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AMENDED AND RESTATED

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

AND RESERVATION OF EASEMENTS

FOR

WILLOW HAVEN

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AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR
WILLOW HAVEN

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AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

AND RESERVATION OF EASEMENTS

FOR

WILLOW HAVEN

THIS AMENDED AND RESTATED DECLARATION is made by Lennar Homes of California, Inc., a California corporation ("*Declarant*"). The capitalized terms used in the Preamble are defined in Article I.

P R E A M B L E:

A. Declarant is the owner of real property located in the City of Murrieta, Riverside County, California, described as follows:

Units 1 to 20, Association Property and Common Area, as shown on that certain Condominium Plan for Phase 1 – Willow Haven, Lot 23 of Tract No. 31177, recorded on September 29, 2004, as Instrument No. 04-0771233, in the Official Records of Riverside County, California, together with Lot 32 of Tract No. 31177, as shown on the Subdivision Map filed in Book 347, at Pages 80 to 85, inclusive, of Maps in the Office of the Riverside County Recorder.

B. Declarant intends to create a "condominium project," as defined in Section 1351(f) of the California Civil Code, to subdivide the Neighborhood as authorized by Section 66427 of the California Government Code into "condominiums" as defined in Section 783 of the California Civil Code and to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all the Condominiums created pursuant to the Davis-Stirling Common Interest Development Act. As part of said subdivision, portions of the Neighborhood will be designated as Units, Common Area and Association Property. In furtherance of this intent, Declarant recorded the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Willow Haven on October 4, 2004 as Instrument No. 2004-0786361 of Official Records of Riverside County ("*Original Declaration*"). The Original Declaration was binding on the Neighborhood.

C. Declarant now amends and restates the Original Declaration in its entirety by including provisions to induce VA and FHA to participate in the financing of the sale of Condominiums.

D. The Neighborhood is to be held, conveyed, encumbered, leased, used and improved subject to the limits, restrictions, reservations, rights, easements, conditions and

covenants in the Declaration, all of which are in furtherance of a plan for subdividing, maintaining, improving and selling the Neighborhood. All provisions of this Declaration are imposed as equitable servitudes on the Neighborhood. All limits, restrictions, reservations, rights, easements, conditions and covenants in this Declaration shall run with and burden the Neighborhood and shall be binding on and for the benefit of all of the Neighborhood and all Persons acquiring any interest in the Neighborhood.

D. Declarant and its successors and assigns covenant that each undivided interest in the Common Area, the appurtenant Membership in the Association, all easements conveyed therewith and fee title to the respective Unit conveyed therewith shall not be separated or separately conveyed, and each such undivided interest, Membership and easement shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit. This restriction on severability of the component interests of the Condominiums shall not extend beyond the period for which the right to partition the Neighborhood is suspended in accordance with Section 1359 of the California Civil Code. Any conveyance by an Owner of a Condominium, or any portion thereof, shall be presumed to convey the entire Condominium together with a Membership in the Association.

ARTICLE I DEFINITIONS AND INTERPRETATION

1.1. **DEFINITIONS.** Unless otherwise expressly provided, the following words and phrases when used in this Declaration have the following meanings.

1.1.1 **Annexable Territory.** Annexable Territory means the real property described in *Exhibit A* which may be made subject to this Declaration pursuant to Article XVI. Any references in this Declaration to Annexable Territory are references to the Annexable Territory as a whole and to portions thereof.

1.1.2 **Annual Assessment.** Annual Assessment means a charge levied against the Owners and their Condominiums representing their share of Common Expenses. The Annual Assessment is a regular assessment as described in California Civil Code Section 1366.

1.1.3 **Apartment Owner.** Apartment Owner means Bluestone Communities, a California corporation, and its successors in interest.

1.1.4 **Apartment Project.** Apartment Project means the apartment project located on Lots 1 to 22, inclusive, of Tract No. 31177.

1.1.5 **Articles.** Articles means the Articles of Incorporation of the Association as currently in effect.

1.1.6 **Assessment.** Assessment means any Annual Assessment, Capital Improvement Assessment, Reconstruction Assessment and Special Assessment.

1.1.7 **Association.** Association means Willow Haven Community Association, a California nonprofit corporation (formed pursuant to the California Nonprofit

Mutual Benefit Corporation Law) and its successors in interest. The Association is also an "association" as defined in Section 1351(a) of the California Civil Code.

1.1.8 **Association Maintenance Funds.** Association Maintenance Funds means the accounts created for Association receipts and disbursements pursuant to Article VII.

1.1.9 **Association Property.** Association Property means real or personal property designated by the Declarant as Association Property and therefore made subject to the restrictions on Association Property established in the Restrictions. Association Property includes Improvements such as paseos, recreational facilities, including the pool, spa, pool building and restrooms, landscaping and irrigation, concrete driveway aprons, streets, street lights, block walls, including the block wall on the west boundary of the Neighborhood, the fences enclosing the patios and side yards and the residential building structures in the Neighborhood. Any references in this Declaration to Association Property are references to the Association Property as a whole and to portions thereof. Additional Association Property may be annexed to the Neighborhood pursuant to Article XVI. The Association Property is "common area" as defined in Section 1351(b) of the California Civil Code. The Association Property located in Phase 1 includes Lot 23 of Tract No. 31177 (excluding the Units and the Common Area thereon) as depicted on the Condominium Plan for Phase 1, all as described in Paragraph A of the Preamble to this Declaration together with Lot 32 of Tract No. 31177. The Association Property in Phase 1 will be conveyed to the Association in fee simple on or before the first Close of Escrow for the sale of a Condominium in Phase 1.

1.1.10 **Board or Board of Directors.** Board or Board of Directors means the Association's Board of Directors.

1.1.11 **Budget.** Budget means a written, itemized estimate of the Association's income and Common Expenses prepared pursuant to the Bylaws.

1.1.12 **Bylaws.** Bylaws means the Bylaws of the Association as currently in effect.

1.1.13 **Capital Improvement Assessment.** Capital Improvement Assessment means a charge levied against the Owners and their Condominiums representing their share of the Association's cost for installing or constructing capital Improvements on the Common Property. Capital Improvement Assessments shall be levied in the same proportions as Annual Assessments. Capital Improvement Assessments are special assessments as described in California Civil Code Section 1366.

1.1.14 **City.** City means the City of Murrieta, California, and its various departments, divisions, employees and representatives.

1.1.15 **Close of Escrow.** Close of Escrow means the date on which a deed is Recorded conveying a Condominium pursuant to a transaction requiring the issuance of a Final Subdivision Public Report by the DRE.

1.1.16 **Common Expenses.** Common Expenses means those expenses for which the Association is responsible under this Declaration including the actual and estimated

costs of and reserves for maintaining, managing and operating the Association Property, recreational facilities, clustered mailboxes and address identification signs. In addition, Common Expenses includes the Association's share of "Shared Expenses" as defined in the Shared Use Agreement. Common Expenses also include unpaid Special Assessments, Reconstruction Assessments and Capital Improvement Assessments. Common Expenses include the cost of all utilities metered to more than one Condominium, other commonly metered charges for the Neighborhood (including water supplied to residential fire sprinklers), alarm monitoring services, annual backflow valve inspections, trash collection and removal (as applicable), managing and administering the Association, including compensation paid by the Association to Managers, accountants, attorneys and employees, gardening and other services benefiting the Common Property, all Association Property fire, casualty, liability, worker's compensation, errors and omissions director and officer and agent liability insurance, and other insurance covering the Neighborhood and the Directors, officers and agents of the Association, bonding the members of the Board; taxes paid by the Association, amounts paid by the Association for discharge of any lien or encumbrance levied against the Neighborhood; maintenance required by this Declaration and all other expenses incurred by the Association for the Neighborhood, for the common benefit of the Owners.

1.1.17 Common Property. Common Property means the Common Area and the Association Property. Any references in this Declaration to Common Property are references to the Common Property as a whole and to portions thereof. The term "Common Property" is defined as "common area" in Section 1351(f) of the California Civil Code.

1.1.18 Condominium. Condominium means an estate in real property as defined in California Civil Code Section 1351(f). A Condominium consists of an undivided fee simple ownership interest in the Common Area in a Phase together with a separate ownership interest in fee in a Unit and all easements appurtenant thereto. Subject to the provisions of Article X, the undivided fee simple interest in the Common Area in a Phase is appurtenant to each Unit in such Phase and is a fraction having one (1) as its numerator and the number of Units in that Phase as its denominator. Such Common Area shall be held by the Owners of Condominiums in that Phase as tenants-in-common.

1.1.19 Common Area. Common Area means those certain volumes of airspace described in the Condominium Plan which shall be owned by Owners in each Phase as tenants-in-common. Any references in this Declaration to Common Area are references to the Common Area as a whole and to portions thereof. Common Area, as defined herein, is a portion of the "common area" as defined in Section 1351(b) of the California Civil Code. The Common Area in Phase 1 is shown on the Phase 1 Condominium Plan, and each Owner of a Condominium in Phase 1 shall own an undivided one-twentieth (1/20) interest in the Common Area in Phase 1.

1.1.20 Condominium Plan. Condominium Plan means the Recorded plan, as currently in effect, for all or a portion of a Phase consisting of (a) a description or survey map of the Phase or portion thereof which shall refer to or show monumentation on the ground, (b) a three-dimensional description of the Phase or portion thereof, one or more dimensions of which may extend for an indefinite distance upwards or downwards in sufficient detail to identify the Association Property, Common Area and each Unit, and (c) a certificate consenting to the Recordation thereof signed and acknowledged by the record owner of fee title to the Phase or

portion thereof, and by either the trustee or the Mortgagee of each Recorded Mortgage encumbering the Phase or portion thereof.

1.1.21 **Construction Claims Statute.** Construction Claims Statute means Division 2, Part 2, Title 7 (commencing with Section 895) of the California Civil Code.

1.1.22 **County.** County means Riverside County, California, and its various departments, divisions, employees and representatives.

1.1.23 **Declarant.** Declarant means Lennar Homes of California, Inc., a California corporation, its successors, and any Person to which it shall have assigned any of its rights under this Declaration by an express written assignment. As used in this Section, "successor" means a Person who acquires Declarant or substantially all of Declarant's assets by sale, merger, reverse merger, consolidation, sale of stock or assets, operation of law or otherwise. Unless otherwise expressly provided in the Declaration, all actions that may be taken by Declarant may be chosen by Declarant in its sole discretion. Declarant is a builder as described in California Civil Code Section 1375.

1.1.24 **Declaration.** Declaration means this Amended and Restated Declaration of Covenants, Conditions and Restrictions and Reservation of Easement for Willow Haven as currently in effect.

1.1.25 **DRE.** DRE means the California Department of Real Estate and any department or agency of the California state government which succeeds to the DRE's functions.

1.1.26 **Design Guidelines.** Design Guidelines mean the rules or guidelines setting forth procedures and standards for submission of plans for Design Review Committee approval.

1.1.27 **Design Review Committee or Committees.** Design Review Committee or Committees means the Design Review Committee created pursuant to Article V.

1.1.28 **Exclusive Use Area.** Exclusive Use Area means the Association Property over which exclusive easements are reserved for the benefit of specified Owners, including for patio, deck and side yard purposes (as applicable), and for internal and external telephone wiring designed to serve a single Unit but located outside the boundaries of the Unit, in accordance with California Civil Code Section 1351(i). Declarant may reserve additional Exclusive Use Areas in one or more Supplemental Declarations.

1.1.29 **FHA.** FHA means the Federal Housing Administration of the United States Department of Housing and Urban Development and its successors.

1.1.30 **FHLMC.** FHLMC means the Federal Home Loan Mortgage Corporation created by Title II of the Emergency Home Finance Act of 1970 and its successors.

1.1.31 **Family.** Family means natural individuals, related or not, who live as a single household in a Condominium.

1.1.32 **FNMA.** FNMA means the Federal National Mortgage Association, a government-sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968 and its successors.

1.1.33 **Fiscal Year.** Fiscal Year means the fiscal accounting and reporting period of the Association selected by the Board.

1.1.34 **GNMA.** GNMA means the Government National Mortgage Association administered by the United States Department of Housing and Urban Development and its successors.

1.1.35 **Improvement.** Improvement means any structure and any appurtenance thereto including a building, walkway, irrigation system, garage, road, driveway, parking area, fence, any type of wall, awning, stairs, deck, any type of landscaping and planting, antenna, windbreak, the exterior surface of any visible structure and the paint on such surface, pole, sign, exterior air conditioning and water softener fixture or equipment. The Design Review Committee may identify additional items that are Improvements.

