

15144

DOC # 2007-0216825



APR 02, 2007 10:08 AM

OFFICIAL RECORDS
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FEES: 181.00 WAYS: 4
PAGES: 51 DA: 1



2007-0216825

6 Recording requested by
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BAYMONT ENTERPRISES, LLC
8461 BASHAN LAKE AVE
SAN DIEGO CA 92119

460000-53

SPACE ABOVE FOR RECORDER'S USE

Index as "CCR's" and "Subordination Agreement"

**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
"DALE/HAWTHORN CONDOMINIUMS"**

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THIS DECLARATION is made on the day and year hereinafter written, by **BAYMONT ENTERPRISES, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, AND SALLY I. SEMM AND C.R. STOVALL, TRUSTEES, OR THE SUCCESSOR TRUSTEE(S), OF THE PALM TRUST, DATED OCTOBER 3, 2003**, hereafter called "Declarant." The first-letter capitalized words used herein shall have the meanings given them in **Article 2** herein. This Declaration is made with reference to the following:

1. RECITALS

A. Declarant is the Owner of the real property located in the City of San Diego, County of San Diego, State of California, more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof, hereinafter called the "Property."

B. Declarant desires to establish certain covenants, conditions and restrictions upon the Property and each and every portion thereof, which will constitute a general scheme for the use and management of the Property as a residential community called **DALE/HAWTHORN CONDOMINIUMS** ("Community"); and for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and the quality of life for the Owners and occupants thereof.

C. Declarant has or will hereafter file a Condominium Plan pursuant to Civil Code Section 1351(e) with the Office of the County Recorder of San Diego County, California, covering the Property.

D. Declarant has or intends to develop the Property as a Common Interest Development ("**Project**"), pursuant to the provisions of the Davis-Stirling Common Interest Development Act (California Civil Code Section 1351 et seq.), whereby Declarant will subdivide the Property into separate interests called "**Units**," each of which, however, will be similar to a residential lot, although the Property will legally be a Condominium Project.

E. Each Unit will consist of a separate interest in space containing all of the earth, air and improvements located within its boundaries. The lower boundary of a Unit will extend to the center of the earth below Ground Elevation; the upper boundary of a Unit will be limitless, insofar as it will extend to the heavens above Ground Elevation, excepting from the airspace commencing fifty feet (50') above the highest vertical improvement, as shown on the Plan, and extending upwards towards the heavens called "Common Area" or "Common Area Module." The lateral (side) boundaries of each Unit are shown on the Condominium Plan.

F. The Owner of a Unit in the Project will receive title to a Unit plus a Fractional Interest in the Common Area. By virtue of owning a Unit in the Project, each Owner shall also have a membership in the **DALE/HAWTHORN CONDOMINIUMS OWNERS ASSOCIATION**, a unincorporated association ("**Association**"), organized with the powers granted to a corporation under the Nonprofit Mutual Benefit Corporation Law (California Corporations Code Sections 7110 et seq.), which membership shall be appurtenant to and pass with title to the Unit. The Association shall act as the management body for the Community, as necessary, and shall be responsible for, but not limited to, the operation and control of the Access Easement and the Common Area, as more fully described in this Declaration and any related Project Documents.

G. Before selling or conveying any interests in the Property, Declarant desires to subject the Property in accordance with a common plan to certain covenants, conditions and restrictions for the benefit of Declarant and any and all present and future Owners of the Property or any portion thereof.

H. "Airport Influence Area" - This property is presently located in the vicinity of an airport or heliport, and/or within typical flight patterns within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration or odors). Individual sensitivities to those annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you.

NOW, THEREFORE, Declarant hereby certifies and declares and does hereby establish the following general plan for the protection and benefit of all of the Property and does hereby fix the following protective conditions and restrictions upon each and every ownership interest in the Property, under which said conditions and restrictions, each ownership interest in the Property shall be hereinafter held, used, occupied, leased, sold, encumbered, conveyed and/or transferred, subject to the limitations, conditions and restrictions hereinafter set forth, all of which shall inure to the benefit of, be binding upon and pass with the Property described above, and each and every ownership interest therein, and shall inure to the benefit of, and apply to and bind the respective successors in title or interest of Declarant.

2. DEFINITIONS

2.1. ACCESS AND MAINTENANCE EASEMENT.

"Access and Maintenance Easement" shall mean and refer to that right-of-way over and through portions of Units U-1 and U-3 for ingress, egress and access shown on Sheet 4 of 5 Sheets of the Condominium Plan for the benefit of Units U-2 and U-3, more particularly described in the "*Easements*" Article herein.

2.2. ASSOCIATION.

"Association" shall mean and refer to the **DALE/HAWTHORN CONDOMINIUMS OWNERS ASSOCIATION**, an unincorporated association described in the Section hereinafter entitled "ASSOCIATION," the members of which are the Owners of the Units.

2.3. CITY.

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

2.4. COMMON AREA; COMMUNITY COMMON AREA.

"Common Area" and/or "Community Common Area" shall mean and refer to the entire Property except for the Unit separate interests, as more fully described in Section 3.1.2 herein and shown and described in the Condominium Plan, upon conveyance by Declarant of the first fractional interest therein to a Purchaser.

2.5. COMMON EXPENSES.

"Common Expenses" means and includes the actual and estimated expenses of operating the Project, if any, including any real property taxes, assessments (including reserves) or insurance premiums which are not charged separately to each Unit and any other sums designated to be a common expense by or pursuant to the Documents.

2.6. CONDOMINIUM.

"Condominium" shall mean and refer to an estate in the Property, or portions thereof, as defined in California Civil Code Section 1351(f), or any similar statute hereinafter enacted, and shall consist of (i) a Separate Interest in space called a "Unit" and (ii) an appurtenant Fractional Interest in the "Common Area" as described in the Condominium Plan.

2.7. CONDOMINIUM PLAN; PLAN.

"Condominium Plan" and/or "Plan" shall mean and refer to a Condominium Condominium Plan, as it may from time to time be amended, consisting of (1) a description or survey map of the Project, which shall refer to or show monumentation on the ground, (2) a three-dimensional description of the Project, as built or to be built, one or more dimensions of which may extend for an indefinite distance upwards or downwards, in sufficient detail to identify the common areas and each separate interest, and (3) a certificate consenting to the recordation of the condominium plan pursuant to California Civil Code Section 1351(e), signed and acknowledged by the record owner of fee title to the Property included in the Project.

2.8. DECLARANT.

"Declarant" shall mean and refer to **BAYMONT ENTERPRISES, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY and SALLY I. SEMM AND C.R. STOVALL, TRUSTEES, OR THE SUCCESSOR TRUSTEE(S), OF THE PALM TRUST, DATED OCTOBER 3, 2003**, their respective successors and assigns, if such successors or assigns acquire any or all of the Declarant's interest in the Property for the purpose of development or sale. A successor Declarant shall also be deemed to include the beneficiary under any deed of trust securing an obligation from a then existing Declarant, encumbering all or any portion of the Property, which beneficiary has acquired any such property by foreclosure, power of sale or deed in lieu of such foreclosure of sale.

2.9. DECLARATION.

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

2.10. DOCUMENTS.

"Documents" means and includes this Declaration, Condominium Plan, the exhibits, if any, attached hereto, and any rules and regulations for the members as established from time to time.

2.11. DWELLING.

"Dwelling" shall mean and refer to a single family residential structure including a detached structure/building such as a garage located within the boundaries of a Unit.

2.12. ELIGIBLE INSURER OR GUARANTOR.

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

2.13. ELIGIBLE MORTGAGE HOLDER.

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

2.14. EMERGENCY.

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

2.15. EXCLUSIVE USE COMMON AREA.

"Exclusive Use Common Area" shall mean and refer to such items as, but not limited to, internal and external telephone & television wiring and other utility installations (conduit, pipe, wiring, etc.) providing gas, electric and water service, sewage and drainage systems, if any of the foregoing are designed to serve a single Unit, but is located outside the boundaries of such Unit.

