfere with the rights of quiet enjoyment of the other residents in the Project, or annoy them by unreasonable noises or otherwise, nor shall any Owner commit or permit any nuisance in the Project or commit or suffer any immoral or illegal act to be committed in the Project. Each Owner shall comply with all health requirements and of all other governmental regulations with respect to his or her Residential Unit.

Section 6.10. Use of Association Property and Common Area. Except as otherwise provided in this Declaration, the Common Area and the Association Property shall be improved and used only for the following purposes:

- (a) Affording vehicular passage and pedestrian movement within the Project, including access to the Condominiums;
- (b) Recreational use by the Owners and occupants of Condominiums and their guests, subject to rules established by the Board;
- (c) Beautification of the Project and providing privacy to the residents of the Project through landscaping and such other means as the Board shall deem appropriate;
- (d) Parking of automotive passenger vehicles in areas provided therefor as may be designated and approved by the Board by such persons, upon such terms and conditions as may from time to time be determined by the Board; the rules and regulations of the Board may be enforced by the Board, which shall have the right and power to remove vehicles from the Project at the cost of the vehicle owner and to levy monetary penalties as provided in this Declaration. Owners who violate parking restrictions are subject to tow-away charges and Association imposed fines as may be determined by the Board. The Board shall set a minimum fine of \$50.00 for parking violations;
- (e) As Exclusive Use Areas to be used in the manner described in this Declaration;
- (f) By Declarant for marketing and construction activities; and
- (g) Those additional purposes which may be allowed by the Board.

No Owner shall use or interfere with use of the Common Area or Association Property in any manner which shall increase the Association's cost of insurance or which shall result in cancellation of insurance or making insurance unavailable.

Section 6.11. Owners Liable for Damage. Each Owner shall be legally liable to the Association for all damages to the Association Property caused by such Owner, such Owner's guests (or other licensees) or any occupant of such Owner's Residential Unit as such liability may be determined under California law. Each Owner shall be responsible for compliance with the provisions of this Declaration, the Bylaws and rules and regulations of the Board by such Owner's licensees and occupants of such Owner's Condominium.

Section 6.12. Exclusive Use Areas. Each Exclusive Use Area, if any, shall be appurtenant to the Residential Unit it serves. Conveyance of a Residential Unit will automatically convey all appurtenant Exclusive Use Areas. No Owner shall make any improvements to an Exclusive Use Area unless such improvements have been approved by the Board.

Section 6.13. Use of Exclusive Use Areas. Use of an Exclusive Use Area, if any, shall be subject to the Board's right to restrict those activities and improvements which it reasonably believes would have adverse structural, drainage or maintenance impacts or adverse visual or noise impacts on other Owners, and no Owner shall make any improvements to any Exclusive Use Area unless and until the Board approves the plans therefor. The Board shall have the right from time to time to establish regulations regarding the content of plans for improvements and the procedure of filing plans with the Board. Should an Owner file plans with the Board in compliance with all applicable requirements and should the Board fail to approve, conditionally approve or disapprove such plans within forty-five (45) days, the plans shall be deemed approved by the Board. The Board shall have the right to allow Owners to exclusively use portions of the Common Area above or below the vertical limits of any Exclusive Use Area.

Section 6.14. Exterior Changes. No Owner shall make any improvements or changes to any improvements within his or her Residential Unit which could be seen from outside the Residential Unit unless and until the Board has approved plans of such improvements or changes showing such detail as the Board or its consultant deems appropriate. Any such approval may be conditional. The Board shall have forty-five (45) days to approve or disapprove such plans from the date the plans, in form required by the Board, are received by the Board. Failure of the Board to approve or disapprove the plans within such 45 day period shall be deemed an approval. The Board shall have the right to hire a civil engineer, architect or other expert consultant as the Board deems appropriate to evaluate plans and inspect the improvements or changes. The Owner proposing the improvements or changes shall be required to pay the cost of such consultant. The Board may require an Owner to deposit the estimated cost of such consultant at the time plans are submitted for Board approval.

The Board shall have the right to appoint an architectural review committee of not less than three (3) and not more than five (5) members to discharge the Board's responsibilities under this Section. Members of the architectural review committee need not be Owners. Neither the architectural review committee, nor any members of the architectural review committee, nor their duly authorized representatives, shall be liable to any applicant or Owner for any loss, damage or injury arising out of or in any way connected with the performance of the committee's duties, unless due to the willful misconduct of the committee.

No Owner shall have any right whatsoever to make any change or improvement to any or Association Property.

Each Owner assumes all risks which may result from improvements or changes he or she makes to his or her Residential Unit or Exclusive Use Area and each Owner indemnifies and holds harmless the Association, the Board, Declarant and each other Owner from any claim, demands, liabilities, judgments, attorney's fees and other obligations which arise out of or are incurred in connection with the changes or improvements.

Section 6.15. Parking Within the Project. No Owner in the Project shall park, store or keep any vehicle in the Project, except wholly within the carport or in such other location as may have been improved by Declarant for vehicular parking by the Owner as shown on the Condominium Plan. No Owner shall park, store or keep any large commercial-type vehicle, any recreational vehicle (including, but not limited to, any camper, motor home, trailer, boat trailer, mobile home or other reasonably similar vehicle, boat or aircraft), any inoperable, partially dismantled or any other similar vehicle, or any vehicle other than a private passenger vehicle within the Project unless parked wholly within a carport. Each Owner shall maintain his carport so that it is readily available for parking the number of vehicles for which the carport was originally designed. Any storage use in the carport shall not restrict the parking of vehicles within the carport. No Owner shall conduct major repairs, painting or major restorations of any motor vehicle of any kind whatsoever within his carport or elsewhere within the Project, except for emergency repairs and then only to the extent necessary to enable movement of the vehicle to a proper repair facility. All vehicles shall be parked in compliance with applicable governmental ordinances.

Section 6.16. Right of Access. Each Owner shall have an unrestricted right of access for egress and ingress to and from such Owner's Condominium.

Section 6.17. Restricted Use of Trailers, Etc. No tent, shack, shed, trailer, camper, motor home, boat or structure of any kind shall be used as a residence or dwelling. Subject to the time limitations stated in the Section above entitled "Residential Purposes", nothing herein stated shall restrict Declarant and its agents, contractors and employees from using trailers as temporary structures for uses incidental to the sales and construction within the Project.

Section 6.18. Windows. No window in any residence shall be covered in whole or in part, inside or outside, with aluminum foil, newspaper, reflective tint or paint. Any temporary window coverings must be replaced with permanent window coverings no later than one hundred and twenty (120) days after a residence first becomes occupied by the initial occupant. Unless the Board allows otherwise, the backing of window coverings shall be neutral in color. No apparel, including, but not limited to, beach towels and bathing suits, may be hung over balconies or decks. In addition, balconies and decks shall not be used for storage without the prior written consent of the Board.

Section 6.19. Fireplaces; Gas Logs Only. Should Declarant have provided gas logs in a fireplace, the Owner shall keep the gas logs in good condition and the gas logs shall not be removed except for replacement or repair. No wood or other substance (other than gas) shall be burned in any fireplace which is specified for use of gas logs only.

Section 6.20. Commercial Activity. No professional, commercial or industrial operations of any kind shall be conducted in or upon any Residential Unit, except (a) as allowed by **Section 6.1** above and (b) such temporary uses as shall be permitted by Declarant while the Project is being developed and Condominiums are being sold or leased by Declarant.

Section 6.21. Compliance With City Requirements. The Association and each Owner shall at all times comply with applicable City ordinances, regulations and permits.

Section 6.22. Air Conditioners. No Owner shall install an air conditioning system or replace any system within his or her Residential Unit without the prior written approval of the Board which shall have the right to approve or disapprove the size, shape, noise level and proposed location of the air conditioning unit.