1.1.36 **Include.** Whether capitalized or not, include means “include without limitation.”

1.1.37 **Maintain.** Whether capitalized or not, maintain means maintain, repair and replace.

1.1.38 **Maintenance Guidelines; Maintenance Manual; Maintenance Recommendations.** Maintenance Guidelines means any current written guidelines, setting forth procedures and standards for the maintenance and operation of Common Property by the Association and the Condominium by the Owners, that may be provided to the Association and to each Owner by Declarant, the Association or any governmental agency. Maintenance Guidelines include any Maintenance Manual initially prepared at Declarant’s direction and containing recommended frequency of inspections and maintenance activities for components of the Common Property and any Maintenance Recommendations prepared by Declarant pertaining to a Condominium.

1.1.39 **Manager.** Manager means the Person retained by the Association to perform management functions of the Association as limited by the Restrictions and the terms of the agreement between the Association and the Person.

1.1.40 **Membership.** Membership means the voting and other rights, privileges and duties established in the Restrictions for members of the Association.

1.1.41 **Mortgage.** Mortgage means any Recorded documents, including a deed of trust, by which a Condominium or other portion of the Neighborhood is hypothecated to secure the performance of an obligation.

1.1.42 **Mortgagee.** Mortgagee means a Person to whom a Mortgage is made or the assignee of the Mortgagee’s rights under the Mortgage by a recorded instrument. For

purposes of this Declaration, the term Mortgagee shall include a beneficiary under a deed of trust.

1.1.43 **Mortgagor.** Mortgagor means a Person who Mortgages his property to another. For purposes of this Declaration, the term Mortgagor shall include a trustor under a deed of trust.

1.1.44 **Neighborhood.** Neighborhood means (a) Phase 1, and (b) each Phase described in a Notice. The Neighborhood is a "condominium project" as defined in Section 1351(f) of the California Civil Code. The Neighborhood is a "common interest development" as defined in Section 1351(c) of the California Civil Code. Any references in this Declaration to the Neighborhood are references to the Neighborhood as a whole and to portions thereof.

1.1.45 **Neighborhood Guidelines.** Neighborhood Guidelines means the current rules and regulations for the Neighborhood.

1.1.46 **Notice of Addition.** Notice of Addition means an instrument Recorded pursuant to Article XVI to annex additional real property to the Neighborhood. A Notice of Addition may include a Supplemental Declaration.

1.1.47 **Notice and Hearing.** Notice and Hearing means written notice and a hearing before the Board, as provided in the Bylaws.

1.1.48 **Owner.** Owner means the Person or Persons, including Declarant, holding fee simple interest to a Condominium. Each Owner has a Membership in the Association. The term "Owner" includes sellers under an executory contracts of sale but excludes Mortgagees. The term "Owner" may be expanded in a Supplemental Declaration to include other Persons.

1.1.49 **Person.** Person means a natural individual or any entity recognized under California law. When the word "person" is not capitalized, the word only refers to natural persons.

1.1.50 **Phase.** Phase means each of the following: (a) Phase 1 and (b) all the real property covered by a Notice of Addition for which a Final Subdivision Public Report has been issued by DRE, unless "Phase" is otherwise defined in such Notice of Addition.

1.1.51 **Phase 1.** Phase 1 means all real property described in Paragraph A of the Preamble of this Declaration.

1.1.52 **Reconstruction Assessment.** Reconstruction Assessment means a charge levied against the Owners and their Condominium, representing their share of the Association's cost to reconstruct any Improvements on the Common Property. Such charge shall be levied among all Owners and their Condominiums in the same proportions as Annual Assessments. Reconstruction Assessments are special assessments as described in California Civil Code Section 1366.

1.1.53 **Record or File.** Record or File means, with respect to any document, entry of such document in official records of the County Recorder.

1.1.54 **Residence.** Residence means the residential element of the Unit (depicted on the Condominium Plan).

1.1.55 **Restrictions.** Restrictions means this Declaration, the Articles, Bylaws, Design Guidelines, Neighborhood Guidelines, Supplemental Declarations and Notices of Addition.

1.1.56 **Shared Use Agreement.** Shared Use Agreement means that certain Easement, Joint Use and Maintenance Agreement recorded or to be recorded in Official Records of Riverside County, California, as may be amended or restated. The Shared Use Agreement was entered into by Declarant and Apartment Owner. The Shared Use Agreement creates nonexclusive easements to use, enjoy and maintain the emergency vehicle access gate located on Lot M of Tract No. 31177, and it requires the Association and the Apartment Owner to share in the cost of operation and upkeep of such facilities.

1.1.57 **Special Assessment.** Special Assessment means a charge against an Owner and his Condominium representing a reasonable fine or penalty, including reimbursement costs, as provided for in this Declaration.

1.1.58 **Supplemental Declaration.** Supplemental Declaration means an instrument executed, acknowledged and Recorded by Declarant which imposes conditions, covenants, or restrictions or reserves easements for a Phase in addition to the conditions, covenants, restrictions and easements established by this Declaration. A Supplemental Declaration may affect one or more Phases. Declarant may Record a Supplemental Declaration if Declarant owns all of the property to be encumbered by that Supplemental Declaration. A Supplemental Declaration may modify this Declaration as it applies to the property encumbered by the Supplemental Declaration.

1.1.59 **Unit.** Unit means a separate interest in space as defined in Section 1351(f) of the California Civil Code. Each Unit is a separate freehold estate, as separately shown, numbered and designated in the Condominium Plan. Each Unit in the Neighborhood includes the residential element and a garage element as depicted on the Condominium Plan. In interpreting deeds, declarations and plans, the actual boundaries of each Unit shall be deemed to extend to the unfinished surfaces of the interior walls, floors and ceiling encompassing the residential element and garage element of the Unit as constructed or reconstructed in substantial accordance with the original plans for the Unit. The foregoing interpretation shall apply notwithstanding any description expressed in the deed, Condominium Plan or Declaration, regardless of settling or lateral movement of the building and regardless of minor variances between boundaries, as shown on the Condominium Plan or defined in the deed and Declaration, and the boundaries of the building Improvements as constructed or reconstructed. The windows and sliding glass doors are portions of the Unit. The boundaries of the Unit are approximately depicted in the Condominium Plan. The Units included in Phase 1 are numbered 1 through 20, inclusive, and are depicted on the Condominium Plan for Phase 1.

1.1.60 **VA.** VA means the Department of Veteran Affairs of the United States of America and any department or agency of the United States government which succeeds to VA's functions of issuing guarantees of notes secured by Mortgages on residential real estate.

1.2. **INTERPRETATION.**

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

1.2.2 **Articles, Sections and Exhibits.** The Article and Section headings have been inserted for convenience only and may not be considered in resolving questions of interpretation or construction. Unless otherwise indicated, any references in this Declaration to articles, sections or exhibits are to Articles, Sections and Exhibits of this Declaration. *Exhibits A, B and C* attached to this Declaration are incorporated herein by this reference.

1.2.3 **Priorities and Inconsistencies.** If there are conflicts or inconsistencies between this Declaration and the Articles, Bylaws, Neighborhood Guidelines, a Supplemental Declaration, or Condominium Plan, then the provisions of this Declaration shall prevail.

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

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

1.2.6 **FHA/VA Requirements.** All of the requirements set forth in (a) Department of Housing and Urban Development (HUD) Condominium Regulations (see 24 CFR 234) and (b) HUD Revised Legal Policy attached to Appendix 24 of HUD Handbook 4265.1, entitled Home Mortgage Insurance Condominium Units Section 234(c) (collectively, the "*FHA/VA Requirements*") are incorporated herein by reference. For so long as FHA and/or VA blanket loan approvals are in effect for the Neighborhood and while any FHA/VA loan encumbers any Condominium in the Neighborhood, the FHA/VA Requirements shall control and prevail over all other provisions of the Declaration to the extent of any inconsistency between them. At such time as the blanket loan approvals are no longer in effect and no FHA or VA loans encumber any Condominium in the Neighborhood, the FHA/VA Requirements shall have no further applicability with respect to the Neighborhood.

ARTICLE II CONDOMINIUM AND USE RESTRICTIONS

The Neighborhood shall be held, used and enjoyed subject to the following restrictions and exemptions and rights of Declarant in the Restrictions.

2.1. **SINGLE FAMILY RESIDENCES.** Each Residence shall be used as a dwelling for a single Family and for no other purpose. Subject to any Owner occupancy requirements that may be separately imposed by Declarant, an Owner may rent his Condominium to a single Family provided that the Condominium is rented pursuant to a lease or rental agreement which is (a) in writing and (b) subject to all of the provisions of this Declaration. The Common Property, including parking spaces and other amenities contemplated as a part of the Neighborhood, will not be leased by Declarant to the Owners or the Association. Owners may also rent Condominiums to Declarant for use as sales offices, models and parking areas. Any failure by a tenant of a Condominium to comply with the Restrictions constitutes a default under the lease or rental agreement.

2.2. **BUSINESS OR COMMERCIAL ACTIVITY.** No part of the Neighborhood may ever be used for any business, commercial (including auctions or similar events), manufacturing, mercantile, storage, vending or other nonresidential purposes, including any activity for which the provider is compensated or receives any consideration, regardless of whether the activity is engaged in full or part-time, generates or does not generate a profit, or requires or does not require a license. This Section does not preclude any of the above-described activities provided that: (a) the activity complies with law; (b) the patrons or clientele of the activity do not visit the Condominium or park automobiles or other vehicles in the Neighborhood; (c) the existence or operation of the activity is not apparent or detectable by sight, sound or smell from outside the boundaries of the Condominium; (d) the activity does not increase the Association's liability or casualty insurance obligation or premium; and (e) the activity is consistent with the residential character of the Neighborhood and this Declaration.

2.3. **NUISANCES.** Noxious and offensive activities in the Neighborhood or on any public street abutting or visible from the Neighborhood are prohibited. All horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of a Condominium or vehicle and its contents, are also prohibited. Noisy, unsightly, unusually painted or smoky vehicles, large power equipment and large power tools (excluding lawn mowers and other equipment used in connection with ordinary landscape maintenance), off-road motor vehicles and objects which create or emit loud noises or noxious odors may not be located, used or placed in the Neighborhood or on any public street abutting or visible from the Neighborhood, or exposed to the view of other Owners without the Board's written approval. Any item which would unreasonably interfere with television or radio reception to a Condominium may be located or used in the Neighborhood or on a public street abutting the Neighborhood only with the prior written consent of the Board. The Association is entitled to determine if any noise, odor, or activity producing such noise or odor constitutes a nuisance. The Association may unilaterally delegate responsibility for enforcing this Section, in whole or in part, to the Owners. No Owner may (a) permit or cause anything to be done or kept in the Neighborhood or on any public street abutting or visible from the Neighborhood which may (i) increase the rate of insurance in the Neighborhood, (ii) result in the cancellation of such insurance, or (iii) obstruct or interfere with the rights of other Owners, or (b) commit or permit any nuisance thereon or violate any law. Each Owner shall comply with all requirements of the local or state health authorities and with all other laws regarding occupancy and use of a Condominium. Each Owner is accountable to the Association and other Owners for the conduct of persons residing in or visiting the Owner's Condominium. Any damage to the Common Property, personal property of the Association, or property of another Owner caused by such

persons shall be repaired at the sole expense of the Owner of the Condominium where such persons are residing or visiting. No plants or seeds infected with noxious insects or plant diseases may be brought upon, grown or maintained in the Neighborhood.

2.4. **SIGNS.** Subject to Civil Code Sections 712, 713 and 1353.6, no sign, advertising device or other display of any kind shall be displayed in the Association Property or on any public street in or abutting the Neighborhood except for: (i) Entry monuments, community identification signs, and traffic or parking control signs maintained by the Association, (ii) One (1) nameplate or similar Owner name or address identification sign for each Condominium which complies with the Design Guidelines, and (iii) Noncommercial signs, posters, flags or banners on or in the Condominium, except as required for the protection of public health or safety or if posting or display would violate a local, state or federal law. A noncommercial sign, poster, flag or banner may be made of paper, cardboard, cloth, plastic or fabric, and may be posted or displayed only from a window, door, deck or other areas within exclusive control of the Owner. Such noncommercial signs, posters, flags and banners may not be made of lights, roofing, siding, paving materials, flora, or balloons or any other similar building, landscaping or decorative component, or include the painting of architectural surfaces. The Association may prohibit noncommercial signs and posters that are more than nine (9) square feet in size and noncommercial flags or banners that are more than fifteen (15) square feet in size. No sign advertising the Condominium for sale or lease may be placed on the Association Property. The preferred location for such sign shall be in a window.