2.16. FHA.

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

2.17. FHLMC.

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

2.18. FNMA.

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

2.19. FINISH GRADE.

"Finish Grade" and/or "Grade Elevation" shall mean and refer to the finish grade of the Property. The Condominium Plan depicts certain Finish Grade and/or Ground Elevation points within the Property by symbols referenced thereon.

2.20. FIRST MORTGAGE.

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

2.21. FIRST MORTGAGEE.

"First Mortgagee" shall mean and refer to the Mortgagee of a First Mortgage as well as to a Beneficiary under a Deed of Trust defined herein as a First Mortgage.

2.22. FRACTIONAL INTEREST

"Fractional Interest" shall mean and refer to each equal, *undivided fractional interest* as tenant-in common in the Common Area, appurtenant to each Unit owned by an Owner.

2.23. IMPROVEMENT.

"Improvement" shall mean and refer to all structures and appurtenances thereto of every type and kind, including, but not limited to: the Dwelling, patios, patio covers, awnings, gazebos, paintings of any exterior surfaces of any structure, walkways, fences, walls, retaining walls, stairs, landscaping, windbreaks, poles, masts, antennas, or equipment.

2.24. INVITEE.

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

2.25. MEMBER.

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

2.26. MORTGAGE.

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

2.27. MORTGAGEE.

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

2.28. MORTGAGOR.

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

2.29. OWNER.

"Owner" shall mean and refer to the record Owner, whether one (1) or more persons or entities, of any Unit, including contract buyers but excluding those having such interest merely as security for the performance of an obligation.

2.30. PROJECT.

"Project" shall mean and refer to the Property, including all Units and all structures and improvements erected or to be erected thereon.

2.31. PROPERTY.

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

2.32. PURCHASER; RETAIL BUYER

"Purchaser" shall mean and refer to a Person who purchases a Condominium from Declarant for purposes of ownership and use thereof.

2.33. UNIT.

"Unit" shall mean and refer to the separate interest in space in the Project which is not owned in common with the other Owners of the other Unit in the Project. Said Units are shown described on the Condominium Plan and are identified therein as a "Unit" and are numbered U-1 through U-3, inclusive. The boundaries of each Unit is the envelope of air space as shown and described in the Condominium Plan, as further described in the Section entitled "*Division of Property and Creation of Property Rights*" hereinafter. Each Unit shall include the Dwelling and other Improvements located within its boundaries. Each Unit shall be a separate freehold estate.

2.34. VA.

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

3. DIVISION OF PROPERTY AND CREATION OF PROPERTY RIGHTS

3.1. DIVISION OF PROPERTY.

The property is divided as follows:

3.1.1. UNITS.

(a) Each of the Units as separately shown, numbered and designated in the Plan consists of a three-dimensional division of land (including airspace, earth, water and improvements) the lateral boundaries of which are vertical planes at the limits of the horizontal dimensions of each such respective unit as shown on the Plan, the upper limit of which extends from ground elevation to the heavens; and the lower limit of which extends from ground elevation down to the center of the earth; excepting therefrom the "Common Area" as defined herein.

(b) Included within the boundaries of each Unit are all earth, air, water and improvements located therein, including but not limited to building structures, walls, fences, decks, foundations and roofs, windows, doors, railings, bearing walls, columns, floors, hot water heaters, appliances, lighting fixtures, heating and other services, pipes, ducts,

flues, chutes, chimneys, conduits, wires and other utility installations, wherever located upon or within a Unit, except any such pipes, wires and other utility installations which serve another Unit, the same pipes, wire and other such utility installations being Exclusive Use Common Area.

(c) A Unit does not include those areas and those things which are defined herein as "Common Area" and/or "Exclusive Use Common Area." Each Unit is subject to encroachments, whether they now exist or may be later caused or created in any manner referred to in the Section entitled "*Easements to Others*" hereinafter. In interpreting deeds and plans, the boundaries of a Unit shall be as defined on the "Plan."

3.1.2. COMMON AREAS.

The remainder of the property constitutes and shall be referred to herein as "Common Area," "Common Area Module" or "Community Common Area." Each Owner shall have, as appurtenant to his or her Unit, a Fractional Interest in the Common Area. Each Unit includes such Fractional Interest in the Common Area, which shall be appurtenant to each Unit, is permanent in character and cannot be altered without the unanimous consent of all of the Owners and of the Eligible Mortgage Holders of each Unit, as expressed in an amended Declaration.

The Common Area consists exclusively of airspace and does not include any earth or physical improvements. The lower limit of the Common Area extends from a horizontal plane beginning from an elevation point that is fifty feet (50.00') above the highest physical improvement upwards to the heavens, the lateral boundaries of the Common Area are vertical planes at the limits of the horizontal dimensions of the Property.

3.1.3. EXCLUSIVE USE COMMON AREAS.

Exclusive Use Common Area shall mean and refer to internal and external telephone, television and electrical wiring, gas, water and sewer lines, if any of the foregoing are designed to serve a single Living Unit, but located outside the boundaries of such Unit.

3.1.4. CONSTRUCTION, RECONSTRUCTION, REMODELING.

(a) Each Owner shall have the right, subject to Applicable Law, to construct or reconstruct a Dwelling, or add on to an existing Dwelling. Only one (1) Dwelling may be constructed within each Unit. Any such construction, reconstruction or addition shall utilize the existing building "footprint" in order to maintain a minimum distance between the Dwelling and the Unit boundaries (the lot lines and the dividing line(s) between Units as described on the Plan).

(b) Under City zoning regulations, each lot must comply with the "*Floor Area Ratio*" ("FAR") requirements as to the size and location of the Dwelling(s) thereon. Each Owner shall have the right to one-third (1/3rd) of the remaining FAR. Any Owner applying for approval to add additional square footage over and above that which now exists shall have the obligation to have the existing square footage of all structures on the lot calculated by a licensed architect or engineer based on a formula acceptable to the City for this purpose. Each Owner will cooperate in such a way to allow this calculation to be made.

3.1.5. ARCHITECTURAL DESIGN & COLOR SCHEME.

All exterior architectural & color scheme changes to be approved by two-thirds vote of the Owners.

3.1.6. NO SEPARATE CONVEYANCE OF UNDIVIDED INTERESTS.

The foregoing interests are hereby established and are to be conveyed with the respective Units as indicated above, cannot be changed, except as herein set forth. Declarant, its successors, assigns and grantees covenant and agree that the interest in the Common Areas and the Units conveyed therewith, shall not be separated or separately conveyed, and each such interest shall be deemed to be conveyed together even though the description in the instrument of conveyance or encumbrance may refer only to the Unit.

Any dispute arising as to the above Section 3.1 shall be resolved in accordance with Section 9 entitled "Enforcement; Dispute Resolution" herein.

3.2. PARTITION PROHIBITED; POWER OF ATTORNEY.

Each of the Owners of a Unit, whether such ownership is in fee simple or as a tenant-in-common, is hereby prohibited from partitioning or in any other way severing or separating such ownership from any of the other ownerships in the Property, except upon the showing that such partition is consistent with the requirements of California Civil Code Section 1359, or any successor statute. The Association is hereby granted an irrevocable power of attorney to sell the Property for the benefit of all the Owners thereof when partition of the Owners' interests in said Property may be had pursuant to Civil Code Section 1359. The power of attorney herein granted may be exercised upon the vote or written consent of One-Hundred Percent (100%) of the Owners who may authorize any two (2) Members of the Association to act on behalf of the Association to record a certificate of exercise in the Office of the County Recorder of San Diego County, which certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith; provided, however, that said power of attorney shall not apply to the Secretary of the U.S. Department of Veterans Affairs.

3.3. RESTRICTIONS ON FURTHER SUBDIVISION.

No Unit shall be further subdivided nor shall less than all of any such Unit be conveyed by an Owner thereof: provided, however, that nothing in this Section shall be deemed to prevent an Owner, including Declarant, from adjusting the boundary of a Unit by amendment to the Plan as approved in writing by one-hundred percent (100%) of the Owners.