Section 6.23. Solar Energy Systems. Each Owner shall have the right to place and maintain on his or her residence equipment and facilities related to the installation and maintenance of individual solar energy systems. The installation and maintenance of any solar energy system by an Owner shall be subject to all applicable zoning regulations, the UNIFORM BUILDING CODE and associated ordinances. No solar heating panels or other solar energy collection equipment shall be installed on any portion of any Residential Unit unless the equipment is installed in a location and manner as to be screened from the view of other persons in the Project to the greatest degree practicable without significantly increasing the cost of the system or significantly decreasing its efficiency or specified performance; alternatively, the Board may allow for an alternative system of comparable cost, efficiency, and energy conservation benefits. No person shall install any solar energy systems or equipment without the prior written consent of the Board, which shall have the right to reasonably restrict the nature, size, shape, color, style, materials or location of any such solar energy systems or equipment within the Project, subject to the requirements for “reasonable restrictions” and other provisions of California CIVIL CODE Sections 714, 714.1 and 4746, as the same may be amended from time to time.

Section 6.24. No Easements for View Purposes; Disclaimer. No representation or assurance whatsoever is given concerning the view, if any, from a particular Residential Unit. There are no express or implied easements appurtenant to any Residential Unit for view purposes, or for the passage of light and air across any other Residential Unit or any property not within the Project, regardless of whether such Residential Unit or property is owned by Declarant. Each Owner, by accepting a deed to a Condominium, expressly acknowledges and agrees that walls and fences constructed by Declarant, and further construction within the Project and in the immediate vicinity of the Project, may impair the view from the Owner's Residential Unit and each Owner expressly consents to any view impairment.

Section 6.25. Declarant's Improvements. Nothing in this Article or elsewhere in this Declaration shall limit the right of Declarant to construct or alter any improvement to any portion of the Project owned by Declarant, or to which Declarant has reserved a construction easement, prior to the completion and sale of the Residential Units in the entire Project.

Section 6.26. Trash Removal. Each Owner shall keep garbage or trash only in sanitary and suitable containers and each Owner shall remove all trash and garbage from his Residential Unit. Each Owner shall comply with any policies adopted by the Board regulating the size, type and location of trash containers.

Section 6.27. Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Project designed to make the Project safer than it otherwise might be. **Neither the Association, the Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Project, nor shall any of them be held liable for any loss or damage by reason or failure to provide adequate security or of ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other security system cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each owner acknowledges, understands and covenants to inform its tenants that the Association, its Board of Directors and Committees, Declarant, and any successor Declarant are not insurers and that each person using the Project assumes all risks for loss or damage to person, to Residential Units and to the dwellings and personal property resulting from acts of third parties.**

ARTICLE VII

RESPONSIBILITIES OF MAINTENANCE

Section 7.1. Maintenance by Owners. Each Owner of a Condominium shall be responsible for the maintenance and repair of:

(a) **Residential Units.** All interior portions of the Owner's Residential Unit.

(b) **Lateral Connections; Heating and Cooling Systems.** The plumbing, electrical, cable television, water heating systems, heating systems and air conditioning systems (if any), and other systems servicing the Owner's Condominium and located either within or without the outside perimeter of the Residential Unit so long as those systems are used exclusively by such Owner and not in common another Owner(s).

(c) **Exclusive Use Areas.** Any Exclusive Use Area appurtenant to the Condominium.

(d) **Designated Areas Shown on Condominium Plan.** An Owner shall be responsible to maintain, repair and replace any other areas or improvements designated on the Condominium Plan for Owner maintenance.

Section 7.2. Failure to Maintain. In the event an Owner defaults in his or her maintenance or repair obligations, the Board may give written notice of such default, stating with particularity the work of maintenance or repair the Board finds to be required and requesting the same be completed in a reasonable period of time as specified in the notice. In the event the Owner fails to complete such maintenance or repair within the period specified in the notice, the Board may cause such work to be completed and assess the Owner the cost thereof.

Section 7.3. Maintenance by Association. From and after commencement of the Association's regular assessments against the Condominiums, the Association shall maintain the Association Property and the exterior portion of each Residential Unit including the roof and exterior portion of each building , except for those items of maintenance which the Owner is required to perform pursuant to the Section above entitled "Maintenance by Owners." For example, the Association shall preserve, repair and maintain:

(a) ***Association Property.*** The Association Property, including any common driveways and parking spaces, open spaces, including the Diegan Coastal Sage Scrub areas and cliff walls above the quarry basin, common area lighting and fencing, utilities, common area drainage systems, landscaping, irrigation, monument signage and any other improvements located within the Association Property.

(b) ***Areas Designated on the Condominium Plan.*** Any area or improvement shown on the Condominium Plan as being maintained by the Association.

(c) ***Solar Panels.*** The Declarant has installed solar panels without batteries on the roofs of the buildings to comply with a requirement of the State of California. The Association is solely responsible to maintain, repair and replace the solar panels installed by the Declarant.

Section 7.4. Water Quality Protection.

(a) To protect the quality of our nation's waters, a number of federal, state and local laws, ordinances, rules, regulations and orders prohibit the discharge of anything other than natural rain water into storm drain systems, including gutters and streets that drain into storm drains. These governmental requirements include the Clean Water Act, the National Pollution Discharge Elimination System, orders and permits of the State Water Resources Control Board and the Regional Water Quality Control Board, the ordinances and regulations of the County, and any Storm Water Pollution Prevention Plan covering the Properties. Water that enters a storm drain flows to waterways, creeks, streams, rivers, lakes and/or oceans. Accordingly, the National Pollutant Discharge Elimination System ("NPDES") the Federal Clean Water Act, orders and permits of the State Water Resources Control Board, the Regional Water Quality Control Board and the policies and ordinances of the City prohibit discharging anything other than natural rain water into storm drainage systems, including gutters and streets which drain into storm drains.

(b) Most discharges of anything other than natural rain water into storm drain systems are unlawful and may result in significant penalties and fines. Neither the Association nor any Owner shall discharge or permit to be discharged (for example, by a contractor working for the Association or Owner, respectively) any of the following into any street, gutter, storm drain or storm water conveyance system: toxic or hazardous chemicals, hydrocarbon compounds such as gasoline, motor oil, antifreeze, solvents, paints, paint thinner, wood preservatives, fertilizers, lawn clippings, yard waste, detergents, pet waste, or other similar materials or pollutants. Toxic chemicals or hydrocarbon compounds such as gasoline, motor oil, antifreeze, solvents, paints, paint thinners, wood preservatives, fertilizers, lawn clippings, yard waste, detergents, pet waste paints and other such materials and pollutants shall not be discharged into any street, public or private, gutters, or into storm drains or storm water conveyance systems. The disposal of such pollutants and materials into a storm drain system may result in significant penalties and fines and that the Association and/or such Owner may be responsible for any activities by contractors (e.g., painters landscapers, etc.) who dispose of such pollutants from the Association Property into a storm drain system.

(c) The Association and each Owner shall comply with and cause its contractors to comply with all federal, state and County requirements, and the requirements of any other applicable governmental agency regarding the use, storage and disposal of pesticides, fungicides, herbicides, insecticides, fertilizers and other such chemicals. The Association and Owners should consult with the County, other governmental authorities, and their refuse hauler regarding the proper disposal of any toxic or hazardous materials.

(d) The Association and each Owner shall ensure that any landscaping and construction materials brought into the Properties by the Association or Owner or the Association's or Owner's contractors shall be properly contained to prevent spillage into any street, gutter or storm drain system. Should a spillage occur, the Association or Owner shall (or cause the contractor responsible for the spill to) sweep the spilled material and place it in a container; it shall not be washed into any storm water curb drain inlet. The Association and each Owner shall prevent erosion and the runoff of soil and other sediment from the Association Property or the Owner's Lot into any street, gutter or storm drain system.

(e) The Association and each Owner shall comply with the Storm Water Management Plan and the Storm Water Maintenance Plan approved by the City for the Project, as such Plans may be amended from time to time. The Association shall implement and follow the Best Management Practices as set forth in such Plans.