2.5. **PARKING AND VEHICULAR RESTRICTIONS.**

2.5.1 **Authorized Vehicles.** The following vehicles are "Authorized Vehicles:" standard passenger vehicles including automobiles, passenger vans designed to accommodate ten (10) or fewer people, motorcycles, and pickup trucks having a manufacturer's rating or payload capacity of one (1) ton or less. Authorized Vehicles may be parked in any portion of the Neighborhood intended for parking of motorized vehicles; however, no Owner may park a vehicle in a manner which the Association determines either restricts the passage of pedestrians or vehicles over garage areas, driveways, streets or sidewalks in the Neighborhood. The Association has the power to identify additional vehicles as Authorized Vehicles in the Neighborhood Guidelines to adapt this restriction to other types of vehicles.

2.5.2 **Prohibited Vehicles.** The following vehicles are "Prohibited Vehicles": (a) recreational vehicles (e.g., motor homes, travel trailers, camper vans and boats), (b) commercial-type vehicles (e.g., stakebed trucks, tank trucks, dump trucks, step vans, concrete trucks, and limousines), (c) buses or vans designed to accommodate more than ten (10) people, (d) vehicles having more than two (2) axles, (e) trailers, (f) inoperable vehicles or parts of vehicles, (g) aircraft, (h) any vehicle or vehicular equipment deemed a nuisance by the Association, (i) vehicles with commercial signage, and (j) any other vehicle not classified as an Authorized Vehicle. Prohibited Vehicles may not be parked, stored or kept on any public or private street in, adjacent to or visible from the Neighborhood or any other Common Property parking area except for brief periods for loading, unloading, making deliveries or emergency repairs. If a vehicle qualifies as both an Authorized Vehicle and a Prohibited Vehicle, then the vehicle is presumed to be a Prohibited Vehicle, unless the vehicle is expressly authorized in writing by the Association. The Association has the power to identify additional vehicles as

Prohibited Vehicles in the Neighborhood Guidelines to adapt this restriction to other types of vehicles. Prohibited Vehicles may only be parked in an Owner's fully enclosed garage with the door closed so long as their presence in the Neighborhood does not otherwise violate the provisions of this Declaration.

2.5.3 General Restrictions. Subject to the restriction on Prohibited Vehicles, all vehicles owned or operated by or in the control of an Owner or a resident of an Owner's Condominium and kept in the Neighborhood must be parked in the assigned garage of the Owner. Uncovered parking spaces in the Neighborhood are for temporary guest parking only. Guest parking spaces are not reserved for nor assigned to any particular Unit. Alleyways in the Neighborhood are designated as fire lines. No Person shall park or leave unattended any Vehicle in front of a garage door or elsewhere in an alleyway or in any other area designated as a fire lane. No repair, maintenance or restoration of any vehicle may be conducted in the Neighborhood except in an enclosed garage when the garage door is closed. However, these activities may not be undertaken as a business and may be prohibited entirely if the Board determines that the activities are a nuisance.

2.5.4 Restrictive Parking Regulations. There shall be no parking in the Restricted Parking Areas depicted on *Exhibit C*. Vehicles may be parked only in marked parking stalls or garages. The Board may establish additional restrictive parking regulations regarding parking areas not assigned to Condominiums, including designating "parking," "guest parking," and "no parking" areas; may establish reasonable regulations for parking areas assigned to Condominiums; and may enforce all parking and vehicle use regulations applicable to the Neighborhood. Enforcement actions the Association may take include removing violating vehicles from the Neighborhood pursuant to California Vehicle Code Section 22658.2 or other applicable laws. If the Association fails to enforce any of the parking or vehicle use regulations, the City may enforce such regulations.

2.6. ANIMAL REGULATIONS. The only animals that may be raised, bred or kept in any Condominium are dogs, cats, fish, birds, reptiles and other usual household pets, provided that they are not kept, bred or raised for commercial purposes, in unreasonable quantities or sizes or in violation of the Restrictions. As used in this Declaration, "unreasonable quantities" ordinarily means more than two (2) pets per Condominium; however, the Association may determine that a reasonable number in any instance may be more or less. The Association may limit the size of pets and may prohibit maintenance of any animal which, in the Association's opinion, constitutes a nuisance to any other Owner. Animals must be either kept in an enclosed area or on a leash held by a person capable of controlling the animal. Each Person is liable for any unreasonable noise and for damage to person or property caused by any animals brought or kept in the Neighborhood by such Person. Each Person shall clean up after such Person's animals. Any Person who keeps any animal, insect or reptile in the Neighborhood shall indemnify, defend and hold harmless the Association, its officers, directors, contractors, agents and employees from any claim brought by any Person against the Association, its officers, directors, agents and employees for personal injuries or property damage caused by such animals.

2.7. ANTENNA RESTRICTIONS. No Person may install on the exterior of any building any antenna or over-the-air receiving device except for an "Authorized Antenna." An

Authorized Antenna is (i) an antenna designed to receive direct broadcast satellite service, including direct-to-home satellite service, that is one meter or less in diameter, or (ii) an antenna designed to receive video programming service, including multichannel multipoint distribution service, instructional television fixed service, and local multipoint distribution service, and is one meter or less in diameter or diagonal measurement, (iii) an antenna designed to receive television broadcast signals, or (iv) an antenna used to receive and transmit fixed wireless signals. An Authorized Antenna may be mounted on a mast or tripod to reach the height needed to receive an acceptable quality signal, subject to local governmental agency permitting requirements for safety purposes.

2.7.1 Restrictions on Installation. The Design Review Committee may adopt reasonable restrictions on installation and use of an Authorized Antenna as part of its Design Guidelines in order to minimize visibility of the Authorized Antenna from other Condominiums. Such restrictions may designate one or more preferred installation locations, or require camouflage such as paint (subject to the antenna manufacturer's recommendations) or screening vegetation or other Improvements. However, no restriction imposed by the Design Review Committee may (i) unreasonably delay or prevent the installation, maintenance or use of an Authorized Antenna, (ii) unreasonably increase the cost of installation, maintenance or use of an Authorized Antenna, or (iii) preclude acceptable quality reception.

2.7.2 Prohibitions on Installation. No Owner shall install any antenna or other Improvement on the building exterior or on any real property which such Owner does not own, such as the walls and fences enclosing the Owner's Exclusive Use Area patios and side yards, or is not entitled to exclusively use or control under the Restrictions without the prior written approval of the Design Review Committee, which it may withhold at its sole discretion. The Design Review Committee may prohibit the installation of an Authorized Antenna in a particular location if, in the Design Review Committee's opinion, the installation, location or maintenance of such Authorized Antenna unreasonably affects the safety of the Owners or any other Person, or for any other safety-related reason established by the Design Review Committee. The Design Review Committee also has the power to prohibit or restrict the installation of any antenna or other over-the-air receiving device that does not meet the definition of an Authorized Antenna above.

2.7.3 Review after Installation. The Design Review Committee may review the location and installation of an Authorized Antenna after it is installed. After its review, the Design Review Committee may require that the Authorized Antenna be moved to a preferred location (if one has been designated) for safety reasons or to comply with reasonable restrictions subject to this Section 2.7 and applicable law.

2.7.4 Restatement of Applicable Law. This Section is intended to be a restatement of the authority granted to the Association under the law. All amendments, modifications, restatements and interpretations of the law applicable to the installation, use or maintenance of an antenna or other over-the-air receiving device shall be interpreted to amend, modify, restate or interpret this Section.

2.8. TRASH. Storage of building materials, refuse or any other materials in the Neighborhood is prohibited, except building materials may be kept in areas designated by the

Board temporarily during construction. No trash may be kept or permitted in the Neighborhood or on any public street abutting or visible from the Neighborhood except in containers at locations specified by the Design Review Committee. Containers may be set out at specified locations only for a reasonable period of time (not to exceed twelve (12) hours before and after scheduled trash collection hours). In no event shall such containers be stored on the patio or side yard of any Condominium. Trash cans must be stored in the garages of the Unit.

2.9. **INSTALLATIONS.** Except for subsection 2.9.4, this Section 2.9 does not apply to Improvements installed (a) as a part of the original construction of the Neighborhood by Declarant, (b) by the Association, or (c) with the approval of the Design Review Committee.

2.9.1 **Generally.** No Owner may cause or permit any mechanic's lien to be filed against the Neighborhood for labor or materials alleged to have been furnished or delivered to the Neighborhood or any Condominium for such Owner and any Owner who does so shall immediately cause the lien to be discharged within five (5) days after notice to the Owner from the Board. If any Owner fails to remove such mechanic's lien, the Board may discharge the lien and charge the Owner a Special Assessment for such cost of discharge.

2.9.2 **Outside Installations.** The following outside installations are prohibited: (a) sound systems, clotheslines, balcony or patio covers, wiring, air conditioning equipment, water softeners, other machines and other similar Improvements, (b) Improvements protruding through the walls or roofs of buildings, and (c) other exterior additions or alterations to any Condominium. Outdoor patio or lounge furniture may be kept in the Exclusive Use Areas. No materials may be stored in the Exclusive Use Areas. Live plants in pots may be kept in the patio and side yard provided that they are kept in pots equipped with dishes to catch excess or leaking water. In order to protect the stucco on building exteriors, Owners must avoid allowing water to run down building walls. Live plants are not allowed on the decks, small balconies with no access, on pot shelves or on wall caps. All other items requiring water, other than those located in the landscape areas in the patio and side yard areas, may not be kept in any Exclusive Use Area. Except for barbecues, no outdoor fires are permitted anywhere in the Neighborhood. Barbecue equipment may be kept in the patio and side yard, but not underneath any building overhangs, or against the side yard or patio fence. Barbecues are not allowed on the decks. The size of the patio and side yard areas may limit the use of some barbecues. The height of a barbecue may not exceed forty-two (42) inches in height. Barbecues may not take up an area greater than ten (10) square feet. No clothing, fabrics or unsightly articles may be hung, dried or aired on or over any Condominium. Articles which are unsightly may be defined in the Neighborhood Guidelines. Spas or pools may not be constructed in the patio or side yard areas. Portable, free-standing basketball back boards are prohibited in the Neighborhood.

2.9.3 **Inside Installations.** Owners may cover their windows with white sheets for up to six (6) months prior to installing permanent window coverings. Nothing may be done in any Condominium or in, on or to the Common Property which may impair the structural integrity of any building in the Neighborhood or which structurally alters any such building except as otherwise expressly provided in this Declaration. No alteration, repair or replacement of wall coverings in Condominiums which may diminish the effectiveness of the sound control engineering in the buildings in the Neighborhood may be made.

2.9.4 **Indemnification.** Neither the Declarant nor the Association shall be liable or responsible for any damage that results from Improvements constructed or modified by an Owner. Improvements should not be installed, constructed or modified without the assistance of qualified consultants.

2.10. **FURTHER SUBDIVISION.** Except as otherwise provided in this Declaration, no Owner may physically or legally subdivide a Condominium in any manner, including dividing such Owner's Condominium into time-share estates or time-share uses. This provision does not limit the right of an Owner to (a) rent or lease all such Owner's Condominium by a written lease or rental agreement subject to this Declaration; (b) sell such Owner's Condominium; or (c) transfer or sell any Condominium to more than one Person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or as community property. Any failure by the tenant of the Condominium to comply with the Restrictions constitutes a default under the lease or rental agreement. Except as provided in this Declaration, there shall be no judicial partition of the Common Area, or any part thereof, for the term of this Declaration; nor may Declarant, any Owner or any other Person acquiring any interest in any Condominium in the Neighborhood seek any such judicial partition. No Condominium in the Neighborhood may be partitioned or subdivided without the written approval of the Mortgagee of any first Mortgage on that Condominium.

2.11. **DRAINAGE.** No one may interfere with or alter the established drainage pattern over the Neighborhood unless an adequate alternative provision is made for proper drainage with the Board's written approval. For the purpose of this Section, "established" drainage in any Phase means the drainage which (a) exists at the time of the first Close of Escrow in such Phase, or (b) is shown on any plans approved by the Design Review Committee.