3.4. ASSOCIATION.

(a) Each Owner automatically shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of the Unit to which it is appurtenant, and then only to the purchaser. The transfer of title to a Unit or the sale of a Unit and transfer of possession thereof to the purchaser shall automatically transfer the membership appurtenant to such Unit to the transferee.

(b) The Association shall have one class of voting membership. Each membership entitles the holder to one (1) vote for each Unit of which he or she is record owner. If a Unit is owned by more than one person, each such person shall be a member of the Association, but there shall be no more than one (1) vote for each Unit.

The foregoing explanation of membership and voting rights is provided should an unanticipated event occur.

3.5. FREQUENCY OF ASSOCIATION MEETINGS.

It is not anticipated or contemplated that the Association will ever require meetings of the membership. Should an unanticipated situation occur, the Association may hold meetings as often as the members shall desire. The Association shall have the rights and shall perform the duties as described in this Declaration.

3.6. AUTHORITY TO EXECUTE CONTRACTS.

The Association may, by a writing signed by all of the members and imposing such conditions as the members desire, designate one or more Owners to act on behalf of the Association in performing any of its duties, including, without limitation, the authority to execute contracts with third parties to provide services or goods for the Property. Any third party may conclusively rely on such writing unless and until notified in writing that the delegation has been revoked. The Association may revoke the delegation at any time with or without cause.

4. RESPONSIBILITY OF MAINTENANCE**4.1. OWNERS' RESPONSIBILITIES.**

Each Owner shall be responsible, at his or her sole cost and expense, for the maintenance, repair and replacement of the following:

(a) All Improvements within his or her Unit, including, but not limited to: landscaping, yards, patios, the Dwelling and any other buildings, building structural components, exterior surfaces, doors, glass, windows, screens, metal frames, hardware, roofs and foundations, as well as the interiors of all building structures and all appliances whether "built-in" or freestanding therein.

(b) Pest control

(c) All plumbing, heating, ventilating, cooling and electrical systems servicing his or her Unit, the Dwelling and any other building structures therein, including television cable equipment, wires and connections and internal and external telephone wiring, so long as those systems are used exclusively by such Owner or exclusively provide service to such Owner's Unit (should any of the foregoing serve another Unit(s), it shall be deemed Exclusive Use Common Area and a Shared Responsibility).

(d) Any fences, walls or slopes, excluding any Party Wall, which shall be a shared responsibility more fully described in Section 13 hereinafter.

(e) Any exterior lighting which is intended to illuminate the Access Easement, the nightly operation of which shall be an obligation of the Owner thereof.

4.2. JOINT RESPONSIBILITIES.

Such other areas, facilities, equipment, services or aesthetic components of the Project, of whatsoever nature as may from time to time be approved in writing by 2/3rds of the Owners of all of the Units.

4.3. PAYMENT FOR COSTS OF JOINT RESPONSIBILITIES.

The cost and expense for the repair and/or replacement of a Joint or Shared Responsibility shall be allocated between the Owners as described in each such Section. Payment from one Owner to another Owner, as the case may be, shall be due and payable upon demand, or in accordance with such terms as may otherwise be mutually agreed upon between the Owners. Any payment not received within ten (10) days after demand therefore, shall be delinquent and the remedies between the Owners shall be as described in the Article herein entitled "ENFORCEMENT."

4.4. LANDSCAPE/HARDSCAPE MAINTENANCE.

The individual Owners of the Units shall water and maintain the landscaping in their respective Unit. The landscape and hardscape shall be maintained in a neat, healthy and lush, weed free, clear-of-debris condition.

4.5. TAXATION.

In the event that any taxes are assessed against the Common Area rather than against the individual Units, said taxes shall be divided between the Owners according to the San Diego County Tax Assessors valuation of the individual improvements within each Unit. Each Unit Owner shall be responsible for the taxes attributable to the improvements within their own Unit.

4.6. ANNUAL BUDGET; ALLOCATION OF COMMON EXPENSES.

It is not anticipated or contemplated that the Association will ever need to establish a budget. The following explanation is provided should an unanticipated event occur:

During the last quarter of each calendar year, the Association shall establish a budget for all Common Expenses, if any, for the coming new year. Each Owner shall be responsible for payment of their portion of the budgeted expenses, and any other Common Expenses. Each of the various Common Expense budget items may be apportioned by one of the following methods as appropriate: (i) uniformly divided between all of the Units; (ii) based upon the percentage of residential square feet of each Unit to the total of all Units; or (iii) as may be agreed upon in writing by all Owners.

4.7. ENFORCEMENT; DISPUTE.

In the event an Owner fails to pay for any Assessment for which such Owner is obligated or otherwise liable under this Declaration, enforcement therefore by the other Owners(s) may be undertaken pursuant to the provisions contained in Section 9 entitled "ENFORCEMENT; DISPUTE RESOLUTION." Any dispute or controversy regarding any budget, Common Expense or allocation thereof. In the event of any dispute or controversy regarding any budget, Common Expense or allocation, other than the enforcement of payment described in the previous sentence, under the provisions of this Article, the matter shall be submitted to mediation as described in Section 9 entitled "ENFORCEMENT; DISPUTE RESOLUTION."

4.8. PERSONAL LIABILITY OF OWNER.

No Owner may exempt himself from personal liability for any obligation under this Declaration, nor release the Unit owned by such Owner from any liens and charges hereof

against such Unit by waiver of the use or enjoyment of any of the Common Area or by abandonment of such Owner's Unit.

5. USE RESTRICTIONS

5.1. USE OF DWELLINGS.

Each Unit shall be improved, used and occupied for private, residential dwelling purposes only, and no portion thereof, nor the Common Area, shall be used for any commercial purpose except as permitted under Section 5.2.

5.2. LEASE OF UNITS.

Each Owner shall have the right to lease his or her Unit, provided that such lease is in writing and provides that the tenant shall be bound by and obligated to the provisions of this Declaration and the failure to comply with the provisions thereof shall be a default under the lease.

5.3. PETS

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

(a) Except as otherwise provided more stringently in the zoning ordinances of the City, an Owner may keep and maintain in such Owner's Condominium domesticated pets such as cats, dogs or other usual and ordinary household pets; provided, however, any pet which may have already been a part of an Owner's or such Owner's tenant's Dwelling prior to the adoption of a Rule that would preclude such pet, shall be exempt from such Rule for the lifetime of such pet or pets. An Owner may keep and maintain any number of aquarium-type fish; provided, however, an Owner shall review and consider the structural load limits and internal drainage pertaining to such Owner's Unit and the proposed site of installation of an aquarium prior to filling such aquarium(s) with water. The foregoing notwithstanding, no pet may be kept, maintained or bred for any commercial purpose.

(b) The foregoing notwithstanding, in accordance with Civil Code §1360.5, no portion of the CC&Rs shall prohibit an Owner from keeping at least one (1) pet within the Project, subject to reasonable rules and regulations of the Association, including those provisions herein contained. The language included in Civil Code § 1360.5 may not be construed to affect any other rights provided by law to an Owner to keep a pet within the Project.

(c) The foregoing notwithstanding, no pets may be kept on the Property which result in an annoyance or are obnoxious to other Owners or occupants; provided, however, that the Association Rules may further limit or restrict the keeping of such pets. No pets shall be permitted in any area designated in the Association Rules as being restricted to pets.

(d) Any Owner (including Declarant) may cause any unleashed or tethered dog found within the Access and Maintenance Easement to be removed to a pound or animal

shelter under the appropriate governmental jurisdiction by calling the appropriate authorities, whereupon the Owner may, upon payment of all expenses connected therewith, repossess the dog.

(e) No dog whose prolonged barking (or other prolonged noise-producing pet) unreasonably disturbs other Owners or occupants shall be permitted to remain in the Project.