(f) To comply with the requirements of the City in connection with the storm water pollution prevention best management practices, the Association shall, at all times, maintain all improvements located on the Association Property in a clean, safe and attractive condition, free and clear of any and all debris. All landscaping shall be maintained by the Association in a manner that will prevent soil erosion and minimize sediment transport. To the extent that Declarant has installed any erosion protection devices (e.g., sandbags) the Association shall not remove such devices unless and until all landscaping has been installed on the Association Property, and has been sufficiently grown so as to prevent soil erosion and transport of any sediment. All trash receptacles shall be covered and closed at all times except when disposing of trash. The Association shall comply with all applicable Best Management Practices ("BMP") and the Water Quality Management Plan and shall perform all maintenance that may be imposed by the Water Quality Management Plan. The costs of the Association's portion of such maintenance if any shall be treated as common expenses. The Association shall be responsible to maintain and keep in good repair all portions of the onsite private storm drain system, lift station, trench drains, inlet boxes, local area drains, drainage swales and water quality basins located on this property to ensure proper function and no adverse conditions are imposed on downstream properties; i.e. increased erosion, flooding, etc. The Association shall be responsible to maintain and repair the collector lines, any inlets to the collector lines and any filtering systems which filter water from the collector lines. The BMP located along the eastern property boundary shall be kept free of trash, debris and silt/sedimentation. Plantings shall be maintained as per manufacturer's recommendations.

(g) The Association shall assure that paved surfaces (including both concrete and pavers) shall be swept at a minimum frequency of once each month. Trash, heavy metals and sediments will be collected and properly disposed of. Inlets and grates shall be cleared of all obstructions to provide unobstructed flows. Silt deposit, rocks and leaves shall be removed. Discharge of wash water from cleaning or hosing impervious surfaces is prohibited.

(h) The Association shall at all times maintain all landscaping and irrigation in a neat and orderly condition. The Association shall cause all landscaping to be inspected on the first of October and April of every year at a minimum. Healthy growth shall be maintained. Dead plants shall be replaced. Irrigation systems shall operate properly.

(i) Fire Protection. Without limiting the generality of the foregoing, the Association shall at all times maintain the private fire hydrants, the "No Parking - Fire Lane" signs within the "Fire Lane" area as designated by the City, and the project monument entry sign with required address numbers. The Association shall at all times maintain the required Fire Lane free of obstructions within an area that is a minimum of twenty (20) feet wide and thirteen and one-half (13.5) feet in height. Only fire-resistive trees shall be planted or maintained in the Project. The Association shall not allow trees to overhang or grow into the fire lane, any hammerhead turn-around areas or within five (5) feet of any chimneys.

(j) The Association and each Owner shall indemnify, protect, defend and hold Declarant harmless from any and all claims, liability, actions, penalties or damages (including attorneys' fees, experts' fees and costs of suit) arising from or attributable to the Association's or Owner's failure to comply with the requirements of this Section.

The Association shall at all times keep and maintain those areas which it is obligated to maintain in good appearance and condition and free from hazards. The Association shall at all times maintain the entrance to the Project and all private driveways in a good, safe and passable condition.

Each Owner shall reimburse the Association for those costs incurred which result from the Condominium occupants' excessive or neglectful use of the Association Property.

Declarant shall, at Declarant's expense, maintain the Association Property until the obligation of the Association to maintain the Association Property commences.

Section 7.5. Maintenance of Uncompleted Areas. Declarant shall be responsible to maintain Association Property landscaping or streets which are not completed at the time the Association's regular assessments commence. For example, the Association's obligation to maintain a private street will not commence until Declarant has installed the final lift of pavement for that street, and until the final lift of pavement is so installed, Declarant and not the Association will be responsible to maintain the street.

Section 7.6. Fuel Modification Plan. The Project has been designed to address the recommendations of the “Cantera Lofts Condominiums Fuel Modification Plan” by J. Charles Weber, dated October 2016, a copy of which is part of the official records of the Association (the “**Fuel Management Plan**”). The Association shall at all times maintain the Association Property and in accordance with the Fuel Modification Plan.

Section 7.7. Best Management Practices - Pocketed Free-tailed Bat.

(a) The Project has been designed to address the best management practices for the pocketed free-tailed bat recommended by the California Department of Fish and Wildlife in its letter dated June 29, 2017, a copy of which is part of the official records of the Association.

(b) The Association shall ensure that any floodlights always point towards the residential structures or down light the Properties; floodlights shall not point on the direction of a neighboring property, the street, the canyon wall, or passing traffic. The Association shall be responsible for readjustment when lighting has been altered (e.g. due to maintenance or other work which may intentionally or unintentionally redirect lighting in a prohibited manner). Additional lighting shall be of a type that prevents spill light onto other properties or the street.

(c) In the interest of avoiding personal injuries and damages to real property, including damage from fire, the ignition or discharge of fireworks, including consumer fireworks in or on the Association Property or public easement property is forbidden. Fireworks or other pyrotechnics shall not be ignited or discharged in or on parks, streets, sidewalks, alleys, or open space. Additionally, minors shall be prohibited from possessing, using, igniting, or discharging consumer fireworks anywhere within the Properties.

(d) All site walls and fencing shall be maintained to preclude access to the steep wall face for the purpose of safety and protection of habitat.

(e) Neither homeowners, renters, nor their contractors shall apply pesticides or fertilizers (including but not limited to herbicides, insecticides, and fungicides) to any portion of the Association Property, or any other Association-owned property including streetscapes.

(f) If pesticides, herbicides, or fertilizers are needed, the following criteria shall be used in determining the appropriate strategy; products shall be chosen such that they are:

- o Least disruptive to natural controls;
- o Least hazardous to human health;
- o Least toxic to non-target organisms;
- o Protective of wildlife and the native habitat;
- o Least damaging to rivers, streams, and the natural environment;
- o Most likely to produce a permanent reduction in the environment's ability to support target pests
- o Cost-effective in relation to resource constraints in the short and long term.

Contractors serving the Association Property under control or ownership of the Association may apply or administer only those insecticides that are natural or synthetic pyrethroid-based. Acceptable compounds include permethrin and cypermethrin, which are relatively safe options related to naturally occurring pyrethrum. Like pyrethrum, they have considerable insecticidal activity but are not generally very toxic to mammals, including humans. They are fairly stable in air and light but are easily metabolized by mammals and broken down by bacteria in soil and other media.

ARTICLE VIII

SEPARATION OF INTERESTS AND PARTITION PROHIBITED

Section 8.1. No Separation of Interests. No Owner may sell, assign, lease or convey any portion of his or her Condominium separate or apart from the entire Condominium. Any conveyance, encumbrance, judicial sale or other transfer (voluntary or involuntary) of any portion of his or her Condominium separate or apart from the entire Condominium shall be void.

Section 8.2. No Partition. There shall be no termination of the Project and the Common Area of the Project shall remain undivided with no judicial partition thereof except:

(a) With the approval, after substantial destruction or condemnation of the Project occurs, of at least sixty-seven percent (67%) of the total voting power of the Association and approval by Eligible Mortgage Holders who represent at least fifty-one percent (51%) of the Condominiums that are subject to Mortgages held by Eligible Mortgage Holders; or

(b) With the approval, for reasons other than substantial destruction or condemnation of the Project, of at least sixty-seven percent (67%) of the total voting power of the Association and approval by Eligible Mortgage Holders who represent at least sixty-seven percent (67%) of the Condominiums that are subject to Mortgages held by Eligible Mortgage Holders; or

(c) As allowed by California law, including CIVIL CODE Section 4610, as the same may be amended from time to time.

An Eligible Mortgage Holder who receives a written request to give such approvals who does not deliver or mail the requesting party a negative response within thirty (30) days shall be deemed to have given such approval provided such written request was delivered by certified mail or registered mail with "return receipt" requested.

Nothing in this Section shall be deemed to prohibit partition of a cotenancy in a Condominium.

Section 8.3. Power of Attorney. The Association is hereby granted an irrevocable power of attorney to sell the Project for the benefit of all the Owners thereof when partition of the Owners' interests in the Project may be had pursuant to this Article. The power of attorney herein granted may be exercised upon the vote or written consent of Owners who own at least fifty percent (50%) of the Condominiums in the Project. Such power of attorney may be exercised by any two (2) members of the Board who are hereby authorized to record a certificate of exercise in the Office of the County Recorder of the County of San Diego, which certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith.