2.12. **WATER SUPPLY SYSTEM.** No individual water supply, sewage disposal or water softener system is permitted in any Condominium unless such system is designed, located, constructed and equipped in accordance with the requirements, standards, and recommendations of any water district having jurisdiction, the City, the Design Review Committee and all other governmental authorities with jurisdiction.

2.13. **VIEW OBSTRUCTIONS.** Each Owner acknowledges that (a) there are no protected views in the Neighborhood, and no Condominium is assured the existence or unobstructed continuation of any particular view, and (b) any construction, landscaping or other installation of Improvements by Declarant, other Owners or owners of other property in the vicinity of the Neighborhood may impair the view from any Condominium, and the Owners consent to such view impairment.

2.14. **RIGHTS OF DISABLED.** Subject to the provisions of Article V, each Owner may modify his Condominium and the route over the Common Property leading to the front door of his Condominium, at his sole expense, to facilitate access to his Condominium by persons who are blind, visually impaired, deaf or physically disabled, or to alter conditions which could be hazardous to such persons in accordance with California Civil Code Section 1360 or any other applicable law.

2.15. **POST TENSION CONCRETE SLABS.** Concrete slabs for Condominiums constructed in the Neighborhood may be reinforced with a grid of steel cable installed in the concrete slab and then tightened to create extremely high tension. This type of slab is commonly known as a "Post Tension Slab." Cutting into a Post Tension Slab for any reason (e.g., to install a floor safe, to remodel plumbing, etc.) is very hazardous and may result in serious damage to the Condominium, personal injury, or both. Each Owner can determine if his Condominium has been constructed with a Post Tension Slab by the indication of a stamp located on the garage slab. If the Condominium is constructed with a Post Tension Slab, the Owner agrees: (a) Owner shall not cut into or otherwise tamper with the Post Tension Slab; (b) Owner will not permit or allow any other Person to cut into or tamper with the Post Tension Slab so long as Owner owns any interest in the Condominium; (c) Owner shall disclose the existence of the Post Tension Slab to any Person who rents, leases or purchases the Condominium from Owner; and (d) Owner shall indemnify and hold Declarant and Declarant's agents, free and harmless from and against any and all claims, damages, losses or other liability (including attorneys' fees and costs of court) arising from any breach of this covenant by Owner.

2.16. **INSTALLATION OF EXCLUSIVE USE AREA LANDSCAPING.** Each Owner shall complete the installation of landscaping in the patio and side yard of such Owner's Exclusive Use Area in accordance with a plan approved by the Design Review Committee within six (6) months after the Close of Escrow. Each Owner shall obtain all permits necessary and shall comply with all requirements of the City.

ARTICLE III DISCLOSURES

Because much of the information included in this Article (a) has been obtained from other sources (e.g., governmental and other public agencies and public records) and (b) is subject to change for reasons beyond the control of Declarant and the Association, the Declarant and the Association do not guarantee the accuracy or completeness of any of the information in this Article. Further, neither Declarant nor the Association undertakes to advise Persons of any changes affecting the disclosures in this Article. All persons should make specific inquiries or investigations to determine the current status of the information contained in this Article.

3.1. **NO REPRESENTATIONS OR WARRANTIES.** No representations or warranties, express or implied, have been given or made by the Declarant, the Association, or their agents in connection with the Neighborhood, its physical condition, zoning, compliance with laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof as a condominium project, except as expressly provided in this Declaration, or as submitted by Declarant to the DRE, or as provided by Declarant to the first Owner of each Condominium, or provided in the standard warranty required by VA and FHA.

3.2. **ACCESS FACILITIES.** Vehicular and pedestrian access into the Neighborhood may be controlled by entry gates located at the private street entrances into the Neighborhood. There may also be controlled access pedestrian gates in the Neighborhood. There are no assurances that any entry gates will be installed or staffed. If staffing is provided, the schedule for commencing staffing operations and the hours of staffing will be subject to change as

development progresses and will be affected by the construction and marketing access requirements of Declarant and the commencement of Assessments in future Phases. Interim access gate staffing may be provided by Declarant at its sole cost and sole discretion as a part of development operations at the Neighborhood. Interim access gate staffing may be modified or eliminated at any time without notice. Declarant has reserved the right to limit the operation of any access gate during the period when Declarant is offering Condominiums for sale. Until the last Close of Escrow occurs in the Neighborhood, (a) the access gate may be open to the general public, (b) Declarant may change the hours of access gate operation in its sole discretion without notice to accommodate construction and marketing activities, and (c) operation of the access gate may be limited.

3.3. **SECURITY AND PRIVACY DISCLAIMER.** Access gates and their staffing are not intended to provide security or privacy for persons, personal property or Condominiums within the Neighborhood. Declarant and the Association do not undertake to provide security or privacy for the Neighborhood or Owners nor do they make any representations or warranties concerning the privacy, security and safety of the Neighborhood or Owners.

3.4. **GRADING.** The grading and drainage design in the Neighborhood should not be altered to redirect surface water flow toward the Condominiums or onto adjacent property, or to trap water so that it ponds or floods. Drainage devices such as concrete ditches, area drain lines and gutters should be carefully designed and installed with professional assistance and then maintained in an unobstructed condition. Drainage devices installed by the Declarant designed to serve more than one Condominium or the Common Property should not be altered in a manner that will redirect or obstruct the drainage through these drainage devices. Grading and drainage modifications are subject to law, approval by the Board, and the terms of any drainage easements of Record.

3.5. **SOILS CONDITION.**

3.5.1 **Fill Soil.** Some of the Residences in the Neighborhood are constructed on fill soil in accordance with the recommendations and inspection of licensed civil and soils engineers. Buildings constructed on fill soil will demonstrate some post-placement settlement. A soils report certifying the compaction of fill soil is available for review at the City.

3.5.2 **Soils Experts.** Before installing landscaping and other permitted Improvements in the Exclusive Use Areas, Owners must consult with a licensed soils engineer to ensure that such work is constructed correctly in light of current soils conditions. Although consulting with a soils expert may add substantially to the cost of installation of Improvements, failure to do so may result in significant breaking, lifting, separating, tilting or cracking in Improvements.

3.6. **PROPERTY LINES.** The boundaries of each Condominium within the Neighborhood and the Common Property are delineated on subdivision (tract) maps, lot line adjustments, parcel maps or Condominium Plans that are public records and are available at the office of the County Recorder.

3.7. **CHANGE IN PLANS.** Declarant has the right to develop the Annexable Territory with Improvements that may be different in design, size, character, style and price from those in Phase I or any other Phase.

3.8. **POLLUTANT CONTROL.** The Neighborhood is subject to all Federal, State and local requirements of the National Pollutant Discharge Elimination System ("**NPDES**") adopted pursuant to the Federal Clean Water Act. The purpose of the NPDES is to regulate activities in the Neighborhood so as to effectively prevent intentional and unintentional discharge of pollutants such as dirt, silt, oil, paint and solid waste into the storm drain system. To prevent illegal discharge of pollutants, NPDES, through applicable state and local regulation, imposes ongoing obligations on the Association and all Owners in the Neighborhood to follow so-called Best Management Practices ("**BMPs**"). The Association and the Owners shall comply with all applicable BMPs and perform all maintenance imposed thereby. The costs of such maintenance, if any, shall be treated as Common Expenses.

3.9. **FIRE SPRINKLERS.** In accordance with City requirements, residential structures in the Neighborhood are equipped with fire sprinklers. The sprinklers are heat-sensitive and should not be exposed to an open flame. Owners may not cover, tamper with, remove or paint sprinkler heads. Pursuant to state law, a common water line supplies water to all sprinkler systems in a building. However, each sprinkler head is designed to be activated individually by its own heat sensor to provide water only in the area where heat is detected. A bell located on the exterior of each building will notify all residents within the building that a fire has been detected. In addition, a fire monitoring system ("**Monitoring System**") is required in each building that contains more than three (3) units due to the fact that they contain over one hundred (100) fire sprinkler heads. Each Monitoring System is connected to an offsite central monitoring location via telephone lines. The Monitoring System is designed to notify the fire department in the event the fire alarm is activated. The Monitoring System is tested quarterly. The Association will perform the required inspection and maintenance of the sprinkler systems and Monitoring System in the Neighborhood. The Association shall have the right to enter the Units to perform maintenance of the sprinkler systems and Monitoring System.

3.10. **CHARITABLE HOUSING AGREEMENT.** A recorded Charitable Housing Agreement ("**Agreement**") affects the Condominiums in the Neighborhood. The Agreement requires that a "Charitable Endowment Fee" equal to one-twentieth (1/20) of one percent of the total sales price be paid each time a Condominium in the Neighborhood is transferred to a new Owner. The Charitable Endowment Fee will be paid to Lennar Charitable Housing Foundation, a California nonprofit public benefit corporation, to be used for the purposes described in the Agreement. Each time a Condominium is sold or resold, the Charitable Endowment Fee must be paid at the close of escrow pursuant to the terms of the Agreement. On the initial sale of a Unit by Declarant, the Charitable Endowment Fee will be paid by the Owner. On the subsequent sale of a Unit by any Owner, the Charitable Endowment Fee can be paid by either the Owner or the new buyer, as the parties agree. The Agreement will be in effect for an indefinite period of time.

3.11. **WATER METERS.** Each Owner, by acceptance of a deed to a Condominium acknowledges that the City provides water and sewer service to the Neighborhood and bills the Association for water and sewer service within the Neighborhood. In connection with the development of the Neighborhood, Declarant has installed several City water meters for the

Neighborhood. Some of the meters may meter the water used for irrigation purposes associated with the irrigation of the Association Property and certain other portions of the Neighborhood which the Association is obligated to maintain. The other City water meter(s) will be used to measure water usage of all the individual residential buildings situated within the Neighborhood each of which will have multiple City water meters. The City will then prepare a bill based upon overall water usage of all the residential buildings within the Neighborhood. Private individual submeters will be installed within each individual Unit that measures water usage for each of the individual Units within a residential building. The Association will be responsible for the payment of this bill to the City and each Owner will be responsible to pay his or her such Owner's portion of the bill to the Association.

3.11.1 Allocation of Water and Sewer Bills. In order to calculate the share attributable to each Unit, for water, sewer and other charges imposed by the City, the Association shall have the right to enter into a contract with a water metering service company ("**Metering Company**"). The Metering Company will be responsible for (1) reading the individual submeters, (2) allocating the water, sewer and other charges imposed by the City for each residential building, which is submetered to the individual Units, and (3) preparing the individual bills for delivery to each Owner. Additionally, the Metering Company will impose a service charge for their services which will be charged to each Owner with a submeter. Each Owner with a submeter will be responsible for paying directly to the Metering Company such Owner's share of water, sewer and other charges imposed by the City and the service charge to the Metering Company prior to the due date. The Metering Company will provide to the Association a statement of all amounts received from the Owners with a submeter on a regular basis. If an Owner with a submeter fails to pay any amounts when due, such Owner will be responsible for any penalties or delinquent amounts levied by the City and the Metering Company. Additionally, the Association shall have the right to cure any failure by an Owner ("**Defaulting Owner**") to pay the amounts due to the City. If the Association elects to cure such default, then the defaulting Owner will be responsible for reimbursing the Association. If the Defaulting Owner fails to reimburse the Association, the Association will be entitled to impose a Special Assessment as provided under this Declaration, may enter a Unit to shut off water service to the Defaulting Owner's Unit or may pursue any other remedies as provided under this Declaration. The Association shall maintain, repair and replace the submeter providing service to each Unit. Each Owner shall provide unobstructed access to the Association or the Metering Company for any inspections and maintenance and remove any items from the garage which would prohibit inspection and maintenance of such submeters upon prior notice of such inspections and maintenance from the Association or Metering Company. If, in the future, there are no companies which can provide the submetering service, then it will be the responsibility and obligations of the Association to allocate costs for water and sewer usage and the other charges levied by the City to the Owners in the Neighborhood.