(f) Persons bringing or keeping a pet within the Project shall prevent their pets from soiling all portions of the Project where other persons customarily walk or otherwise occupy from time to time and shall promptly clean up any mess left by their pets.

Each person bringing or keeping a pet within the Project shall be absolutely liable to the Association and other Owners, Occupants and their respective Invitees for any damage to persons or property caused by any pet brought upon or kept upon the Project by such person. Any Owner, Occupant or their respective Invitees who maintain(s) any animal, insect or reptile within the Project, whether in compliance with or in violation of the CC&R's, shall indemnify and hold harmless the Association, its officers, directors, the other Owners and Occupants from any claim brought by any person against them or any one or more of them, for personal injuries or property damage caused by such animal, insect or reptile.

5.4. FENCES.

No chain link fences shall be erected or maintained upon the Property without the written permission of one-hundred percent (100%) of the Owners. No fence of any type may be erected that is taller than six feet (6') above the finished grade.

5.5. SHEDS OR TEMPORARY SHELTERS.

No sheds or shelters (e.g. tent like structure(s) which acts as a carport, RV or boat shelter), temporary or permanent, shall be erected or maintained upon the Property without the written permission of one-hundred percent (100%) of the Owners.

6. UTILITIES; EASEMENTS

6.1. OWNERS RIGHTS AND DUTIES.

The rights and duties of the Owners of Units within the Project with respect to sanitary sewer, water, drainage, electric, gas, television receiving, telephone equipment, cables and line, and similar facilities (hereinafter referred to, collectively, as "utility facilities") shall be as follows:

(a) Whenever utility facilities are installed within the Property, which utility facilities or any portion thereof lie in or upon a Unit owned by other than the Owner of a Unit served by said utility facilities, the owners of any Unit served by said utility facilities shall, subject to Entry Notice, have the right, and are hereby granted an easement to the full extent necessary therefor, to enter upon the Unit(s) or to have the utility companies enter upon the Unit(s) in or upon which said utility facilities, or any portion thereof, lie, to repair, replace and generally maintain said utility facilities as and when necessary.

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

(c) The water, sewer, gas, electricity and other utilities to each Unit shall be under a separate meter, and each Owner shall be responsible for paying his or her own utility bills.

6.2. CERTAIN RECIPROCAL EASEMENTS.

Reciprocal easements shall exist between the Owners for the installation, repair, maintenance, and replacement of meters for water, gas and electricity, so that each Owner shall have access to such meter(s) for his or her Unit, regardless of where located.

6.3. RIGHTS OF ACCESS.

Notwithstanding the foregoing, unless an emergency occurs, the right of access upon a neighboring Unit shall not include entering within or under the Dwelling therein. Repair of any damage to a "before work commenced" condition within a Unit shall be performed promptly by the Owner (or his agents) of the Unit who enters another Unit in order to effect such work upon his utility facilities or Dwelling. Non-emergency work shall require adequate Notice (described herein) prior to its commencement.

Routine maintenance (e.g. painting, re-roofing, etc.) to the Dwelling within Unit U-2 shall require *Notice* of not less than two (2) nor more than four (4) weeks from the proposed start of such maintenance. Unless during the performance of "Noticed" maintenance, the Owner, tenants, guests, contractors and invitees of Unit U-1 may never loiter within the Access and Maintenance Easement within Units U-1 and U-3. With the exception of an Emergency, such access shall be in the daylight hours only.

6.4. ENCROACHMENT EASEMENTS.

If any portion of a Dwelling or improvement located in one Unit encroaches into another Unit due to minor engineering errors, settlement or shifting, the Owner of the encroachment shall have the obligation to remove, or if not feasible, to maintain or repair the encroachment, as long as it exists and the rights and obligation of the Owners shall not be altered in any way by said encroachment. No right shall be created in favor of an Owner or Owners if said encroachment occurred due to the intentional conduct of said Owner or Owners. Any such encroachment shall be promptly removed at the expense of the encroaching Owner.

6.5. DRAINAGE & SLOPES.

The Owner of any Unit shall not in any way interfere with the established drainage pattern over his or her Unit from the adjacent Unit, and such Owner will make adequate provisions for property drainage in the event it is necessary to change the established drainage through his or her Unit. For the purpose herein, "established drainage" is defined as the drainage which occurred at the time that the overall grading of the Project was completed.

6.6. EASEMENTS TO OTHERS.

Upon agreement in writing by one hundred percent (100%) of Unit Owners, new easements may be established and/or granted over and across the Units. Such easements and

rights of way on, over, under or across all or any part thereof to or for the benefit of the State of California and the City, or any other political subdivision or public or private organization, or any public utility entity, for the purpose of constructing, erecting, operating and maintaining facilities and improvements thereon, therein or thereunder at that time or at any time in the future, including: (i) roads, streets, walks, driveways, parkways and park areas; (ii) poles, wires and conduits for transmission of electricity, providing telephone service and cable television service to the Property and for the necessary attachments in connection therewith, and (iii) public and private sewers, sewage disposal systems, sprinkling systems, water, heating and gas lines or pipes and any and all equipment in connection therewith. Said public utilities easement shall inure and run to all franchised utility companies and to the City, and shall include the right of ingress and egress by vehicles of the City and such utility companies to properly install, maintain, repair, replace and otherwise service such utility facilities. The grant of said public utility easement shall not be interpreted to imply any obligation or responsibility of any such utility company or the City for maintenance or operation of any of the Common Area or the facilities located thereon or the repair, replacement or reconstruction thereof except as occasioned by such utility companies or the City, of the utility facilities for which they are responsible. Except for lawful and proper fences, structures and facilities placed upon the Property by utility companies, the Property area subject to the public easement shall be kept open and free from buildings and structures. The City, furthermore, is hereby granted an easement across the Property for ingress and egress for use by emergency vehicles of the City.

The foregoing Declarant rights to establish and/or grant easements and rights of way on, over and across the Units, shall cease with the conveyance of the first Unit within the Project.

6.7. ACCESS EASEMENTS AND/OR EASEMENT FOR GENERAL UTILITY.

(a) Nonexclusive access easements are hereby reserved by Declarant in favor of Unit U-2 over and upon that portion of Unit U-1 and U-3 as shown on the Condominium Plan Sheet 4 of 5 Sheets by the designation "Access and Maintenance Easement" for purposes of ingress, egress and access by the Owner, Owners contractor and invitees of Unit U-2 to and from Dale Street and those portions of the garage and Dwelling within Unit U-2 by way of the described Access and Maintenance Easement.

(b) Non-emergency work shall require adequate Notice as described in Section 6.3 herein, prior to its commencement.

(c) Individual grant deeds to Units may, but shall not be required to set forth the easements specified in this Section. Except as provided in Section 3.1.4 entitled **CONSTRUCTION, RECONSTRUCTION, REMODELING.**, there shall be no obstructions whatsoever of the foregoing Access Easements, so to permit them to be used for the purposes intended herein. Provided, however, any encroachments of the nature described in the Section entitled "Encroachment Easements" hereinabove shall not be deemed an obstruction for purposes herein, unless such obstruction prevents reasonable access.

(d) Each Owner shall maintain or cause to be maintained that portion of the Access Easement located within the boundaries of his Unit in a neat and clean manner so to permit unobstructed access for the purposes intended herein. **The "Access and Maintenance Easement" shall not be used for parking or storage purposes so as to prevent its described use.**

6.8. COMMENCEMENT OF EASEMENTS.

The easements reserved herein shall become effective upon the conveyance of the first Unit from Declarant or its successor in interest. Individual grant deeds to Units may, but shall not be required to, set forth the easements specified in this Section.

7. RIGHTS OF MORTGAGEES**7.1. GENERAL.**

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

7.2. NO RIGHT OF FIRST REFUSAL.

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

7.3. UNPAID DUES OR CHARGES.

Where the Mortgagee of a first Mortgage of record or other purchaser of a Unit obtains title to the same pursuant to the remedies in the Mortgage or as a result of foreclosure, such acquirer of title, his or her successors and assigns, shall not be liable for the share of the common expenses or assessments made by the Association chargeable to such Unit which became due prior to the acquisition of title to such Unit by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Units including such acquirer, his or her successors and assigns.