ARTICLE IX

DAMAGE, DESTRUCTION AND CONDEMNATION OF COMMON AREA OR ASSOCIATION PROPERTY

Section 9.1. Damage or Destruction. If any portion of the Common Area or Association Property is damaged or destroyed by fire or other casualty, then:

(a) If the cost of repairing or rebuilding does not exceed the amount of available insurance proceeds by more than five percent (5%) of the budgeted gross expenses of the Association, the Board shall contract to repair or rebuild the damaged portions of the Common Area or Association Property. Such repair or rebuilding will be in substantial accordance with the original construction unless it is impractical to do so. As stated in **Section 9.3** below, it is not expected that the Association will obtain fire insurance covering the Common Area or Association Property.

(b) If the cost of repairing or rebuilding exceeds the amount of available insurance proceeds by more than five percent (5%) of the budgeted gross expenses of the Association, then:

(i) The Board shall obtain at least two competitive bids for the repair or rebuilding not more than forty-five (45) days after such damage occurs;

(ii) The Board shall use its best efforts to cause a special meeting of the Members to occur no later than ninety (90) days after such damage occurs. The notice of such meeting shall state that the reason for the meeting is to consider repair or rebuilding the portion of the Project which was damaged and whether to impose a special assessment to repair or rebuild. Such notice shall be accompanied with a summary of the competitive bids for repair or replacement.

(iii) Unless a majority of the voting power of the Association votes against the Board doing so, the Board shall within one hundred eighty (180) days after such damage enter into a contract for repair or replacement and impose special assessments therefor pursuant to its Resolution to do so in accordance with the Section entitled "Limitation on Regular and Special Assessments" of the Article above entitled "COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION". For purposes hereof, a "Majority of the voting power of the Association" means: (A) a majority of the voting power of each Class of Members if the two-class voting structure is in effect, or (B) a majority of the total voting power if only one-class voting is in effect.

(iv) Nothing herein stated is intended to prevent the Board from repairing or replacing the Common Area or Association Property and imposing a special assessment therefor pursuant to its authority to do so in accordance with the Section entitled "Limitation on Regular and Special Assessments" of the Article above entitled "COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION".

(c) If the Owners vote to not repair or rebuild the Common Area or Association Property, then each Owner (and the Owner's Mortgagee(s) as their respective interests shall then appear) shall be entitled to receive that portion of insurance proceeds equal to the proportion of the decrease in fair market value of the Owner's Condominium as compared to the aggregate decrease in fair market values of all the Condominiums in the Project caused by such damage or destruction. Fair market value shall be determined by an MAI (Member Appraisal Institute of the American Institute of Real Estate Appraisers) appraiser selected by the Board and hired by and at the expense of the Association. Should dispute arise as to the distribution of insurance proceeds, the dispute shall be decided by arbitration by the American Arbitration Association pursuant to its Commercial Rules of Arbitration.

(d) If a bid to repair or rebuild is accepted, the Board shall levy a special assessment against each Condominium pursuant to the Section entitled "Rate of Special Assessments For Repairs" of the Article above entitled "COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION" for purposes of raising funds for the rebuilding or repair and to make up any deficiency between the total insurance proceeds and the contract price for such repair and rebuilding, and such assessment and all insurance proceeds, whether or not subject to liens of Mortgagees, shall be paid to the account of the Association to be used for such rebuilding.

Section 9.2. Condemnation. If any portion of the Common Area, or the Association Property is taken by condemnation, eminent domain or any proceeding in lieu thereof, then all the Owners in the Project, and their Mortgagees as their respective interests then appear, shall be entitled to receive a distribution from the award for such taking in the same proportion as insurance proceeds would be distributed pursuant to Subsection (c) of the Section above entitled "Damage or Destruction"; provided, however, that should it be determined to repair or rebuild any portion of the Common Area, or the Association Property, such proceeds shall be paid to the Association for that purpose in the same manner and subject to the same terms, conditions and limitations as are set forth above in this Article for repairing damaged or destroyed portions of the Common Area, and the Association Property. A decision to repair or rebuild shall be made in the same manner and subject to the same conditions and limitations as provided above in this Article for determining whether to rebuild or repair following damage or destruction.

Section 9.3. Insurance.

(a) The Association shall obtain and continue in effect at least the following insurance:

(i) A comprehensive general liability and property damage insurance policy with cross liability endorsement, if available, insuring the Association, any manager, the Declarant and the Owners against liability incident to ownership or use of the Common Area, and the Association Property. Typically, the limits of such insurance are required to be not less than \$1 Million covering all claims for death, personal injury and property damage arising out of a single occurrence, and the form and content of the comprehensive general liability policy must satisfy the requirements of the Federal National Mortgage Association ("FNMA") and the Federal Home Loan Mortgage Corporation ("FHLMC").

(ii) A policy insuring the Association's officers and directors against liability for their negligent acts or omissions while acting in their capacity as officers and directors. Typically, the limits of such insurance are required to be not less than \$1 Million for all claims arising out of a single occurrence.

(iii) Section 5800 of the California CIVIL CODE provides for a partial limitation on the liability of volunteer officers and directors of the Association, provided that certain requirements, as set forth in the Code section, are satisfied. The requirements include that general liability insurance and insurance covering individual liability of officers and directors for negligent acts or omissions be carried by the Association in specified amounts. The Association shall have the right to maintain general liability insurance and insurance covering individual liability of officers and directors for negligent acts or omissions in amounts which satisfy the requirements of the Code to limit the liability of volunteer officers and directors of the Association.

(iv) A fidelity bond covering members of the Board, officers and employees of the Association and employees of any manager or managing agent, whether or not such persons are compensated for their services, naming the Association as obligee and written in an amount equal to at least three (3) months' aggregate regular assessments (including reserves) by the Association against all Condominiums then subject to assessment.

(v) Workers' compensation insurance covering any employees of the Association.

(b) A master fire insurance policy with glass coverage and extended coverage endorsement for one hundred percent (100%) of the current replacement cost of all of the Association Property buildings within the Project, excluding land, foundations, excavations and other items that are usually excluded from insurance coverage. The maximum deductible amount shall be the lesser of \$10,000 or one percent (1%) of the policy face amount. The form and content of such policy must satisfy the requirements of FNMA and FHLMC and shall contain the following endorsements:

(i) An Inflation Guard Endorsement, when it can be obtained.

(ii) A construction code endorsement, if there is a construction code provision that would require changes to undamaged portions of the building(s) even when only part of a building is destroyed by an insured hazard (typical endorsements include Demolition Cost Endorsements, Contingent Liability From Operation of Building Laws Endorsement and Increased Cost of Construction Endorsement).

(iii) A Special Condominium Endorsement which states the policy shall provide that any insurance trust agreement will be recognized; the right of subrogation against Owners will be waived; the insurance will not be prejudiced by any acts or omissions of Owners that are not under the control of the Association; and the policy will be primary, even if an Owner has other insurance that covers the same loss.

(c) Insurance premiums for the insurance obtained by the Association (other than the cost of endorsements which cover only particular Owners) shall be a Common Expense to be included in the regular assessments levied by the Association.

(d) All insurance policies shall provide that they shall not be cancelable by the insurer without first giving at least ten (10) days' prior notice in writing to the Association and the servicer of each first Mortgage which requests such notice, and shall contain a waiver of subrogation by the insurers against the Association, Board and Owners.

(e) The Association shall maintain such insurance coverage as may be required by FNMA or FHLMC so long as either FNMA or FHLMC, respectively, holds a Mortgage on or owns any Condominium.

(f) Nothing herein stated shall prevent the Association from obtaining additional amounts of insurance or from adding to the items covered by a master policy.

(g) It shall be the responsibility of each Owner to insure the Owner's residence and related Residential Unit and any other Residential Unit improvements and to obtain any liability insurance covering these areas.

Section 9.4. Mortgage Approval. Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with original plans and specifications, unless other action is approved by Eligible Mortgage Holders of first Mortgages on Condominiums which have at least fifty-one percent (51%) of the votes of Condominiums subject to Eligible Mortgage Holders' Mortgages.