3.11.2 Deposits. Upon the initial sale of a Unit to an Owner from Declarant under authority of a Final Subdivision Public Report and any subsequent sale of a Unit by an Owner, such Owner shall be obligated to pay to the Association a deposit in an amount established by the Board as security for such Owner's obligation to pay such Owner's water and sewer bill when due. As provided above, the Association may apply such deposit in payment of a Defaulting Owner's water and sewer bill and such Owner shall replace the full amount of such deposit promptly upon written notice from the Association. The Association shall, within thirty

(30) days of receiving written notice from an Owner that such Owner has conveyed Owner's Unit (provided that the subsequent Owner has paid a replacement security deposit in the amount determined appropriate by the Association) return to the Owner any amounts not expended by the Association from such Owner's deposit. The Association may increase the amount of such security deposits and require the deposit of additional amounts by the Owners, based on increases in such water and sewer bills.

3.12. SPECIAL TAX ASSESSMENT OR MELLO-ROOS COMMUNITY FACILITIES DISTRICT. The Neighborhood lies in the boundaries of special tax assessment districts. Such districts have the power to levy a special tax against each Condominium to finance the provisions of services or capital improvements and community facilities. The special taxes appear on each Owner's property tax bill.

3.13. RURAL AREA. The Neighborhood is located in a rural area which includes various rural land uses. As a result of the rural character of the area in the vicinity of the Neighborhood, Condominiums may be affected by wildlife, noises, odors, reptiles or insect life typically found in rural areas. Snakes, rodents, mountain lions and coyotes are some of the wildlife typically encountered in rural areas. Owners should expect to encounter insects of all types including flies, ticks, Africanized (killer) bees, mosquitoes, spiders, black and red fire ants, crickets and aphids. Declarant and the Association are not responsible for wildlife control or eradication.

3.14. RECREATIONAL CENTER. The Neighborhood is planned to include a recreation center, which may include recreational facilities consisting of a pool, spa, restroom and pool equipment room (collectively, the "*Recreational Center*").

3.14.1 Rules of Use and Operation. The Board may, from time to time, promulgate rules for use and operation of the Recreational Center (including reasonable hours of operation); provided, however, that in no event may any Person use the facilities at the Recreational Center for any purpose except maintenance after the hours set by the Board.

3.14.2 Impact on Surrounding Condominiums. Residents of Condominiums in the vicinity of the Recreational Center will likely notice additional noise from maintenance activities and during periods of use of the Recreational Center.

3.15. APARTMENT PROJECT. The Apartment Project lies along the west boundary of the Neighborhood. Garages from the Apartment Project will be visible to those Condominiums located on the western boundary of the Neighborhood. In addition to garages, trash enclosures will also be located along the boundary of the Apartment Project and the Neighborhood. Trash enclosures may be visible to some Condominiums. Residents may encounter odors, rodents, ants and noise from trash trucks due to the proximity of the trash enclosures. Furthermore, discarded trash may enter those side yard areas located adjacent to the boundary wall between the Apartment Project and the Neighborhood. The Declarant nor the Association have control over the use and operation of the Apartment Project.

3.16. EMERGENCY VEHICLE ACCESS GATE. There is an Emergency Vehicle Access Gate ("*EVA Gate*") on Lot M of Tract No. 31177. The Fire Department will use the

EVA Gate for access to the Neighborhood or the adjacent Apartment Project. The EVA Gate will be used in the event that the entrances at Mapleton Avenue for the Neighborhood or the Apartment Project are closed or blocked. The EVA Gate is intended to be used by emergency vehicles only, and it is equipped with a Knox padlock. Residents of the Neighborhood may experience noise when emergency vehicles use the EVA Gate. Owners, by accepting a deed to a Condominium in the Neighborhood, understand and acknowledge that the EVA Gate is not intended nor designed to provide security for the Neighborhood.

3.17. **ADDITIONAL PROVISIONS.** There may be provisions of various laws, including the Davis-Stirling Common Interest Development Act codified at Sections 1350 et seq. of the California Civil Code and the federal Fair Housing Act codified at Title 42 United States Code, Section 3601 et seq., which may supplement or override the Restrictions. Declarant makes no representations or warranties regarding the future enforceability of any portion of the Restrictions.

ARTICLE IV THE ASSOCIATION

4.1. **GENERAL DUTIES AND POWERS.** The Association has the duties and powers listed in the Restrictions and also has the general and implied powers of a nonprofit mutual benefit corporation, generally to do all things that a corporation organized under the laws of the State of California may lawfully do which are necessary or proper in operating for the peace, health, comfort, safety and general welfare of the Owners, subject only to the limits on the exercise of such powers listed in Restrictions. Unless otherwise indicated in the Articles, Bylaws or this Declaration, the powers of the Association may be exercised by the Board.

4.2. **SPECIFIC DUTIES AND POWERS.** In addition to its general powers and duties, the Association has the following specific powers and duties.

4.2.1 **Common Property.** The power and duty to accept, maintain and manage the Common Property in accordance with the Restrictions. The Association may install or remove capital Improvements on the Common Property. The Association may reconstruct, replace or refinish any Improvement on the Common Property.

4.2.2 **Utilities.** The power and duty to obtain, for the benefit of the Neighborhood, all commonly metered water, gas and electric services, and the power but not the duty to provide for trash collection and cable or master television service.

4.2.3 **Granting Rights.** The power to grant exclusive or nonexclusive easements, licenses, rights of way or fee interests in the Common Property, to the extent any such grant is reasonably required (a) for utilities and facilities to serve the Common Property and the Condominiums, (b) for purposes of conformity with the as-built location of Improvements installed or authorized by Declarant or the Association, (c) in connection with any lawful lot line adjustment, or (d) for other purposes consistent with the intended use of the Neighborhood. This power includes the right to create and convey Exclusive Use Areas. The Association may deannex any Property from the encumbrance of the Declaration in connection with any lawful lot line adjustment.

4.2.4 **Employ Personnel.** The power to employ Persons necessary for the effective operation and maintenance of the Common Property, including legal, management and accounting services.

4.2.5 **Insurance.** The power and duty to maintain insurance for the Common Property in accordance with this Declaration.

4.2.6 **Neighborhood Guidelines.** The power but not the duty to establish, amend, restate, delete, and create exceptions to, the Neighborhood Guidelines.

(a) **Effective Date.** All changes to the Neighborhood Guidelines will become effective fifteen (15) days after they are either (i) posted in a conspicuous place in the Neighborhood or (ii) sent to the Owners via first-class mail or by any system or technology designed to record and communicate messages.

(b) **Areas of Regulation.** The Neighborhood Guidelines may concern use of the Neighborhood, signs, parking restriction, minimum standards of property maintenance, and any other matter under the Association's jurisdiction; however, the Neighborhood Guidelines are enforceable only to the extent they are consistent with the Articles, Bylaws, Declaration, any Supplemental Declarations and any Notices of Addition.

(c) **Limits on Regulation.** The Neighborhood Guidelines must apply uniformly to all Owners. The rights of Owners to display religious, holiday and political signs, symbols and decorations inside their Condominiums of the kinds normally displayed in single family residential Neighborhoods shall not be abridged, except the Association may adopt time, place and manner restrictions for such displays if they are visible outside of the Condominium. No modification to the Neighborhood Guidelines may require an Owner to dispose of personal property that was on a Unit adoption of such modification if such personal property was in compliance with all rules previously in force; however, this exemption shall apply only during the period of such Owner's ownership of the Unit and shall not apply to (i) subsequent Owners who take title to the Unit after the modification is adopted, or (ii) clarifications to the Neighborhood Guidelines.

(d) **Use of Facilities.** The Neighborhood Guidelines may (i) specify a maximum number of guests which an Owner, tenant or other Person may admit to the Association Property recreational facilities at one time, (ii) establish rules for allowing Owners, tenants or other Persons to use Association Property facilities for private functions, or (iii) establish admission fees, deposit requirements and other fees for the use of any facilities on Association Property.

4.2.7 **Borrowings.** The power, but not the duty, to borrow money for purposes authorized by the Articles, Bylaws, Declaration, any Supplemental Declarations or any Notice of Addition, and to use the Association Property as security for the borrowing.

4.2.8 **Maintenance Guidelines.** The power and duty to (a) operate, maintain and inspect the Association Property and its various components in conformance with any Maintenance Guidelines and any Maintenance Manual, and (b) review any Maintenance Manual

for necessary or appropriate revisions no less than annually after the Board has prepared the Budget.

4.2.9 **Contracts.** The power but not the duty to enter into contracts. This includes contracts with Owners or other Persons to provide services or to maintain Improvements in the Neighborhood and elsewhere which the Association is not otherwise required to provide or maintain pursuant to this Declaration.

4.2.10 **Indemnification.**

(a) ***For Association Representatives.*** To the fullest extent authorized by law, the Association has the power and duty to indemnify Board members, Association officers, Design Review Committee members, and all other Association committee members for all damages, pay all expenses incurred, and satisfy any judgment or fine levied as a result of any action or threatened action brought because of performance of an act or omission within what such person reasonably believed to be the scope of the Person's Association duties ("***Official Act***"). Board members, Association officers, Design Review Committee members and all other Association committee members are deemed to be agents of the Association when they are performing Official Acts for purposes of obtaining indemnification from the Association pursuant to this Section. The entitlement to indemnification under this Declaration inures to the benefit of the estate, executor, administrator and heirs of any person entitled to such indemnification.

(b) ***For Other Agents of the Association.*** To the fullest extent authorized by law, the Association has the power, but not the duty, to indemnify any other Person acting as an agent of the Association for damages incurred, pay expenses incurred, and satisfy any judgment or fine levied as a result of any action or threatened action because of an Official Act.

(c) ***Provided by Contract.*** The Association also has the power, but not the duty, to contract with any Person to provide indemnification in addition to any indemnification authorized by law on such terms and subject to such conditions as the Association may impose.

4.2.11 **Annexing Additional Property.** The power but not the duty to annex, pursuant to Section 16.2, additional property to the property encumbered by this Declaration.

4.2.12 **Vehicle Restrictions.** The power granted in Section 2.5 to identify Authorized Vehicles or Prohibited Vehicles and to modify the restrictions on vehicles.

4.2.13 **License and Use Agreements.** The Association may enter into agreements with Declarant or any homeowners association having jurisdiction over the Annexable Territory to share recreational or other facilities located on the Common Property ("***Facility***") with the Owners of Condominiums on the Annexable Territory that is not annexed to the Neighborhood. Any such agreement shall be in a form and content acceptable to the Board of Directors (without the approval of Owners) and Declarant or the board of directors of any adjacent homeowners association and shall include provisions regarding equal use and sharing of maintenance costs for the Facility.

4.2.14 **Prohibited Functions.**

(a) **Off-site Nuisances.** The Association shall not use any Association funds or resources to abate any annoyance or nuisance emanating from outside the physical boundaries of the Neighborhood.

(b) **Political Activities.** The Association shall not (i) participate in federal, state or local political activities or activities intended to influence a governmental action affecting areas outside the boundaries of the Neighborhood (e.g., endorsement or support of (A) legislative or administrative actions by a local governmental authority, (B) candidates for elected or appointed office, or (C) ballot proposals, or (ii) conduct, sponsor, participate in or expend funds or resources or any activity, campaign or event, including any social or political campaign, event or activity which is not directly and exclusively pertaining to the authorized activities of the Association. There shall be no amendment of this Section so long as Declarant owns the Neighborhood or Annexable Territory.

4.2.15 **Standing to Resolve Disputes.** The Association will have standing to institute, defend, settle or intervene in litigation, alternative dispute resolution or administrative proceedings (each, an "**Action**") in its own name as the real party in interest and without joining the Owners, in matters pertaining to (i) damage to the Association Property, (ii) damage to portions of the Condominiums which the Association is obligated to maintain or repair, and (iii) damage to portions of the Condominiums which arises out of, or is integrally related to, damage to the Association Property or portions of the Condominiums that the Association is obligated to maintain or repair (each, a "**Claim**"). Upon commencement of an Action by the Association pertaining to any Claim described in subparts (i), (ii) or (iii) above, the Association's standing shall be exclusive, and during the pendency of such Action, the Owners shall be barred from commencing a new Action or maintaining a pending Action on the same Claim. The Association's exercise of exclusive standing as to an Action on a particular Claim shall not be deemed to give rise to any affirmative obligation on the part of the Association to maintain, settle or dismiss the Action, except in the Association's sole discretion, and subject to Section 12.4.

4.2.16 **Shared Use Agreement.** The power and the obligation to assume all of Declarant's obligations under the Shared Use Agreement and perform the maintenance and repair required thereunder.