7.4. ACTION REQUIRING MORTGAGEE APPROVAL.

Provided that the mortgagee informs the Association in writing of its appropriate address and requests in writing to be notified, neither the Association nor any Owner shall do any of the following, unless one-hundred percent (100%) of the First Mortgagees of Mortgages encumbering Units (based upon one (1) vote for each Mortgagee) have given their prior written approval:

(a) Seek, by act or omission, to abandon the Project or to terminate the Plan or this Declaration, or change, waive or abandon any scheme of regulation or enforcement thereof;

(b) Change the pro rata interest or obligations of any Unit for purposes of levying assessments or allocating distributions of hazard insurance proceeds or condemnation awards or for determining the pro rata share of the Common Area appurtenant to each Unit;

(c) Partition or subdivide any Unit;

(d) Seek, by act or omission, to abandon, partition, subdivide, encumber, sell or transfer the Common Area; provided, however, that the granting of easements for public utility or other public purposes consistent with the uses of the Property shall not be deemed a transfer within the meaning of these provisions;

7.5. PRIORITY OF INSURANCE PROCEEDS DISTRIBUTION.

Any other provision herein contained to the contrary notwithstanding, no provision of this Declaration or any other constituent documents shall give a Unit Owner, or any other party, priority over any rights of the first mortgagee or beneficiary of the Unit pursuant to its mortgage or deed of trust in the case of a distribution to such unit Owner of insurance proceeds or condemnation awards for losses to or a taking of Units and/or Common Areas.

7.6. NOTIFICATION TO MORTGAGEE.

Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Unit number or address, any Eligible Mortgage Holder or Eligible Insurer 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 Unit on which there is a first Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer;

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

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

(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders as required in the Bylaws or in this Declaration.

7.7. NONCURABLE BREACH.

Any Mortgagee who acquires title to a Unit by foreclosure or by deed in lieu of foreclosure or assignment-in-lieu of foreclosure shall not be obligated to cure any breach of this Declaration that is noncurable or of a type that is not practical or feasible to cure.

7.8. LOAN TO FACILITATE.

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

8. INSURANCE; DAMAGE OR DESTRUCTION; CONDEMNATION

8.1. INDIVIDUAL INSURANCE.

Each Owner shall obtain and maintain, at the Owner's sole expense, fire and casualty coverage insuring all improvements and fixtures of the Owner's Unit improvements, and a comprehensive liability policy insuring the Owners and occupants of the Unit and their respective family members, guests, invitees and agents against any liability incident to the ownership or use of the Unit, the term, amount and coverage of which shall satisfy the customary minimum requirements of a First Mortgagee imposed for this type of Project. If a First Mortgagee does not impose requirements on any policy required hereunder, the term, amount and coverage of such policy shall be no less than that which is customary for similar policies on similar Units in the area. All such individually carried insurance shall contain a "waiver of subrogation" by the carrier as to the Declarant (if applicable) and the mortgagee of the insured Unit. Each Owner may also obtain and maintain such other insurance as he or she considers necessary or advisable.

If requested, each Owner shall deliver to the requesting Owner, upon such Owner's request, copies of such insurance required herein or certificates evidencing the existence and amounts of such insurance.

8.2. DAMAGE OR DESTRUCTION - UNIT IMPROVEMENTS.

If an improvement within a Unit is damaged or destroyed by fire or other casualty, the Owner of such Unit shall repair, reconstruct or replace the improvement as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction. To the extent not covered by insurance, each Owner shall separately be responsible for the cost and expense of such repair or reconstruction. The Owner of such Unit shall be obligated to proceed with all due diligence hereunder, and such Owner shall cause construction to commence within four (4) months after the damage occurs if it is of a "repair-like" nature (less than 20% damage to the improvements), or six (6) months after the damage if it is of a "reconstruction" nature (greater than 20% damage to the improvements); repair or reconstruction shall be completed within one (1) year after commencement thereof. The foregoing time provisions shall be subject to causes beyond an Owner's reasonable control, such as strikes, Acts of God, etc.

8.3. CONDEMNATION.

In the event of a taking by eminent domain of all or any part of a Unit, the award shall be disbursed to the Owner of said Unit subject to the rights of the Owner's mortgagees. If the taking is for all of a Unit, the Unit Owner, after acceptance of the award therefor, and the Unit's Mortgagee, shall be divested of all interest in the Property.

9. ENFORCEMENT; ASSOCIATION AND OWNER DISPUTE RESOLUTION

Except as provided in Section 9.2.2(a) or Article 10 below, any claim, controversy, dispute, or cause of action which arises out of, or relates to this Declaration and/or the Property, or any tort cause of action related thereto, including any breach, interpretation, or enforcement thereof (collectively or individually referred to herein as a "Dispute"), as between:

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

which Dispute cannot be settled through direct informal discussions between the Parties, shall be subject to the Dispute Resolution procedures and protocols described in Section 9.2 below.

9.2. DISPUTE RESOLUTION.

Disputes shall be submitted first to mediation as described in Section 9.2.1 below. If any such Dispute(s) remains unresolved through mediation, then, second, through submission of such unresolved Dispute(s) to general judicial reference as described in Section 9.2.2 below.

9.2.1. MEDIATION.

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

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

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

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

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

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

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

(g) If there are any unresolved Disputes between the Parties through mediation, or if there are certain portions of a Dispute that remain unresolved, such unresolved Dispute or portion thereof, as the case may be, shall be submitted to and conclusively determined by general judicial reference described in Section 9.2.2 below.

9.2.2. JUDICIAL REFERENCE.

Any unresolved disputes under Section 9.2.1 above, shall be submitted to general judicial reference pursuant to CODE OF CIVIL PROCEDURE §§ 638(1) and 641-645.1 or any successor statutes thereto. The general referee shall have the authority to try all issues, whether of fact or law, and to report a statement of decision to the court. The parties shall use the procedures adopted by Judicial Arbitration and Mediation Services ("JAMS") for judicial reference and selection of a referee (or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the Parties), provided that the following rules and procedures shall apply in all cases unless the parties agree otherwise:

(a) **Participation By Parties.** The Parties to the Dispute shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. A Party in a particular judicial reference proceeding shall not be required to participate in the judicial reference proceeding if (i) all parties against whom the applicable Party would have cross-claims or counterclaims necessary to afford complete relief to such Party cannot be joined in the judicial reference proceeding (a "Necessary Party"), or (ii) the enforcement of the provisions of this Section 9.2.2 would impair the insurance coverage of a Party for any claim arising out of the Dispute that would otherwise provide coverage for such claim. If a Party determines that it cannot join all Necessary Parties or that its insurance coverage would be impaired with respect to the Dispute, such Party may elect not to participate in the judicial reference proceeding. If a Party so elects not to participate in the judicial reference proceeding, such Party will provide notice to Claimant(s) and the other Parties to the judicial reference proceeding that the Dispute will not be resolved by judicial reference. In such circumstances, the other Parties may seek determination of the Party's right not to participate by way of a motion under **CODE OF CIVIL PROCEDURE §§ 638 and 641 through 645.1**, or any successor statutes thereto. If a determination is made as a result of such a motion that a Party is not required to participate in the judicial reference proceeding, unless the remaining Parties agree otherwise, the Dispute shall not be resolved by judicial reference and the Claimant(s) may proceed with an action with respect to the subject Dispute in an appropriate court of law. In the event that Claimant(s) are permitted to pursue legal proceedings as provided herein, **Subsections through (b) through (o)** of this Section 9.2.2 will not apply in such legal proceeding, provided that the legal proceeding shall be tried by a judge and not a jury and

Claimant(s) and all parties shall waive their rights to a jury (unless all Parties to such proceeding mutually consent otherwise).