Section 9.5. Association Represents Owners Re Common Area, and Association Property. The Association is hereby designated to represent each Owner with respect to proceedings, negotiations, settlements or agreements pertaining to condemnation, destruction or repair of the Common Area, and the Association Property and any proceeds from settlement shall be payable to the Association for the benefit of the Owners and their Mortgagees and are to be used as set forth in this Declaration. Each Owner hereby grants the Association a power of attorney to so represent each Owner. Any condemnation proceeds that are wholly due to severance damages to a particular Residential Unit shall belong to the Owner or Mortgagee of that Residential Unit, as their respective interests then appear.

ARTICLE X

DAMAGE, DESTRUCTION AND CONDEMNATION OF RESIDENCES

Section 10.1. Damage or Destruction. In the event of damage to or destruction of any residence within a Residential Unit the Owner shall reconstruct the same as soon as reasonably practicable (unless the Association is not required to repair surrounding damaged Common Area, or Association Property pursuant to the terms of **Article IX** above).

Section 10.2. Each Owner to Insure His/Her Residential Unit. Each Owner shall at all times maintain either (a) the financial capacity to repair or rebuild the residence in his or her Residential Unit in the event of fire, or (b) fire insurance insuring the full replacement value of the residence. Each such insurance policy shall contain a waiver of subrogation provision both as to Declarant and the Association. An Owner shall within ten (10) days after request by the Board provide the Board with reasonable evidence of such Owner's compliance with this Section. However, the Board shall have no duty to make any such request or to otherwise determine whether an Owner is in compliance with this Section. Failure of the Board to determine compliance with this Section shall not constitute a waiver of the right of the Board, Declarant or any Owner to enforce this Section.

Section 10.3. Condemnation. In the event of any taking of a Residential Unit, the Owner of the Condominium (and such Owner's Mortgagees as their interests may appear) shall be entitled to receive the award for such taking and after acceptance thereof the Owner and the Owner's Mortgagee shall be divested of all further interest in the Project and membership in the Association as to such Residential Unit. In such event the Owner shall grant the Owner's remaining interest in the Common Area appurtenant to the Residential Unit so taken, if any, to the other Owners owning a fractional interest in the same Common Area, such grant to be in proportion to the fractional interest in the Common Area then owned by each.

Section 10.4. Mortgage Approval. Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with original plans and specifications, unless other action is approved by Eligible Mortgage Holders of first Mortgages on Condominiums which have at least fifty-one percent (51%) of the votes of Condominiums subject to Eligible Mortgage Holders' Mortgages.

ARTICLE XI

ASSOCIATION'S RIGHT OF ENTRY

For the purpose of performing the maintenance of the Association Property or for any other purpose reasonably related to the performance by the Board of its responsibilities under this Declaration, the Association's agents or employees shall have the right to enter any Residential Unit, Exclusive Use Area or upon any portion of the Association Property to effect repairs, improvements, replacements or maintenance as necessary; provided, however, except in case of an emergency, there shall be no entry into a Residential Unit or Exclusive Use Area without (a) a court order allowing such entry or (b) the Owner's consent, which consent shall not unreasonably be withheld and shall be presumed if the Owner makes no objection to such entry within three (3) days after the Board delivers notice of its intent to enter. When there is an entrance into any Residential Unit or Exclusive Use Area such entrance shall be made with as little inconvenience to the Owner as possible and any damage caused shall be repaired by the Association.

ARTICLE XII

EXCLUSIVE EASEMENTS AND LICENSES

The Board shall have the right to grant the following additional easements and licenses:

Section 12.1. Association Property. The Board shall have the right to grant easements or licenses (which may be revocable or irrevocable) for Owners to exclusively use portions of the Association Property adjoining the Owners' Residential Units provided that the granting of such easements would not materially and adversely affect any Owner's use of the Association Property.

ARTICLE XIII

EASEMENTS

Section 13.1. Easements for Encroachments. Easements are hereby reserved on, over and across each Residential Unit, and the Association Property (a) to allow the continuation of any encroachment of any improvements (*e.g.*, foundations, footings, eaves, utility meters, utility lines or other overhangs, wing walls or chimneys, gates, walls, fences, landscaping, and other improvements) as originally constructed by Declarant or as reconstructed in substantial accordance with the original plans and locations thereof, and (b) to allow the continuation of any encroachment of improvements resulting from subsequent settling or shifting of the improvements.

Section 13.2. Easements for Utilities. The rights and duties of the Owners with respect to sanitary sewer, water, electricity, gas, television cable (or CATV service) and telephone lines, and other facilities, shall be governed by the following:

(a) Each Owner shall maintain those facilities and connections located upon the Owner's Residential Unit or which serve only such Owner's Residential Unit unless the facilities or connections are maintained by the respective utility company or public agency;

(b) Whenever sanitary sewer, water or gas connections, television cables, electricity or telephone lines are installed within the Project and it becomes necessary to gain access to the connections, cables or lines through a Residential Unit owned by someone other than the Owner of the Residential Unit served by the connections, cables or lines, the Owner of the Residential Unit served by the connections, cables or lines shall have the right, and is hereby granted an easement to the extent necessary, to enter upon such other Residential Unit or to have the utility companies enter upon such other Residential Unit to repair, replace and generally maintain the connections, cables or lines;

(c) Whenever sanitary sewer, water or gas connections, television cables, electricity or telephone lines are installed within the Project and the connections, cables or lines serve more than one (1) Residential Unit, the Owner of each Residential Unit served by the connections, cables or lines shall be entitled to the full use and enjoyment of the portions of the facilities which service the Owner's Residential Unit; and

(d) No Owner shall construct any improvements on any utility easement area of record which will unreasonably interfere with the maintenance and repair of the facilities located in the easement without the prior written consent of the appropriate utility company or easement owner.

Section 13.3. Additional Easements. Declarant hereby reserves the following additional easements:

(a) **To Construct the Private Drive Improvements.** Declarant reserves easements for Declarant to complete the construction of the private drive and the utilities thereunder, planned by Declarant for the Real Property.

(b) **To Construct and Market Homes.** Declarant reserves the easements granted in **Section 2.2(j)** above.

(c) **To Fence Off Areas During Construction.** Declarant reserves the right and easement for Declarant to reasonably fence off areas prior to and during construction for reasons of public safety, provided that alternative access remains available to the persons affected by any such fence.

(d) **Further Utility Easements.** Declarant reserves easements to install, keep and repair all gas, electric, sewer, water and other public utilities within or adjoining any private drive planned by Declarant for the Real Property, together with the right to transfer the same to the City or utility suppliers.

(e) **Easement to Inspect and Test.** Easements for Declarant to enter any Residential Unit, including the interior of the residence, to inspect those areas and to conduct invasive testing referred to in California CIVIL CODE Section 6000. However, Declarant shall notify the Owner of the Residential Unit of at least three (3) alternative dates and times when such inspection can take place (the earliest of which shall not be less than ten (10) days after the notification is given) and Declarant shall give the Owner the opportunity to specify which date and time is acceptable to the Owner. Should the Owner not respond affirmatively with respect to one of the dates and times within five (5) days, then Declarant may decide which of the dates and times the inspection and testing shall take place and so notify the Owner. Alternatively, Declarant may seek a judicial order allowing such inspection and testing to take place. Declarant shall be entitled to its reasonably incurred attorney's fees and be deemed the "prevailing party" should such a court order be sought and obtained. Declarant shall be obligated to fully repair any damage caused by any such destructive testing.

(f) **Other Easements.** Any other easement reserved in this Declaration.

ARTICLE XIV

ENFORCEMENT

Section 14.1. Enforcement. The Association, Declarant, and any Owner shall have the right to enforce against one another, by any proceeding at law or in equity, all restrictions, covenants, reservations, liens and charges now or hereafter imposed by this Declaration.

Section 14.2. No Waiver. Failure by the Association, Declarant or any Owner to enforce any provision of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

ARTICLE XV

OTHER PROVISIONS

Section 15.1. Severability. Should any provision in this Declaration be void or become invalid or unenforceable in law or equity by judgment or court order, the remaining provisions hereof shall be and remain in full force and effect.

Section 15.2. Amendments Prior to Escrow Closings. Prior to the date escrow closes for any sale of a Condominium to a Retail Purchaser, this Declaration may be unilaterally amended by Declarant.