4.3. **STANDARD OF CARE, NONLIABILITY.**

4.3.1 **Scope of Powers and Standard of Care.**

(a) **General Scope of Powers.** Rights and powers conferred on the Board, the Design Review Committee or other committees or representatives of the Association by the Restrictions are not duties, obligations or disabilities charged upon those Persons unless the rights and powers are explicitly identified as including duties or obligations in the Restrictions or law. Unless a duty to act is imposed on the Board, the Design Review Committee or other committees or representatives of the Association by the Restrictions or law, the Board and the committees have the right to decide to act or not act. Any decision to not act is not a waiver of the right to act in the future.

(b) **Business Affairs.** This Section 4.3.1(b) applies to Board member actions in connection with management, personnel, maintenance and operations, insurance, contracts and finances and Design Review Committee members actions. Each Board member shall perform the duties of a Board member in good faith, in a manner such Board member believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. When performing his duties, a Board member is entitled to rely on information, opinions, reports or statements, including financial data prepared or presented by:

(i) One or more officers or employees of the Association whom the Board member believes to be reliable and competent in the matters presented;

(ii) Counsel, independent accountants or other Persons as to matters which the Board member believes to be within such Person's professional or expert competence; or

(iii) A committee of the Board upon which the Board member does not serve, as to matters within its designated authority, which committee the Board member believes to merit confidence, so long as, in any such case, the Board member acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

(iv) This Section 4.3.1(b) is intended to be a restatement of the business judgment rule established in applicable law as it applies to the Association. All modifications and interpretations of the business judgment rule applicable to the Association shall be interpreted to modify and interpret this Section 4.3.1(b).

(c) **Association Governance.** This Section 4.3.1(c) applies to Board actions and Design Review Committee and decisions in connection with interpretation and enforcement of the Restrictions, architectural and landscaping control, regulation of uses within the Neighborhood, rule making and oversight of committees. Actions taken or decisions made in connection with these matters shall be reasonable, fair and nondiscriminatory.

4.3.2 Nonliability.

(a) **General Rule.** No Person is liable to any other Person (other than the Association or a party claiming in the name of the Association) for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries or damage result from the Person's willful or malicious misconduct. No Person is liable to the Association (or to any party claiming in the name of the Association) for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries or damage result from such Person's negligence or willful or malicious misconduct. The Association is not liable for damage to property in the Neighborhood unless caused by the negligence of the Association, the Board, the Association's officers, the manager or the manager's staff.

(b) **Nonliability of Volunteer Board Members and Officers.** A volunteer Board member or volunteer Association officer shall not be personally liable to any Person who suffers injury, including bodily injury, emotional distress, wrongful death or

property damage or loss as a result of the tortious act or omission of the volunteer officer or Board member if all applicable conditions specified in Section 1365.7 of the California Civil Code are met.

(c) *Nonliability of Owners.* Pursuant to California Civil Code Section 1365.9, no Owner shall be liable for any cause of action in tort which can be brought against the Owner solely because of the Owner's undivided interest in the Common Area so long as the Association keeps one or more policies of insurance which include coverage for general liability of the Association in the amount required by California Civil Code Section 1365.9 and that insurance is in effect for the cause of action being brought.

4.4. MEMBERSHIP.

4.4.1 **Generally.** Every Owner shall automatically acquire a Membership in the Association and retain the Membership until such Owner's Condominium ownership ceases, at which time such Owner's Membership shall automatically cease. Ownership of a Condominium is the sole qualification for Membership. Memberships are not assignable except to the Person to whom title to the Condominium is transferred, and every Membership is appurtenant to and may not be separated from the fee ownership of such Condominium. The rights, duties, privileges and obligations of all Owners are as provided in the Restrictions.

4.4.2 **Transfer.** The Membership of any Owner may not be transferred, pledged or alienated in any way, except on the transfer or encumbrance of such Owner's Condominium, and then only to the transferee or Mortgagee of such Condominium. A prohibited transfer is void and will not be reflected in the records of the Association. Any Owner who has sold a Condominium to a contract purchaser under an agreement to purchase may delegate the Owner's Membership rights to the contract purchaser. The delegation must be in writing and must be delivered to the Association before the contract purchaser may vote. The contract seller shall remain liable for all charges and Assessments attributable to the contract seller's Condominium which accrue before title to the Condominium is transferred. If an Owner fails or refuses to transfer his Membership to the purchaser of such Owner's Condominium on transfer of title thereto, the Association may record the transfer in the Association's records. Until satisfactory evidence of such transfer is presented to the Association, the purchaser will not be entitled to vote at Association meetings. The Association may levy a reasonable transfer fee against a new Owner and such Owner's Condominium (which fee shall be paid through escrow or added to the Annual Assessment chargeable to such new Owner) to reimburse the Association for the administrative cost of transferring the Membership to the new Owner on the Association's records. Such fee may not exceed the Association's actual cost involved in changing its records.

4.4.3 **Classes of Membership.** The Association classes of voting Membership are as follows:

Class A. Class A members are all Owners except Declarant for so long as a Class B Membership exists. Class A members are entitled to one (1) vote for each Condominium owned by such Class A members which is subject to Assessment. Declarant shall become a Class A member on conversion of Declarant's Class B Membership as provided below. The vote

for each Condominium shall be exercised in accordance with Section 4.5.2, but no more than one (1) Class A vote may be cast for any Condominium.

Class B. The Class B member is Declarant. The Class B member is entitled to three (3) votes for each Condominium owned by Declarant and subject to Assessment. The Class B Membership shall convert to Class A Membership on the first to occur of the following events:

(1) The second anniversary of the first Close of Escrow in the most recent Phase; or

(2) The fourth anniversary of the first Close of Escrow in Phase 1.

Class C. The Class C member shall be Declarant (whether or not Declarant is an Owner). The Class C Membership shall not be considered a part of the voting power of the Association. The Class C member is entitled to select a majority of the members of the Board of Directors until the Class C Termination Date. The "Class C Termination Date" shall be the earlier to occur of the following events.

(1) The second anniversary of the first Close of Escrow in the most recent Phase; or

(2) The fourth anniversary of the first Close of Escrow in Phase 1.

4.5. VOTING RIGHTS.

4.5.1 **Limits.** All voting rights are subject to the Restrictions. Except as provided in Section 12.3 of this Declaration and Section 4.8 of the Bylaws, as long as there exists a Class B Membership, any provision of the Restrictions which expressly requires the vote or written consent of a specified percentage (instead of a majority of a quorum) of the Association's voting power before action may be undertaken shall require the approval of such specified percentage of the voting power of each class of Membership. Except as provided in Section 12.3 of this Declaration and Section 4.8 of the Bylaws, on termination of the Class B Membership, any provision of the Restrictions which expressly requires the vote or written consent of Owners representing a specified percentage (instead of a majority of a quorum) of the Association's voting power before action may be undertaken shall then require the vote or written consent of Owners representing such specified percentage of both (1) the Association's total voting power and (2) the Association's voting power represented by Owners other than Declarant.

4.5.2 **Joint Ownership.** When more than one (1) Person holds an interest in any Condominium ("*co-owners*"), each co-owner may attend any Association meeting, but only one (1) such co-owner shall be entitled to exercise the single vote to which the Condominium is entitled. Co-owners owning the majority interests in a Condominium may designate in writing one (1) of their number to vote. Fractional votes shall not be allowed, and the vote for each Condominium shall be exercised, if at all, as a unit. Where no voting co-owner is designated or if the designation is revoked, the vote for the Condominium shall be exercised as the co-owners owning the majority interests in the Condominium agree. Unless the Association receives a written objection in advance from a co-owner, it shall be conclusively presumed that the voting

co-owner is acting with his co-owners' consent. No vote may be cast for any Condominium if the co-owners present in person or by proxy owning the majority interests in such Condominium fail to agree to the vote or other action. The nonvoting co-owner or co-owners are jointly and severally responsible for all obligations imposed on the jointly-owned Condominium and are entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in the Restrictions are binding on all Owners and their successors in interest.

4.6. REPAIR AND MAINTENANCE.

4.6.1 **Maintenance Standards.** The Association shall maintain everything it is obligated to maintain in a clean, sanitary and attractive condition reasonably consistent with the level of maintenance reflected in the most current Budget, and in conformance with any Maintenance Guidelines. Unless specifically provided in any Maintenance Guidelines, the Board shall determine, in its sole discretion, the level and frequency of maintenance of the Association Property and Improvements thereon. Each Owner shall maintain everything the Owner is obligated to maintain in a clean, sanitary and attractive condition and in conformance with any Maintenance Recommendations.

4.6.2 **By Owners.** Owners repair, maintenance and replacement responsibilities are set forth on *Exhibit B*, attached hereto. Owners shall perform all required maintenance, repair and replacement in accordance with the Restrictions. Unless otherwise specified in the Restrictions, (i) the Owner's maintenance obligation includes the obligation to keep the items Owner is obligated to maintain in a clean and sanitary condition, free of debris and reasonably protected from damage, and (ii) each Owner shall bear all costs and expenses of the maintenance, repair and replacement that the Owner is required to perform pursuant to the Declaration. Each Owner shall pay when due all charges for any utility service which is separately metered to the Owner's Unit. If the Association does not adopt an inspection and prevention program with regard to wood-destroying pests and other organisms pursuant to Section 4.6.3(d), then such a program is the responsibility of each Owner.

4.6.3 By Association.

(a) **Commencement of Obligations.** The Association's obligation to maintain Common Property in any Phase commences on the date Annual Assessments commence on Condominiums in the Phase that includes the Common Property. Until commencement of Annual Assessments on Condominiums in any Phase in which a Condominium is located, Declarant shall maintain the Common Property in such Phase. The Association's obligation to maintain the Association Property in a Phase comprised solely of Association Property shall commence on conveyance of such Association Property to the Association.

(b) **Maintenance Standards.** Subject to Articles IX and X, the Association shall maintain the Common Property and Improvements thereon or shall contract to assure the Common Property and Improvements thereon are maintained in a clean, sanitary and attractive condition reasonably consistent with the level of maintenance reflected in the most current Budget. However, the Association is not responsible for performing any maintenance,

repair or replacement which is made the Owner's responsibility pursuant to Section 4.6.2 or *Exhibit B*, attached hereto. The Board shall determine, in its sole discretion, the level and frequency of maintenance of the Common Property and Improvements thereon.

(c) *Maintenance Items.* The Association shall be responsible for all maintenance, repair and replacement not provided by either the Owners, pursuant to Section 4.6.2 and *Exhibit B* attached hereto. The Association shall maintain all Common Property. The Association shall repair and pay for all centrally metered utilities and mechanical and electrical equipment serving the Common Property, and pay all charges for utilities which serve individual Condominiums but which are subject to a common meter. The Association shall perform periodic structural repair, resurfacing, sealing, caulking, replacement or painting of the Exclusive Use Areas, so long as the need for any of these activities is not caused by the willful or negligent acts of the Owner of the Unit to which the Exclusive Use Area is appurtenant or any of such Owner's Family, tenants or guests. The Association shall maintain, repair, replace, and periodically service, as necessary, all fire sprinkler systems and water lines which serve the residential building structures in the Neighborhood. The Association shall also paint, stain and waterproof, as necessary, the main entry doors to, and the garage doors of each Unit. The Association's maintenance responsibility includes the obligation to maintain all surfaces and the structural integrity of any and all gates and fences installed by Declarant in the Neighborhood which enclose the patio and side yard Exclusive Use Areas. The Association shall maintain, repair and replace all of the block wall on the western boundary of the Neighborhood and the interior surface (facing towards the Neighborhood) of the block wall on the eastern boundary of the Neighborhood. The Association shall also be responsible for maintaining the yard drains located in each Owner's patio or side yard Exclusive Use Area (as applicable) and the clustered mailboxes for the Neighborhood.

(d) *Termite Eradication.* If determined by the Board to be economically feasible, the Association shall adopt an inspection and prevention program for the prevention and eradication of infestation by wood-destroying pests and organisms in the Neighborhood. The Association may, but is not required to, perform all corrective janitorial, landscaping and repair work in any Condominium if the Owner thereof fails to do so after Notice and Hearing. If the Association adopts an inspection and preventive program for the prevention and eradication of infestation by wood destroying pests and organisms, the Association, on no less than fifteen (15) nor more than thirty (30) days' notice, may require each Owner and any occupants of the Owner's Condominium to vacate such Condominium to accommodate Association efforts to eradicate such infestation. The notice must state the reason for the temporary relocation, the date and time of the beginning of treatment, the anticipated date and time of termination of treatment, and that the occupants will be responsible for their own accommodations during the temporary relocation. Any damage caused to a Condominium by such entry by the Association or by any person authorized by the Association shall be repaired by the Association as a Common Expense. All costs involved in operating the inspection and preventive program as well as repairing and replacing the Common Property and Improvements thereon when the need for such maintenance, repair or replacement is the result of wood destroying pests or organisms are a Common Expense.