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

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

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

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

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

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

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

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

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

(k) **Statement of Decision.** The referee's statement of decision shall contain findings of fact and conclusions of law to the extent required by law if the case were tried to a judge. The decision of the referee shall stand as the decision of the court, and upon filing of the statement of decision with the clerk of the court, judgment may be entered thereon in the same manner as if the Dispute had been tried by the court.

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

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

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

(o) **Severability.** In addition to and without limiting the effect of general severability provisions of this Declaration, if the referee or any court determines that any provision of this Section 9.2.2 is unenforceable for any reason, that provision shall be severed, and judicial reference shall be conducted under the remaining enforceable terms of this Section 9.2.2.

9.3. EXCEPTIONS TO SECTION 9.2 ALTERNATIVE DISPUTE RESOLUTION.

The resolution or determination of the following issues and matters are exempt from the requirements of Section 9.2 above or those described in Article 10 below:

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

(b) an unlawful detainer action.

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

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

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

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

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

9.3.1. REMEDY OR RESOLUTION OF A NON-EMERGENCY EXIGENT MATTER.

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

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

9.3.2. REMEDY OR RESOLUTION OF AN EMERGENCY EXIGENT MATTER.

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

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

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

10. DECLARANT-RELATED DISPUTE RESOLUTION

The purpose of this Article 10 is to provide an expedited means of resolving any claims, disputes and disagreements which may arise after the Close of Escrow or other conveyance of any portion of the Property by Declarant, between:

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

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

Initially, Declarant, the Association and/or any Owner agree to attempt to resolve any Post-Closing Dispute asserted by an Owner or the Association absent a formal resolution process. Any resolution not so achieved, however, and which is not otherwise resolved pursuant to any applicable statutory dispute resolution procedures, shall be resolved by resolution process ("**Declarant Resolution Process**" or "**Resolution Process**") described hereafter, subject to the general rules ("**General Rules**") set forth below. Alternatively, Declarant, an Owner or the Association may elect to resolve any unresolved Post-Closing Dispute through a small claims court proceeding.

THE RESOLUTION PROCESS INVOLVES WAIVER OF THE RIGHT TO A JURY TRIAL. BY EXECUTING THIS DECLARATION AND BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, RESPECTIVELY, DECLARANT, EACH OWNER AND THE ASSOCIATION, AGREE TO BE BOUND BY THE PROVISIONS OF THIS ARTICLE 10.

**10.1. GENERAL RULES
(REAL ESTATE COMMISSIONERS' REGULATION §2791.8 [AS OF 2004])**

10.1.1. FEE TO INITIATE RESOLUTION PROCESS

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

10.1.2. PAYMENT OF FEES

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

10.1.3. NEUTRAL, IMPARTIAL FACILITATOR

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

10.1.4. TIMELY APPOINTMENT OF OVERSEER

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

10.1.5. VENUE

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

10.1.6. COMMENCEMENT AND TIMING

The proceeding or hearing of the Resolution Process shall commence promptly at the earliest convenient date in light of all of the facts and circumstances and shall be conducted without undue delay. The foregoing notwithstanding, should a specific Resolution Process be utilized, such Resolution Process shall be deemed to be promptly and

timely commenced if it is to be commenced in accordance with the rules applicable to such Resolution Process; if the rules thereof, however, do not specify a date by which the proceeding or hearing of such Resolution Process must commence, then such hearing or proceeding shall commence on a date mutually agreed upon by the Parties, and if they cannot agree, then on a date determined by the Resolution Facilitator.

10.1.7. FAIR AND REASONABLE RULES AND PROCEDURES

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

10.1.8. PROMPT ISSUANCE OF DECISION OR RULING

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

10.1.9. REMEDIES AVAILABLE TO RESOLUTION FACILITATOR

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

10.1.10. PUNITIVE DAMAGES

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

10.1.11. JUDICIAL REMEDY

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

10.2. DECLARANT RESOLUTION PROCESS

10.2.1. NOTICE.

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

10.2.2. RIGHT TO INSPECT AND RIGHT TO CORRECTIVE ACTION

Within a reasonable period after receipt of the Claim Notice, which period shall not exceed sixty (60) days, Declarant (and any applicable Declarant Parties) and the Claimant(s) shall meet at a mutually-acceptable place within or near the Project to discuss the Dispute claim. At such meeting or at such other mutually-agreeable time, Declarant (and

any applicable Seller Parties) and their respective representatives shall have full access to any property that is subject to the Dispute claim and shall have the right to conduct inspections, testing and/or destructive or invasive testing of the same in a manner deemed appropriate by Declarant (and any applicable Declarant Parties), which rights shall continue until such time as the Dispute is resolved as provided in this Article 10. The parties to the Dispute shall negotiate in good faith in an attempt to resolve the claim. If Declarant (and any applicable Declarant Parties) elects to take any corrective action, Declarant (and any applicable Declarant Parties) and their respective representatives and agents shall be provided full access to the Project to take and complete corrective action.

10.2.3. CIVIL CODE SECTIONS 1368.4, 1375, 1375.05 AND 1375.1

Nothing contained herein shall be deemed a waiver or limitation of the provisions of CIVIL CODE §§ 1368.4, 1375, 1375.05 and 1375.1. If the claim is subject to the provisions of CIVIL CODE §§ 1375, 1375.05 and 1375.1 as they may be amended from time to time, compliance with the procedures of these Sections shall satisfy the requirements of Sections 10.2.1, 10.2.2 and 10.2.4, as applicable.

10.2.4. MEDIATION

If the Parties to the Dispute cannot resolve the claim pursuant to the procedures described in Section 10.2.2 above, the matter shall be submitted to mediation pursuant to the mediation procedures adopted by Judicial Arbitration and Mediation Services ("JAMS") (except as such procedures are modified by the provisions of this Section 10.2.4) or any successor thereto or to any other entity offering mediation services that is mutually acceptable to such parties. No person shall serve as a mediator in any Dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all Parties to the Dispute participating in the mediation. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. Except as provided in Section 10.3.1 below, Purchaser/Owner covenants that Purchaser/Owner shall not commence any arbitration against the Declarant Parties without complying with the procedures described in this Section 10.2.4.

(A) POSITION MEMORANDA; PRE-MEDIATION CONFERENCE

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

(B) CONDUCT OF MEDIATION

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

(C) EXCLUSION AGREEMENT

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

(D) PERSONS PERMITTED AT SESSIONS

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

(E) EXPENSES

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

10.2.5. ARBITRATION

Claimant(s) and Declarant Parties shall resolve any Post-Closing Dispute not resolved as provided above exclusively through a binding arbitration Resolution

Process. This arbitration provision shall apply to any unresolved Post-Closing Disputes of any kind or nature regardless of the relief sought.

(A) FEDERAL ARBITRATION ACT

Because many of the materials and products incorporated into the Property are manufactured in other states, the development and conveyance of the Property or any portion thereof evidences a transaction involving interstate commerce and the FEDERAL ARBITRATION ACT (9 U.S.C. §1 *et seq.*) ("*The Act*") now in effect and as it may be hereafter amended will govern the interpretation and enforcement of the arbitration provisions under this 10. Accordingly, any and all unresolved Post-Closing Disputes shall be arbitrated, which arbitration shall be mandatory and binding, pursuant to THE ACT.

(B) WAIVER OF LITIGATION AND APPEAL

The Association, Owner(s) and Declarant:

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

(C) GENERAL ARBITRATION PROVISIONS

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

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

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

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

(5) **Expenses** The fees and costs charged by JAMS and the arbitrator ("*Arbitration Expense*") to initiate the arbitration Resolution Process shall be advanced by Declarant. All Arbitration Expense, however, shall be paid as mutually agreed upon by the Parties. In the event the Parties cannot agree upon the mutual payment of such Arbitration Expense, such Arbitration Expense shall be paid as determined by the arbitrator. The foregoing notwithstanding, except as otherwise agreed by the Parties or as required by

Applicable Law, an Owner shall not be required to pay a total Arbitration Expense greater than that that would be imposed upon the disputant if the Dispute had been filed as a suit in court. The arbitrator may not award against an Owner any Arbitration Expense in excess of that that would be recoverable as costs if the Post-Closing Dispute had been litigated to final judgment in court.