Section 15.3. Amendments After Escrow Closings. The following provisions shall apply after the close of the first escrow for a sale of a Condominium to a Retail Purchaser. During the period of time prior to conversion of the Class B membership to Class A membership, this Declaration may be amended by an instrument in writing signed by the President or Secretary of the Association certifying that at least sixty-seven percent (67%) of the voting power of each class of Members of the Association have approved the amendment. After conversion of the Class B membership in the Association to Class A membership, the Declaration may be amended by an instrument in writing signed by the President or Secretary of the Association certifying that the following have approved the amendment: (a) at least sixty-seven percent (67%) of the total voting power of the Association, and (b) at least sixty-seven percent (67%) of the voting power of Members of the Association other than Declarant. The percentage of voting power necessary to amend a specific clause or provision of this Declaration shall not be less than any percentage of affirmative votes prescribed for action to be taken under that clause. An amendment shall become effective upon the recording thereof by the Office of the County Recorder of the County of San Diego, California. Anything herein stated to the contrary notwithstanding, for so long as Declarant owns any portion of the Real Property, no amendment may be made to this Declaration which diminishes Declarant's rights hereunder without Declarant's prior written consent.

Section 15.4. Mortgage Approval of Amendment. Anything contained herein to the contrary notwithstanding, no amendment material to a Mortgagee may be made to this Declaration without the prior written consent of Eligible Mortgage Holders whose Mortgages encumber fifty-one percent (51%) or more of the Condominiums within the Project which are subject to Eligible Mortgage Holder Mortgages. For purposes hereof, any amendments to provisions of this Declaration governing any of the following subjects, shall normally be deemed "material to a Mortgagee":

- (a) Voting rights.
- (b) Assessment liens and the priority of assessment liens and the right of Eligible Mortgage Holders to approve increases in regular assessments of in aggregate more than twenty-five percent (25%) during any fiscal year from the regular assessments assessed during the previous fiscal year.
- (c) The right of Eligible Mortgage Holders to approve reductions in reserves for maintenance, repair and replacement of the Association Property, Common Area and .
- (d) Responsibility for maintenance and repairs.
- (e) Reallocation of interests in the Common Area, or the Association Property (including Exclusive Use Area) or rights to its use.
- (f) Redefinition of Residential Unit boundaries.
- (g) Convertibility of Residential Units into Common Area and Association Property and vice versa.
- (h) Annexation and de-annexation.
- (i) Hazard or fidelity insurance requirements.
- (j) Imposition of any restrictions on the leasing of Condominiums.
- (k) Imposition of any right of first refusal or similar restriction on the right of a Condominium Owner to sell, transfer or otherwise convey the Owner's Condominium.
- (l) The Section below entitled "Approval of First Mortgagees".
- (m) Restoration or repair of the Project (after a hazard or partial condemnation) in a manner other than specified herein.
- (n) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs.
- (o) Any provision which, by its terms, is specifically for the benefit of the first Mortgagees, or specifically confers rights on first Mortgagees.

An Eligible Mortgage Holder who receives a written request to approve amendments (including additions) who does not deliver or mail to the requesting party a negative response within thirty (30) days, shall be deemed to have approved such request provided that such written request was delivered by certified mail or registered mail, with "return receipt" requested, to the address last supplied by the Eligible Mortgage Holder.

Section 15.5. Extension of Declaration. Each and all of these covenants, conditions and restrictions shall terminate sixty (60) years following the recordation of this Declaration of Restrictions with the Office of the County Recorder of the County of San Diego, after which date they shall automatically be extended for successive periods of ten (10) years unless all the Owners have executed and recorded at any time within six (6) months prior to the end of said sixty (60) year period, or within six (6) months prior to the end of any such ten (10) year period, in the manner required for a conveyance of real property, a writing in which it is agreed that said restrictions shall terminate at the end of said sixty (60) year period or at the end of any such ten (10) year period.

Section 15.6. Enforcement Litigation. In the event the Association, Declarant, or any Owner shall commence litigation to enforce any of the covenants or restrictions contained in this Declaration, the prevailing party in such litigation shall be entitled to costs of suit and such attorney's fees as the Court may adjudge reasonable and proper. The "prevailing party" shall be the party in whose favor a final judgment is entered. This Section shall not entitle a party to his or her attorney's fees for any claim based on alleged defects in the design or construction of the Real Property or any portion of the Real Property or any improvements to the same.

Section 15.7. Provisions Apply to All Condominiums. The provisions of this Declaration apply to all Condominiums which have been made subject to this Declaration, including any unsold Condominiums which may be owned by Declarant. Declarant shall have the same rights and assumes the same duties as any other Owner with respect to unsold Condominiums, except as expressly stated otherwise.

Section 15.8. DVA Approval. So long as there is a Class B membership in the Association, and during the period of time that the DVA is the guarantor of a Mortgage encumbering a Condominium, the following actions will require the prior approval of the DVA; deannexation of additional property from the Project, any mergers or consolidations of the Association, any special assessment, and a material amendment to the Declaration, a draft of which shall be submitted to and approved by the DVA prior to recordation.

Section 15.9. FHA Approval. The Federal Housing Authority ("FHA") shall have the same approval rights as are provided to the DVA in this Declaration during such period of time as FHA is insuring a Mortgage encumbering a Condominium within the Project or owns a Condominium within the Project.

Section 15.10. Special Responsibilities of Association. In the event that the improvements to be installed by Declarant to the Common Area or the Association Property have not been completed prior to the issuance by the California Department of Real Estate of a Final Subdivision Public Report and in the further event that the Association is the obligee under a bond to secure performance by the Declarant to complete such improvements, then if such improvements have not been completed and a Notice of Completion filed within sixty (60) days after the completion date specified in the Planned Construction Statement appended to the bond, the Board shall consider and vote upon the question of whether or not to bring action to enforce the obligations under the bond. If the Association has given an extension in writing for the completion of any such improvement then the Board shall consider and vote on said question if such improvements have not been completed and a Notice of Completion filed within thirty (30) days after the expiration of the extension period. In the event that the Board determines not to take action to enforce the obligations secured by the bond, or does not vote on the question as above provided, then, in either such event, upon petition signed by Members representing not less than five percent (5%) of the total voting power of the Association, the Board shall call a special meeting of the Members of the Association to consider the question of overriding the decision of the Board or of requiring the Board to take action on the question of enforcing the obligations secured by the bond. Said meeting of Members shall be held not less than thirty-five (35) days nor more than forty-five (45) days following receipt of the petition. At said meeting a vote of a majority of the voting power of the Members of the Association, excluding the vote of Declarant, to take action to enforce the obligations under the bond shall be deemed to be the decision of the Association, and the Board shall thereafter implement the decision by initiating and pursuing appropriate action in the name of the Association.

Section 15.11. Limitation of Restrictions on Declarant. Declarant is undertaking the work of construction of residential Condominium dwellings and incidental improvements within the Project. The completion of that work, and the sale, rental and other disposal of said Condominium dwellings is essential to the establishment and welfare of the Project as a residential community. In order that Declarant's work may be completed and the Project may be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

- (a) Require Declarant to obtain any approval of the Board; Declarant is exempt from the provisions of this Declaration which require Board approvals; or
- (b) Prevent Declarant, its contractors or subcontractors from doing in the Project whatever is reasonably necessary or advisable in connection with the completion of such work; or
- (c) Prevent Declarant or its representatives from erecting, constructing and maintaining on any part of the Project such structures as may be reasonable and necessary for the conduct of its business of completing such work and establishing the Project as a residential community and disposing of the same in parcels by sale, lease or otherwise; or
- (d) Prevent Declarant from conducting on any part of the Project its business of completing such work, and of establishing a plan of Condominium ownership and of disposing of Condominiums in the Project by sale, lease or otherwise; or

(e) Prevent Declarant from maintaining such signs within the Project as may be necessary for the sale, lease or disposition of Condominiums; provided, however, that the maintenance of any such sign shall not unreasonably interfere with the use by any Owner of such Owner's Condominium.