(e) *Additional Items.* The Association shall also be responsible for maintaining any Improvements a majority of the voting power of the Association designates for

maintenance by the Association. Such property shall be deemed to be Association Property and subject to the Restrictions applicable to the Association Property.

(f) **Charges to Owners.** All costs of maintenance, repairs and replacements for the Neighborhood shall be paid for as Common Expenses out of the Association Maintenance Funds as provided in this Declaration.

4.6.4 **Inspection of the Neighborhood.**

(a) **Inspection by Declarant.** Except as otherwise provided in this Declaration, from and after the date of conveyance of fee title or appropriate easements thereto to the Association, the Association will be responsible for the maintenance, repair, replacement, irrigation, brush clearance, landscaping and preservation of the appearance of the Common Property in strict compliance with the Maintenance Manual provided to the Board of the Association by Declarant, the BMPs, and in accordance with all commonly accepted maintenance practices. To ensure compliance with the requirements of the Maintenance Manual, for a period of ten (10) years after the Close of Escrow for the sale of the last Condominium in the Neighborhood covered by a Final Subdivision Public Report, Declarant shall have the right, but not the obligation, at its own cost and expense, to retain the services of appropriate consultant(s) to (a) prepare, update and keep current, the Maintenance Manual for the Association maintenance, repair and replacement of the Common Property, (b) conduct annual inspections of all elements of the Common Property covered by the Maintenance Manual, and (c) prepare a report covering the results of such inspections and deliver such report to Declarant and to the Association. Declarant hereby reserves nonexclusive easements on, over, under, across and through all Common Property within the Neighborhood, for the purpose of such inspections and activities related thereto. The Association shall provide Declarant's consultant(s) with copies of its maintenance log, and related records reasonably requested by such consultant(s), at least thirty (30) days prior to the date scheduled for the Declarant's annual inspection. Declarant shall provide any updates to the Maintenance Manual to the Association. The Association shall cause such Common Property, to be regularly maintained, painted, repaired, and/or replaced in accordance with the requirements and recommendations of the Maintenance Manual, as revised from time to time and shall perform all remedial maintenance in accordance with the recommendations of the annual inspection reports prepared by Declarant's consultant(s). The provisions of this Section shall not be amended without the prior written consent of Declarant.

(b) **Maintenance Manual, Compliance.** The Association has the duty and obligation, along with the attendant rights and power to carry out the Declarant's and its consultant(s)' required maintenance of the Common Property, as set forth in the Maintenance Manual. The Board shall regularly determine whether the recommended inspections and maintenance activities have been followed, and, if any such recommendations have not been followed, what corrective steps need to be taken to assure proper inspections and maintenance of the Common Property. The Board shall keep a record of such determinations in the Board's minutes. The Board shall review the Maintenance Manual for any needed appropriate revisions at appropriate intervals, but in no event less frequently than annually, and shall make appropriate recommendations to Declarant and Declarant's consultant(s) for revisions to the Maintenance

Manual within thirty (30) days of its determination that revisions to the Maintenance Manual should be recommended to Declarant.

(c) **Association Inspections.** If in any year Declarant elects not to perform an annual maintenance inspection as provided for in Section 4.6.4(a) above, the Board shall have the duty and obligation to cause an inspection and report to be made in accordance with the provisions hereof. The Board's annual inspections shall (i) determine whether the Common Property is being maintained adequately in accordance with the standards of maintenance established herein and by the Maintenance Manual, (ii) identify the condition of the Common Property, including the existence of any hazards or defects, and the need for performing additional maintenance, repair, refurbishing or replacement, and (iii) recommend preventative actions, which may be taken to reduce potential maintenance costs to be incurred in the future. The Association may employ such experts and consultants as necessary to perform such inspections. Within thirty (30) days after the Board's annual inspection, the Board shall have a report of the results of the inspection prepared, and such report shall include the following: (i) a description of the condition of the Common Property, including a list of items inspected and the status of maintenance, repair and need for replacement of all such items; (ii) a description of all maintenance, repair and replacement planned for the ensuing fiscal year and; (iii) if any maintenance, repair or replacement is to be deferred, an explanation must be given for such deferral; (iv) a summary of all reports of inspections performed by any expert or consultant employed by the Association to perform inspections; (v) a report of the status of compliance with the maintenance, replacement and repair needs set forth in all inspection reports from Declarant's consultant(s) and of its own inspection, for preceding years; and (vi) such other matters as the Board deems appropriate. The Board shall promptly cause a copy of each inspection report prepared in accordance with this Section to be delivered to Declarant. The Association's obligations under this Section shall continue until the expiration of the ten (10) year period following the Close of Escrow for the sale of the last Condominium in the Neighborhood covered by a Final Subdivision Public Report. The requirements of this Section are in addition to the Board's obligations to perform ongoing reserve studies as required by Section 2.10 of the Bylaws. The provisions of this Section shall not be amended without the prior written consent of Declarant.

4.6.5 **Damage by Owners.** Each Owner is liable to the Association for any damage to the Common Property if the damage is sustained due to the act of an Owner, his guests, tenants or invitees, or any other persons deriving their right to use the Common Property from the Owner, or such Owner's respective family, tenants and guests. The Association may, after Notice and Hearing, (a) determine whether any claim shall be made on the Association's insurance, and (b) levy a Special Assessment equal to the cost of repairing the damage or any deductible paid and the increase, if any, in insurance premiums directly attributable to the damage caused by such Owner or the person for whom such Owner may be liable as described in this Declaration. If a Condominium is jointly owned, the liability of its Owners is joint and several, except to the extent that the Association has previously contracted in writing with the joint owners to the contrary. After Notice and Hearing, the cost of correcting the damage shall be a Special Assessment against such Owner.

4.7. **UNSEGREGATED REAL PROPERTY TAXES.** To the extent not assessed to or paid by the Owners, the Association shall pay all real and personal property taxes and

assessments levied on the Neighborhood. If all Condominiums in a Phase are taxed under a tax bill covering all of such Phase, then each Owner shall pay his share of any installment due under the tax bill to the Association at least ten (10) days before the delinquency date. The Association shall transmit the taxes to the appropriate tax collection agency on or before the delinquency date. The Association shall allocate taxes equally among the Owners and their Condominiums in such Phase, based on the total number of Condominiums in such Phase. The Association shall, at least forty-five (45) days before the delinquency date of any tax installment, deliver to each Owner in such Phase a copy of the tax bill, along with a written notice setting forth the Owner's obligation to pay his share of the tax installment and the potential additional charges to the Owner for failure to comply. The Association shall pay the taxes on behalf of any Owner who does not pay his share. The Association shall add to the Annual Assessment of a delinquent Owner the amount of any sum advanced, plus interest at the rate of ten percent (10%) per annum and any amount necessary to reimburse the Association for any penalty or late charge actually assessed in connection with the tax bill for a Phase, which late charge results from the failure of the delinquent Owner to make timely payment of his share of the taxes. Until Close of Escrow for the sale of ninety percent (90%) of the Condominiums in the Neighborhood has occurred, this Section may not be amended without the written consent of Declarant.

ARTICLE V DESIGN REVIEW

5.1. **MEMBERS OF COMMITTEE.** The Design Review Committee shall be composed of three (3) members. The initial members of the Design Review Committee shall be representatives of Declarant until one (1) year after the original issuance of the Final Subdivision Public Report ("**Public Report**") for Phase 1 ("**First Anniversary**"). After the First Anniversary, the Board may appoint and remove one (1) member of the Design Review Committee, and Declarant may, but is not obligated to, appoint and remove a majority of the members of the Design Review Committee and fill any vacancy of such majority, until the earlier to occur of (a) Close of Escrow for the sale of ninety percent (90%) of all the Condominiums in the Neighborhood, or (b) the fifth (5th) anniversary of the first Close of Escrow in Phase 1, after which the Board may appoint and remove all members of the Design Review Committee. Design Review Committee members appointed by the Board must be Owners, but Design Review Committee members appointed by Declarant need not be Owners. Board members may serve as Design Review Committee members.

5.2. **POWERS AND DUTIES.**

5.2.1 **General Powers and Duties.** The Design Review Committee shall consider and act upon all plans and specifications submitted for its approval, including inspection of work in progress to assure conformity with plans approved by the Design Review Committee, and shall perform such other duties as the Board assigns to it.

5.2.2 **Issuance of Standards.** The Design Review Committee shall issue and update its Design Guidelines. The Design Guidelines may require a fee to accompany each application for approval, and may identify additional factors which the Design Review Committee will consider in reviewing submissions. The Design Review Committee may provide that fees it imposes be uniform, or that fees be determined in any other reasonable manner. The

Design Review Committee may require such detail in plans and specifications submitted for its review as it deems proper, including landscape plans, floor plans, site plans, drainage plans, elevation drawings and descriptions or samples of exterior materials and colors.

5.2.3 **Retaining Consultants.** The Design Review Committee has the power but not the duty to retain Persons to advise its members in connection with decisions; however, the Design Review Committee does not have the power to delegate its decision-making power.

5.3. REVIEW OF PLANS AND SPECIFICATIONS.

5.3.1 **Improvements Requiring Approval.** No construction, installation or alteration of an Improvement, including landscaping, in the Neighborhood, and no grading, excavation, filling or other alteration to the grade or level of the land in the Neighborhood, may be commenced until the plans and specifications therefor showing the nature, kind, shape, height, width, color, materials and location thereof are submitted to and approved in writing by the Design Review Committee. However, any Improvement may be repainted without Design Review Committee approval so long as the Improvement is repainted the identical color which it was last painted. The provisions of this Article apply to construction, installation and alteration of solar energy systems, as defined in Section 801.5 of the California Civil Code, subject to the provisions of California Civil Code Sections 714 and 714.1, the City Building Code, zoning regulations, and other laws.

5.3.2 **Application Procedure.** Until changed by the Board, the address for the submission of such plans and specifications is the Association's principal office. The form of application used by the Design Review Committee may include spaces allowing "Adjacent Owners" to sign or initial the application confirming that they have been notified of the application. The Design Review Committee may establish a definition of "*Adjacent Owners*" in its Design Guidelines. Applications will be complete and may be approved or disapproved by the Design Review Committee even if all of the Adjacent Owners do not initial the applications so long as the Owner submitting plans and specifications ("*Applicant*") certifies that the Applicant has asked the Adjacent Owners to sign the applications. The requirement that the Applicant attempt to obtain the signatures of Adjacent Owners is intended only to provide notice of the pending application to the Adjacent Owners. It does not create in the Adjacent Owners any power to approve or disapprove the Application by signing or withholding a signature. Only the Committee may approve or disapprove an Application.

The Design Review Committee may reject the application for approval if it determines that the Applicant's plans and specifications are incomplete. The Design Review Committee shall transmit its decision and the reasons therefor to the Applicant at the address listed in the application for approval within forty-five (45) days after the Design Review Committee receives all required materials or send a request for additional information or materials to the Applicant.