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

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

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

(9) **Participation by Other Parties** The Association, an Owner and Declarant, to the extent any such party is defending a claim in the arbitration, may, if it chooses, have all necessary and appropriate parties included as parties to the arbitration. The absence of another Party's participation in the Resolution Process shall not be asserted or accepted as a reason by Claimant or Declarant to delay, to refuse to participate in the Resolution Process, or to refuse to enforce this Article 10.

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

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

(D) Additional Rules Applicable To Certain Cases.

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

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

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

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

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

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

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

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

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

10.3. SEVERABILITY

Should any provision in this Article 10 be determined to be unenforceable or to have been waived, the remaining provisions shall be deemed to be severable therefrom and enforceable according to their terms. In the event the arbitration Resolution Process is held not to apply or is held invalid, void or unenforceable in its entirety for any reason, the Parties agree that all Post-Closing Disputes shall be tried before a judge in a court of competent jurisdiction without a jury. The judge in such court of competent jurisdiction shall have the power to grant all legal and equitable remedies and award compensatory damages. The Parties each hereby waive and covenant not to assert their constitutional right to trial by jury of Post-Closing Disputes. The Parties hereby covenant and agree that their mutual waiver of jury trial shall be binding upon their respective successors and assigns and upon all persons and entities asserting rights or claims or otherwise acting on behalf of the Parties or their successors and assigns.

10.3.1. EXCEPTIONS TO MEDIATION AND ARBITRATION; STATUTES OF LIMITATION

The procedures set forth in this Article 10 shall apply only to Post-Closing Disputes and shall not apply to any Dispute, matter or issue described in Article 9. Nothing in this Article 10 shall be considered to toll, stay, reduce or extend any applicable statute of limitations; provided, however, that the Parties shall be entitled to commence a legal action which in the good faith determination of any Party is necessary to preserve the Parties' respective rights under any applicable statute of limitations, provided that a Party shall take no further steps in prosecuting the action until it has complied with the procedures described in this Article 10.

10.3.2. SURVIVAL; SUCCESSORS AND ASSIGNS

The rights and obligations of the Parties pursuant to this Article 10 shall survive the Close of Escrow. This Article 10 and the rights, duties and obligations of the

Parties shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective Parties.

11. MISCELLANEOUS PROVISIONS REGARDING ENFORCEMENT AND LEGAL ACTION

11.1. FAILURE TO ENFORCE

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

11.2. VIOLATION OF LAW

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

11.3. GOVERNING LAW

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

11.4. MEETING AND NOTICE TO MEMBERS PRIOR TO CERTAIN LEGAL ACTIONS BY THE BOARD

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

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

11.4.2. DEFINITION OF "SIGNIFICANT LEGAL PROCEEDING."

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

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

12. GENERAL PROVISIONS

12.1. INVALIDITY OF ANY PROVISION.

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

12.2. AMENDMENTS.

This Declaration may be amended at any time and from time to time by an instrument duly recorded in the Office of the San Diego County Recorder bearing the acknowledged signatures of One-Hundred Percent (100%) of the Unit Owners.

12.3. INCORPORATION.

The Association, an unincorporated association, may be incorporated upon the vote or written assent of one hundred percent (100%) of the voting power thereof, whereafter, the approving members shall be authorized to execute appropriate Articles of Incorporation and to file the same with the Secretary of State, certifying that such votes or written consent have been obtained.

12.4. TERM AND EXTENSION OF DECLARATION.

The covenants and restrictions of this Declaration shall run with and bind the property, and shall inure to the benefit of and shall be enforceable by any Owner of the property subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by all of the then Owners of the Units, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions in whole or in part, or to terminate the same.

12.5. LITIGATION.

In the event the Declarant, or any Owner shall commence litigation to enforce any of the covenants, conditions or restrictions herein contained, the prevailing party in such litigation shall be entitled to costs of suit and such attorney's fees as the Court may adjudge reasonable and proper. The "prevailing party" shall be the party who is entitled to recover his or her costs of suit, whether or not the suit proceeds to final judgment. A party not entitled to recover his or her costs shall not recover attorney's fees.

12.6. OWNER'S COMPLIANCE.

Each Owner, tenant or occupant of a Unit shall comply with the provisions of this Declaration, as lawfully amended from time to time. Failure to comply with any such provisions shall be grounds for an action (a) to recover sums due, (b) for damages, (c) for injunctive relief, (d) for costs and attorneys fees, or (e) any combination of the foregoing.

12.7. NOTICE.

Any notice permitted or required by this Declaration may be delivered either personally or by mail. If delivery is by mail, it shall be deemed to have been delivered seventy-two hours after a copy of the same has been deposited in the United States Mail, by certified mail, postage prepaid, addressed to the person to be notified at his or her current address given by such person to the Association or addressed to the Unit of such person if no address has been given.

12.8. SINGULAR INCLUDES PLURAL.

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

12.9. LIBERAL CONSTRUCTION.

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

12.10. EASEMENTS RESERVED AND GRANTED.

Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in a deed to any Condominium.

12.11. CIVIL CODE SECTION 1368.

The Owner of a Condominium shall, as soon as practicable before transfer of title or execution of a real property sales contract therefor, as defined in California Civil Code Section 2985, provide copies of the Project Documents and such disclosures and certificates as may be required by **Civil Code Section 1368**, or any successor statute or law. The Association shall, if requested by said Owner, provide copies of the same to such Owner within ten (10) days of the mailing or delivery of the request.

13. PARTY WALLS**13.1. GENERAL.**

Each retaining wall or fence which is constructed as a part of the original construction of a Unit and any part which is placed on the dividing line between the Units and is used in common with the adjacent Unit, shall constitute a party wall, and with respect to such wall, each of the adjoining Owners shall assume the burdens and be entitled to the benefits of this Declaration, and to the extent not inconsistent with this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall be applied thereto.

13.2. PROTOCOL FOR REPAIR OR REPLACEMENT OF PARTY WALL.

In the event a Party Wall is damaged or destroyed by some cause (including ordinary wear and tear and deterioration from lapse of time), other than the act or omission of one of the Owners or an Owner's Invitee, then both Owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly existed, as their Shared Responsibility, to such extent not covered by insurance.

13.3. DAMAGE BY ONE OWNER.

In the event any such party wall is damaged or destroyed through the act of one adjoining Owner or any of his agents, guests, invitees, tenants or members of his family (whether or not such act is negligent or otherwise culpable), then that Owner shall forthwith proceed to rebuild and repair the same to as good a condition as formerly existed, without cost to the adjoining Owner.

13.4. SHARING OF MAINTENANCE.

The cost of reasonable maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

13.5. DAMAGE BY OTHER CAUSE.

In the event any such party wall is damaged or destroyed by some cause (including ordinary wear and tear and deterioration from lapse of time), other than the act of one

of the adjoining Owners, his tenants, guests or family, both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly existed, at their joint expense, to such extent not covered by insurance.

13.6. AESTHETIC AND COSMETIC APPEARANCE.

Notwithstanding anything herein to the contrary, each Owner shall be responsible to maintain at such Owner's cost, the aesthetic and cosmetic appearance and the condition of the surface finish (satisfactory to such Owner) of the side of the Party Wall that faces into or toward such Owner's Unit. Any such maintenance shall be performed, if at all, at such Owner's sole discretion and without notice to the other Owner.

13.7. STRUCTURAL ALTERATION, MODIFICATION OR EXTENSION OF PARTY WALL.

In addition to satisfying the other requirements of this Declaration and any Applicable Law, any Owner proposing to modify, make additions, repair or rebuild a Party Wall in any manner which requires the *structural*: (a) alteration, (b) modification or (c) extension thereof or thereto, shall first obtain the written consent of the adjoining Owner. In considering any such structural change, the key criteria shall be assuring the aesthetic and cosmetic congruence of any such change with the Dwellings and other Improvements in the Project.