The rights of Declarant provided in Subparagraphs (a) through (e) above may be exercised during the period of time commencing when the Condominiums are first sold or offered for sale to the public and ending when all Condominiums have closed escrow, or five (5) years following the date of conveyance of the first Condominium in the Project to a Retail Purchaser, whichever shall first occur.

Section 15.12. Owners' Compliance. Each Owner, tenant or occupant of a Condominium shall comply with the provisions of this Declaration, the Bylaws, decisions and resolutions of the Association or its duly authorized representative, as lawfully amended from time to time, and failure to comply with any such provisions, decisions, or resolutions shall be grounds for an action to recover sums due, for damages, or for injunctive relief.

All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration or in the Bylaws, shall be deemed to be binding on all Owners of Condominiums, their successors and assigns.

Section 15.13. Payments of Taxes or Premiums by First Mortgagees. First Mortgagees may, jointly or severally, pay taxes or other charges which are in default and which may or have become a charge against the Association Property, unless such taxes or charges are separately assessed against the Owners, in which case, the rights of first Mortgagees shall be governed by the provisions of their deeds of trust. First Mortgagees may, jointly or severally, also pay overdue premiums on casualty insurance policies, or secure a new casualty insurance coverage on the lapse of a policy for the Association Property, and first Mortgagees making such payments shall be owed immediate reimbursement thereof from the Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of any first Mortgagee who requests the same to be executed by the Association.

Section 15.14. Mortgagee Curing Defaults. A Mortgagee who acquires title by judicial foreclosure, deed in lieu of foreclosure or trustee's sale shall not be obligated to cure any breach of the provisions of this Declaration which is non-curable or of a type which is not practical or feasible to cure. The determination of the Board made in good faith as to whether a breach is non-curable or not feasible to cure shall be final and binding on all Mortgagees.

Section 15.15. Approval of First Mortgagees. Unless at least sixty-seven percent (67%) of the first Mortgagees (based on one vote for each first Mortgage owned; however a construction lender shall have one vote for each Condominium encumbered by the first Mortgage which secures a construction loan) have given their prior written approval, the Association shall not be entitled to:

- (a) By act or omission seek to abandon or terminate the Project.
- (b) Change the pro rata interest or obligations of any Condominium in order to levy assessments or charges, allocate distribution of hazard insurance proceeds or condemnation awards, or determine the pro rata share of ownership of each Condominium in the Common Area.
- (c) Partition or subdivide any Condominium.
- (d) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Association Property (this requirement does not apply to areas which are Association Property only for maintenance purposes). The granting of easements for public utilities or for other public purposes and other easements allowed by this Declaration shall not be deemed a transfer within the meaning of this Subsection nor shall non-material boundary adjustments be deemed a transfer within the meaning of this Subsection.
- (e) Restoration of the project (after hazard damage or partial condemnation) in such a manner other than specified in this Declaration. Any restoration or repair of Common Area or the Association Property after partial condemnation or damage due to an insurable event, shall be performed substantially in accordance with this Declaration and original plans and specifications unless other action is approved by Eligible Mortgage Holders, Insurers or Guarantors which have at least sixty-seven percent (67%) of the votes of Condominiums subject to Eligible Mortgage Holders, Insurers or Guarantors. When Owners are considering termination of the legal status of the project for reasons other than substantial destruction or condemnation of the project, Eligible Mortgage Holders, Insurers or Guarantors which have at least sixty-seven percent (67%) of the votes of Condominiums subject to Eligible Mortgage Holders, Insurers or Guarantors must agree.
- (f) Use hazard insurance proceeds or proceeds from other third parties for losses to or claimed defects in any portion of the Common Area or the Association Property for other than the repair, replacement or reconstruction of such Common Area or Association Property.

Section 15.16. Notice to Eligible Mortgagees. Upon written request to the Association identifying the name and address of the Eligible Mortgage Holder, Insurer or Guarantor and the Condominium number or address, any Eligible Mortgage Holder, Insurer or Guarantor will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Condominium on which there is a Mortgage held, insured or guaranteed by such Eligible Mortgage Holder, Insurer or Guarantor.

(b) Any delinquency in the payment of assessments or other default by an Owner subject to a Mortgage held, insured or guaranteed by such Eligible Mortgage Holder, Insurer or Guarantor which remains uncured for a period of sixty (60) days.

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

(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders, Insurers or Guarantors as specified above.

Section 15.17. Documents to be Available to Mortgagees. The Association shall make available to Owners and Mortgagees, and holders, insurers or guarantors of any Mortgage, current copies of this Declaration, the Bylaws, other rules concerning the Project and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances. If no audited statement is available, the Eligible Mortgage Holder or Eligible Mortgage Insurer or Guarantor may have an audited statement prepared at its expense. Any such financial statement so requested shall be furnished within a reasonable time following such request.

Section 15.18. Mortgagee Protection. A breach by an Owner of any of the covenants, conditions and restrictions contained herein shall not affect, impair, defeat or render invalid the lien, charges or encumbrance of any first Mortgage made for value which may then exist on any Condominium; provided, however, that in the event of a foreclosure of any such first Mortgage, or if the holder of the note secured by such first Mortgage acquires title to a Condominium in any manner whatsoever in satisfaction of the indebtedness, then the purchaser at the foreclosure sale shall, upon acquiring title, become subject to each and all of the covenants, conditions and restrictions contained herein, but free from the effects of any breach occurring prior thereto.

Section 15.19. Conflicts. In the event of any conflict between any of the provisions of this Article and any of the other provisions of this Declaration, the provisions of this Article shall control.

Section 15.20. Documents to be Provided to Prospective Purchasers.

(a) ***By Owners.*** Each Owner shall, as soon as practicable before transfer of title to his or her Condominium or execution of a real property sales contract therefor (as defined in CIVIL CODE Section 2985), provide to the prospective purchaser the documents the documents required by CIVIL CODE Section 4525.

(b) ***By the Association.*** Upon written request to the Association it shall, within ten (10) days of mailing or delivery of the request, provide an Owner with a copy of the requested Association items specified in CIVIL CODE Section 4525. The Association may charge a fee for this service which may not exceed the cost to prepare and reproduce the requested items.

Section 15.21. Member Approval Required to Initiate Binding Arbitration or Litigation.

Neither the Board nor any committee of the Board shall initiate binding arbitration or litigation with respect to portions of the Real Property owned or maintained by the Association for violation of the construction standards set forth in California CIVIL CODE Sections 896 and 897 and any successor statutes or laws ("**Construction Claim**") without first obtaining the approval of a majority of the voting power of Members of the Association, excluding the vote of Declarant. The Board and any committee so authorized by the Board shall have the right and authority, without Member approval, to engage in non-adversarial proceedings or mediation with respect to a Construction Claim (*e.g.* pursuant to California CIVIL CODE Sections 910 through 938 or California CIVIL CODE Section 6000).

Section 15.22. Notice of Statutory Procedures for Certain Claims.

Pursuant to California CIVIL CODE Section 912(f), Declarant and each Guest Builder (that has signed the Consent of Guest Builder below), notify each Owner and the Association that Chapter 4 (commencing with Section 910) of Title 7 of Part 2 of Division 2 of the California CIVIL CODE sets forth non-adversarial procedures and remedies (the "Chapter 4 Procedures") that may apply to claims for construction defect which may arise in connection with the Real Property or improvements constructed on the Real Property. The Chapter 4 Procedures impact the legal rights of Owners and the Association. The statute allows Declarant or a Guest Builder to elect not to use its procedures. The statute also allows Declarant or a Guest Builder, by contract with Owners or the Association, to provide alternative non-adversarial procedures and remedies in lieu of the Chapter 4 Procedures.

Section 15.23. Documents to be Provided by Owners to Subsequent Purchasers.

In conjunction with the sale of each Residential Unit by Declarant or a Guest Builder to a Retail Buyer, Declarant or the Guest Builder (as applicable) provided the Retail Buyer certain documents ("**Homeowner Documents**"), which may include, without limitation, the following: (i) a Maintenance Manual and/or other maintenance or preventive maintenance information; (ii) manufactured products' maintenance and limited warranty information; and (iii) a fit and finish warranty or other contractual warranty. Each Owner shall maintain a full and complete copy of the Homeowner Documents and provide the Homeowner Documents to any subsequent purchaser of the Owner's Residential Unit.