13.8. WEATHERPROOFING.

Any other provision of this Article notwithstanding, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole costs of furnishing the necessary protection and repair against such elements.

13.9. BINDING EFFECT.

The provisions of this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

In WITNESS WHEREOF, the undersigned being Declarant herein, has executed this instrument on MARCH 12, 2007.

DECLARANT:

**BAYMONT ENTERPRISES, LLC, A
CALIFORNIA LIMITED LIABILITY COMPANY**

By: Richard A. Arroyo
RICHARD A. ARROYO
(Print title above)

**SALLY I. SEMM AND C.R. STOVALL, TRUSTEE,
OR THE SUCCESSOR TRUSTEE(S), OF THE
PALM TRUST, DATED OCTOBER 3, 2003**

By: Charles R. Stovall
Charles R. Stovall
(Print title above)

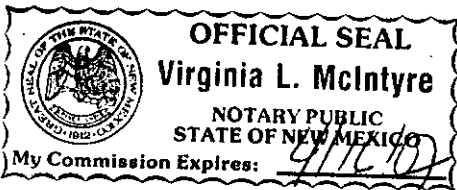
By: Sally I. Semm
Sally I. Semm
(print title above)

ALL-PURPOSE ACKNOWLEDGMENT

NM
State of ~~California~~
County of ~~San Diego~~ *Bernalillo*

On 3-12-07 before me, Virginia McIntyre, a Notary Public,
personally appeared
Charles R Stovall & Sally L Lewis

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



WITNESS my hand and official seal.

Virginia L McIntyre

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN DIEGO)

On March 12, 2007, ~~2006~~, before me, David L. Veit, a
notary Public in and for said State, personally appeared Richard Arroyo, a
personally known to me (~~or proved to me on the basis of satisfactory~~
~~evidence~~) to be the person whose name is subscribed to the within instrument
and acknowledge to me that ~~he~~ she executed the same in ~~his~~ her authorized
capacity, and that by ~~his~~ her signature on the instrument the person, or the
entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

David L. Veit
Notary Public



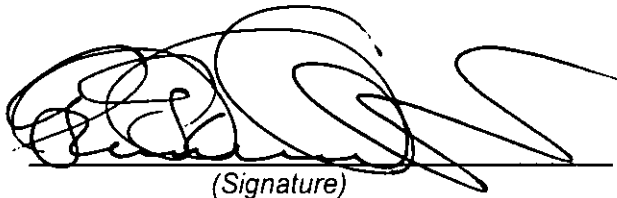
SUBORDINATION AGREEMENT

FIRST BANK, successor by acquisition to **SAN DIEGO COMMUNITY BANK**, being the beneficiary under that certain Deed of Trust recorded **JULY 7, 2006** as File No. **2006-0480922** of Official Records in the Office of the County Recorder of San Diego County, California, hereby declares that the lien and charge of said Deed of Trust is and shall be subordinate to the **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS "DALE/HAWTHORN CONDOMINIUMS"** to which this Subordination Agreement is attached.

DATED: 2-15-07

FIRST BANK

By:


(Signature)

BILL BLACKWELL
(Printed Name)

ASSISTANT VICE PRESIDENT
(Title)

(Please Attached Proper Notary Certificate(s) of Acknowledgment)

Subordination to Declaration

ALL-PURPOSE ACKNOWLEDGMENT

State of California

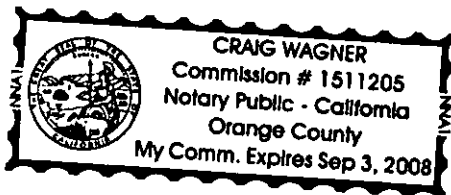
County of ~~San Diego~~ ORANGEOn FEBRUARY 15, 2007 before me, CRAIG WAGNER, a Notary Public,
personally appearedBILL BLACKWELL

personally known to me

OR



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




WITNESS my hand and official seal.

SUBORDINATION AGREEMENT

JONATHAN EARLY, TRUSTEES OR THE SUCCESSOR TRUSTEE(S) OF THE BEAR FLAG TRUST DATED JANUARY 14, 1992, being the beneficiary under that certain Deed of Trust recorded JULY 7, 2006 as File No. 2006-0480923 of Official Records in the Office of the County Recorder of San Diego County, California, hereby declares that the lien and charge of said Deed of Trust is and shall be subordinated to the **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS "DALE/HAWTHORN CONDOMINIUMS"** to which this Subordination Agreement is attached.

DATED: 10.10.06

JONATHAN EARLY, TRUSTEES OR THE SUCCESSOR TRUSTEE(S) OF THE BEAR FLAG TRUST DATED JANUARY 14, 1992

By: 
 (Signature)

JONATHAN EARLY
 (Printed Name)

TRUSTEE
 (Title)

(Please Attached Proper Notary Certificate(s) of Acknowledgment)

Subordination to Declaration

ALL-PURPOSE ACKNOWLEDGMENT

State of California

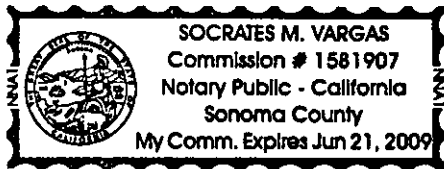
County of ~~San Diego~~ *Sonoma*

On 10-10-06 before me, Socrates M Vargas, a Notary Public,
personally appeared Jonathan Early

personally known to me

OR

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



WITNESS my hand and official seal.

Socrates M Vargas

Subordination Agreement

San Diego Housing Commission, a public agency, being the beneficiary under that certain Deed of Trust recorded **August 22, 2006** as File No. **2006-0598779** of Official Records in the Office of the County Recorder of San Diego County, California, hereby declares that the lien and charge of said Deed of Trust is and shall be subordinate to the **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS "DALE/HAWTHORN CONDOMINIUMS"** to which this Subordination Agreement is attached.

Dated: March 20, 2007

San Diego Housing Commission, a public agency

By: Cissy Fisher
Cissy Fisher, Director of Housing Finance & Development

(Printed Name)

(Title)

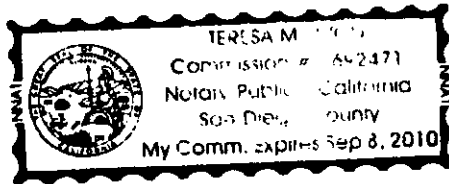
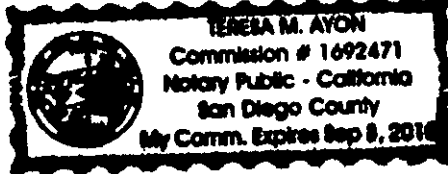
ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego

On March 20, 2007 before me, Teresa M. Ayon, a Notary Public,
personally appeared Cissy Fisher

personally known to me OR



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

WITNESS my hand and official seal.

Teresa M. Ayon

EXHIBIT "A" - LEGAL DESCRIPTION

PARCEL 1 OF PARCEL MAP NO. 20078, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, AUGUST 17, 2006 AS DOCUMENT NO. 2006-0588723 OF OFFICIAL RECORDS.

NOTARY SEAL CERTIFICATION

(Government Code 27361.7)

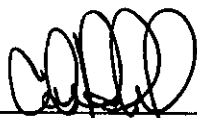
I CERTIFY UNDER PENALTY OF PERJURY THAT THE NOTARY SEAL ON THE DOCUMENT TO WHICH THIS STATEMENT IS ATTACHED READS AS FOLLOWS:

Name of the Notary: VIRGINIA L. McINTYRE

Commission Number: N/A Date Commission Expires: 4/16/07

County Where Bond is Filed: BERNALILLO

Manufacturer or Vendor Number: N/A
(Located on both sides of the notary seal border)

Signature: 
Firm Name (if applicable)

Place of Execution: San Diego Date: 4 12 2007