ARTICLE XVI

PROCEDURES TO RESOLVE DISPUTES WITH DECLARANT

Section 16.1. Definitions. For purposes of this Article, the following terms shall have the following meanings:

(a) **"Affiliated Contractor"** shall mean and refer to each general contractor and contractor who, as of the time of sale of the portion of the project that is the subject of a Dispute: (i) is in the business of building, developing or constructing the project for public purchase; and (ii) is a partner, member of, subsidiary of, or otherwise similarly affiliated with Declarant.

(b) **"Claimant"** shall mean and refer to any party (including any Owner or the Association) who initiates a claim against a Development Party.

(c) **"Development Party"** shall mean and refer to Declarant or any director, officer, partner, employee, subcontractor or agent of Declarant, or any Affiliated Contractor.

(d) **"Dispute"** shall mean and refer to a dispute or disagreement between a Claimant and a Development Party concerning any Residential Unit, Common Area, or improvements in the Real Property.

Section 16.2. Resolution of Disputes by Binding Arbitration. The purpose of this Article is to provide an expedited means of resolving Disputes which may arise between a Development Party and a Claimant that is not resolved pursuant to any applicable statutory dispute resolution procedures. **DECLARANT, THE ASSOCIATION, AND EACH OWNER (COLLECTIVELY THE "PARTIES") AGREE TO USE THE PROCEDURES ESTABLISHED IN THIS ARTICLE TO RESOLVE ALL DISPUTES AND WAIVE THEIR RIGHTS TO RESOLVE DISPUTES COVERED IN THIS ARTICLE IN ANY OTHER MANNER. THE PARTIES ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS ARTICLE, THEY ARE GIVING UP THEIR RIGHT TO HAVE DISPUTES TRIED BEFORE A JURY, PURSUANT TO THE FEDERAL ARBITRATION ACT.**

Section 16.3. Agreement to Arbitrate. The Parties agree to resolve all Disputes that may arise between a Claimant and a Development Party exclusively through binding arbitration in San Diego County, where the Real Property is located. This arbitration provision shall apply to Disputes of any kind or nature regardless of when the Dispute first arose or the nature of the relief sought. Alternatively, the Parties may elect to resolve such Disputes through a small claims court proceeding.

Section 16.4. No Trial by Judge or Jury. By agreeing to resolve all Disputes through binding arbitration, the Parties will not have their respective claims and defenses decided by a judge or a jury. Instead all claims and disputes will be decided by the Arbitrator.

Section 16.5. Rules Applicable to All Cases. The arbitration will be conducted in accordance with the commercial arbitration rules of the American Arbitration Association ("AAA Rules") then applicable to the claims presented, as supplemented by this Article. The following supplemental rules shall apply to all arbitration proceedings respecting Disputes and shall govern in the event of a conflict between the rules set forth below and the AAA Rules.

(a) **Qualifications of Arbitrators.** The arbitrator shall be neutral and impartial and either a retired judge or a member or former member of the California State Bar with at least 15 years experience as a practicing lawyer.

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

(c) **Expenses.** All fees charged by the arbitrator shall be advanced by the Development Party. If Development Party is the prevailing party in the arbitration, the arbitrator may, in his or her discretion and only to the extent permitted by law, direct the Claimant to reimburse Development Party all or part of the arbitrator's fee advanced by such Development Party.

(d) **Preliminary Procedures.** If state or federal law requires the Parties to take steps or procedures before commencing an action in court, then the Parties must take such steps or follow such procedures, as the case may be, before commencing the arbitration. For example, any claims or Disputes pursuant to California CIVIL CODE Sections 895 *et seq.* as hereafter amended may be subject to the non-adversarial procedures set forth in California CIVIL CODE Sections 910 through 938, prior to the initiation of any arbitration or small claims court proceeding. In addition, nothing contained herein shall be deemed a waiver or limitation of the provisions of California CIVIL CODE Section 5985, 6000, 6100 or 6150.

(e) **Participation by Other Parties.** A Claimant and a Development Party, to the extent any such party is defending a claim in the arbitration, may, if it chooses, have all necessary and appropriate parties included as parties to the arbitration.

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

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

Section 16.6. Additional Rules Applicable to Certain Cases. In any arbitration in which a claim of a Claimant or a Development Party exceeds \$500,000 in value, the Large, Complex Case Rules and procedures of the AAA will supplement the AAA rules.

Section 16.7. Federal Arbitration Act. The Parties acknowledge that because many of the materials and products incorporated into the home are manufactured in other states, the purchase of a Residential Unit evidences a transaction involving interstate commerce and the Federal Arbitration Act (9 U.S.C. Sections 1, *et seq.*) now in effect and as it may be hereafter amended will govern the interpretation and enforcement of the arbitration provisions in this Article.

Section 16.8. AGREEMENT TO ARBITRATE DISPUTES. THE PARTIES AGREE TO HAVE ANY DISPUTES DECIDED BY NEUTRAL ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT, AND THE PARTIES ARE GIVING UP ANY RIGHTS A PARTY MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. FURTHERMORE, THE PARTIES ARE GIVING UP THEIR RESPECTIVE JUDICIAL RIGHTS TO DISCOVERY, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THIS ARTICLE. IF A PARTY REFUSES TO SUBMIT TO ARBITRATION, A 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.

Section 16.9. Final and Binding Award. The decision of the arbitrator shall be final and binding. A petition to confirm, vacate, modify or correct an award may be filed in any court of competent jurisdiction in the county in which the Real Property is located, but the award may be vacated, modified or corrected only as permitted by the Federal Arbitration Act.

Section 16.10. Severability. If the arbitrator or any court determines that any provision of this Article is unenforceable for any reason, that provision shall be severed, and proceedings agreed to in this Article shall be conducted under the remaining enforceable terms of this Article.

Section 16.11. Application; Conflicts. The provisions of this Article do not apply to any dispute or disagreement that a Development Party is not named as a party thereto. However, in the event of any conflict between the provisions of this Article and any other alternative dispute resolution provisions, the provisions of this Article shall control.

Section 16.12. Third Party Beneficiary: Affiliated Contractor. The Parties do hereby intend and agree that any entity that falls within the definition of "Affiliated Contractor" is an intended third party beneficiary of the provisions of this Article.

Section 16.13. No Amendment Without Declarant's Consent. No amendment may be made to this Article without the written consent of Declarant.

IN WITNESS WHEREOF, the undersigned, being Declarant herein, has executed this instrument the day and year first hereinabove written.

HIGH STREET 34 LP,
a California limited partnership

By: N.T.C Development, Inc.
A California corporation

By: _____
Nels T. Chistensen, President

ACKNOWLEDGMENT

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

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

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

WITNESS my hand and official seal.

Signature: _____

SUBORDINATION

The undersigned, as Beneficiary of the beneficial interest in and under that certain Deed of Trust dated June 30, 2023 and recorded on July 5, 2023 as Instrument No. 2023-0175729 in the Official Records of San Diego County, California (the “Deed of Trust”) which Deed of Trust is by and between High Street 34 LP as Trustor, Fidelity National Title, as Trustee and Construction Loan Services II, LLC, as Beneficiary, hereby expressly subordinates said Deed of Trust and its beneficial interest thereunder to the foregoing DECLARATION OF RESTRICTIONS FOR CANTERA (the “Declaration”) and to maintenance and other easements to be conveyed to the Association in accordance with the Declaration. By executing this Subordination, the undersigned agrees that should the undersigned acquire title to all or any portion of the Property by foreclosure or any other remedy in or relating to the Deed of Trust, the undersigned will acquire title subject to the provisions of the Declaration, and any recorded amendments thereto, which shall remain in full force and effect.

Dated: February 26, 2024.

Construction Loan Services II, LLC:

By: _____

Its: _____

ACKNOWLEDGMENT

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

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

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

WITNESS my hand and official seal.

Signature: _____

EXHIBIT "A"

LEGAL DESCRIPTION