5.3.3 **Standard for Approval.** The Design Review Committee shall approve plans and specifications submitted for its approval only if it determines that (a) installation, construction or alterations of the Improvements in the locations proposed will not be detrimental to the appearance of the surrounding area of the Neighborhood as a whole, (b) the

appearance of any structure affected by the proposed Improvements will be in harmony with the surrounding structures, (c) installation, construction or alteration of the proposed Improvements will not detract from the beauty, wholesomeness and attractiveness of the Neighborhood or the enjoyment thereof by the Owners, (d) maintenance of the proposed Improvements will not become a burden on the Association, and (e) the proposed Improvements are consistent with this Declaration. The Design Review Committee may consider the impact of views from other Residences or Condominiums along with other factors including reasonable privacy right claims, passage of light and air, beneficial shading and other factors in reviewing, approving or disapproving any proposed landscaping, construction or other Improvements. However, neither the Declarant nor the Association warrants that any views in the Neighborhood are protected. No Residence or Condominium is guaranteed the existence or unobstructed continuation of any particular view

5.3.4 Conditions of Approval. The Design Review Committee may condition its approval of an Application for any Improvement on any one or more of the following: (a) the Applicant's agreement to furnish the Association with security acceptable to the Association against any mechanic's lien or other encumbrance which may be Recorded against the Common Property or another Owner's Condominium as a result of such work; (b) such changes to the Application as the Design Review Committee considers appropriate; (c) the Applicant's agreement to grant to the Association or other Owners such easements as are made reasonably necessary by the existence of the Improvement; (d) the Applicant's agreement to install water, gas, electrical or other utility meters to measure any increased utility consumption; (e) the Applicant's agreement to reimburse the Association for the cost of maintaining the Improvement (should the Association agree to accept maintenance responsibility for the Improvement as built); or (f) the Applicant's agreement to complete the proposed work within a stated period of time. The Committee may also require the Applicant, prior to commencing work, to deposit with the Association adequate funds to repair or restore any Common Property that may be damaged by the Applicant or the Applicant's contractors. The Committee will determine the actual amount of the deposit in each case, but the amount shall be at least enough to cover the cost of repairing or restoring damage that is reasonably foreseeable to the Committee. The deposit shall be refundable to the extent the Committee finds that the work of Improvement is complete, and that the Association Common Property was not damaged or was restored at least to the condition it was in prior to the commencement of work.

The Design Review Committee has the right to require a reasonable security deposit with each Application. The security deposit will be applied to the cost of repairing damage to Common Property as a result of the Application. The amount of the security deposit shall be specified in the Design Guidelines. The security deposit may be increased or decreased from time to time at the discretion of the Design Review Committee. The Design Review Committee may also require submission of additional plans and specifications or other information before approving or disapproving material submitted. The Applicant shall meet any review or permit requirements of the City and/or County before making any construction, installation or alterations permitted under this Declaration.

5.3.5 Matters Outside Scope of Approval. The Design Review Committee's approval or disapproval of each Application shall be based solely on the aesthetic considerations listed in this Article. Approval of any Application does not constitute a finding

by the Design Review Committee that the Application or any portion of the Application (a) incorporates good engineering practices, (b) complies with applicable law, ordinance, code, or regulation, including zoning laws and building and safety codes, (c) complies with the requirements of any public utility, or (d) is permissible under the terms of any easement, license, permit, mortgage, deed of trust, or other recorded or unrecorded instrument (other than the Restrictions) that affects the land.

5.3.6 Exculpation of Committee. By submitting an Application, each Applicant is deemed to agree that neither the Design Review Committee, nor the members thereof, nor Declarant, nor their respective agents, employees, attorneys or consultants shall be liable to any Person for:

(a) any defect in any Improvement constructed by or on behalf of the Applicant pursuant to an approved Application;

(b) any loss, damage, or injury to Persons or property arising out of or in any way connected with work performed by or on behalf of the Applicant pursuant to an approved Application; or

(c) any loss, damage, or injury to Persons or property arising out of or in any way connected with the performance of the Design Review Committee's duties hereunder, unless due to willful misconduct or gross negligence.

5.4. MEETINGS AND ACTIONS OF THE DESIGN REVIEW COMMITTEE. The Design Review Committee shall meet as necessary to perform its duties. Subject to 5.2.3, so long as a majority of the members of the Design Review Committee are Declarant representatives, the Design Review Committee may, by resolution unanimously adopted in writing, designate a Design Review Committee Representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Design Review Committee except the granting of variances. In the absence of such designation, the vote or written consent of a majority of the Design Review Committee constitutes an act of the Design Review Committee. All approvals issued by the Design Review Committee must be in writing. Verbal approvals issued by the Design Review Committee, any individual Design Review Committee member or any other representative of the Association are not valid, are not binding on the Association and may not be relied on by any Person. If within six (6) months of issuance of the approval, an Owner either does not commence work pursuant to approved plans or obtain an extension of time to commence work, the approval shall be automatically revoked and a new approval must be obtained before work can be commenced.

5.5. NO WAIVER OF FUTURE APPROVALS. The Design Review Committee's approval of any proposals, plans and specifications or drawings for any work done or proposed in connection with any matter requiring the Design Review Committee's approval does not waive the right to withhold approval of any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval.

5.6. **COMPENSATION OF MEMBERS.** The Design Review Committee's members shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in performing their duties.

5.7. **INSPECTION OF WORK.** The Design Review Committee or its duly authorized representative may inspect any work for which approval of plans is required under this Article ("**Work**"). The Design Review Committee may require that the Owner submit pictures of the completed work. The right to inspect includes the right to require any Owner to take such action as may be necessary to remedy any noncompliance with the Design Review Committee-approved plans for the Work or with the requirements of this Declaration ("**Noncompliance**").

5.7.1 **Time Limit.** The Design Review Committee's right to inspect the Work and notify the responsible Owner of any Noncompliance shall terminate sixty (60) days after the Work is completed and the Design Review Committee receives written notice on a form provided by the Committee from the Owner that the Work is completed. If the Design Review Committee fails to send a notice of Noncompliance to an Owner before this time limit expires, the Work shall be deemed to comply with the approved plans.

If an Owner fails to complete Work within one (1) year from the date the approval for the Work is issued, then a Noncompliance is deemed to exist and the Association has the right, but not the obligation, to pursue the remedies listed in this Section.

5.7.2 **Remedy for Noncompliance.** If an Owner fails to remedy any Noncompliance within sixty (60) days after the date of notice from the Design Review Committee, the Design Review Committee shall notify the Board in writing of such failure. After Notice and Hearing, the Board shall determine whether there is Noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a Noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days after the date that notice of the Board ruling is given to the Owner. If the Owner does not comply with the Board ruling within that period, the Association may record a Notice of Noncompliance (if allowed by law), correct the Noncompliance and charge the Owner for the Association's costs, or commence an action for damages or injunctive relief, as appropriate, to remedy the Noncompliance.

5.8. **VARIANCES.** The Design Review Committee may authorize variances from compliance with any of the architectural provisions of this Declaration or the Design Guidelines including restrictions on height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration require. Such variances must be evidenced in writing, must be signed by a majority of the Design Review Committee, and become effective on Recordation. After Declarant's right to appoint a majority of the Design Review Committee's members expires, the Board must approve any variance recommended by the Design Review Committee before any such variance becomes effective. If variances are granted, no violation of the covenants, conditions and restrictions in this Declaration shall be deemed to have occurred with respect to the matter for which the variances were granted. The granting of a variance does not waive any of the provisions of this Declaration for any purpose except as to the particular

property and particular provision of this Declaration covered by the variance, nor does it affect the Owner's obligation to comply with all laws affecting the use of his Condominium. The Committee's written variance shall be Recorded against the Applicant's Condominium in the Official Records of the County. The cost of Recording the variance shall be borne solely by the Applicant.

5.9. **PRE-APPROVALS.** The Design Review Committee may authorize pre-approval of specified types of construction activities if, in the exercise of the Design Review Committee's judgment, such preapproval is appropriate in carrying out the purposes of the Restrictions.

5.10. **APPEALS.** So long as Declarant has the right to appoint and remove a majority of the Design Review Committee's members, the Design Review Committee's decisions are final. There is no appeal to the Board. After Declarant's right to appoint a majority of the Design Review Committee's members expires, the Board may adopt policies and procedures for the appeal of Design Review Committee decisions to the Board by the Applicant (and no other persons). The Board has no obligation to adopt or implement any appeal procedures. In the absence of Board adoption of appeal procedures, all Design Review Committee decisions are final.

ARTICLE VI PROPERTY EASEMENTS AND RIGHTS

6.1. EASEMENTS.

6.1.1 **Maintenance and Repair.** Declarant reserves for the benefit of the Association and all Association agents, officers and employees, nonexclusive easements over the Common Area as necessary to fulfill the obligations and perform the duties of the Association.

6.1.2 **Utility Easements.** Declarant reserves easements for maintaining utilities over the Common Property for the benefit of the Owners. Declarant reserves the right to grant additional easements and rights-of-way over the Neighborhood to utility companies and public agencies, as necessary, for the proper development and disposal of the Neighborhood. Such right of Declarant shall expire on Close of Escrow for the sale of the last Condominium in the Neighborhood and the Annexable Territory.

6.1.3 **Encroachments.** Declarant reserves, for its benefit and the benefit of the Owners, a reciprocal easement appurtenant to each Condominium over the other Units and the Common Property to accommodate (a) any existing encroachment of any wall or any other authorized Improvement, (b) authorized construction or repair, and (c) shifting, movement or natural settling of Improvements. Declarant reserves for the benefit of the Neighborhood, the Owners and the Association, reciprocal nonexclusive easements for drainage of water over, across and in the Neighborhood. Use of the foregoing easements may not unreasonably interfere with each Owner's use and enjoyment of the burdened Condominiums.

6.1.4 **Completion of Improvements.** Declarant reserves the right and easement to enter the Neighborhood to complete any Improvement which Declarant considers desirable to implement Declarant's development plan.

6.1.5 **Owners' Easements in Common Property.** Declarant reserves for the benefit of every Owner, his Family, tenants and guests, a nonexclusive easement for use of and vehicular and pedestrian access over the Common Property in connection with use and enjoyment of each Condominium in the Neighborhood.

6.1.6 **Exclusive Use Area.** Declarant reserves for the benefit of specified Owners exclusive easements over the Neighborhood for use of the Exclusive Use Area, including for patio, deck and side yard purposes (as applicable), all as shown and assigned on the Condominium Plan or Plans for the Neighborhood, and for internal and external telephone wiring designed to serve a single Unit.

6.1.7 **Drainage Easements.** Declarant reserves for the benefit of the Neighborhood, the Owners and the Association, reciprocal nonexclusive easements for drainage of water over, across and in the Neighborhood.

6.2. **RIGHT TO GRANT EASEMENTS.** Declarant reserves the right to grant easements over the Common Property for the exclusive benefit of a Condominium or Condominiums. Any such easement may be conveyed by the Declarant before the last Close of Escrow for sale of a Condominium in the Neighborhood and the Annexable Territory. Such conveyance must be approved by the Board, which approval must not be unreasonably withheld. The purpose of the easement, the portion of the Common Property affected, the Condominium to which the easement is appurtenant, and any restrictions on use of the easement area shall be identified in a Recorded grant of easement.

6.3. **DELEGATION OF USE.** Any Owner may delegate his right to use the Common Property in writing to his tenants, contract purchasers or subtenants who reside in such Owner's Condominium, subject to regulation by the Board. An Owner who has delegated his rights may not use the recreational facilities as long as the delegation remains in effect.

6.4. **RIGHT OF ENTRY.**

6.4.1 **Association.** The Association has the right to enter the Units to inspect the Neighborhood, and may take whatever corrective action it determines to be necessary or proper. Entry onto any Unit under this Subsection may be made after at least three (3) days' advance written notice to the Owner of the Unit except for emergency situations, which shall not require notice. Any damage to the Unit caused by entry under this Subsection shall be repaired by the Association.

6.4.2 **Declarant.** The Declarant has the right to enter the Units (i) to complete and repair any Improvements as determined necessary or proper by the Declarant, in its sole discretion, (ii) to comply with requirements for the recordation of the Map or the grading or construction of the Neighborhood, and (iii) to comply with requirements of applicable governmental agencies. Declarant shall provide reasonable notice to Owner prior to entry into the Owner's Unit under this Subsection except for emergency situations, which shall not require notice. Any damage to the Unit caused by entry under this Subsection shall be repaired by the Declarant. Unless otherwise specified in the initial grant deed of the Unit from the Declarant,

this right of entry shall automatically expire ten (10) years from the last Close of Escrow for the sale of a Condominium in the Neighborhood.

6.4.3 Owners. Each Owner shall permit other Owners, and their representatives, to enter his Unit to perform installations, alterations or repairs to the mechanical or electrical services to a Unit if (a) requests for entry are made in advance; (b) entry is made at a time reasonably convenient to the Owner whose Unit is to be entered; and (c) the entered Unit is left in substantially the same condition as existed immediately preceding such entry. Any damage to the Unit caused by entry under this Subsection shall be repaired by the entering Owner.

ARTICLE VII ASSOCIATION MAINTENANCE FUNDS AND ASSESSMENTS

7.1. PERSONAL OBLIGATION TO PAY ASSESSMENTS. Each Owner covenants to pay to the Association Assessments established and collected pursuant to this Declaration. The Association shall not levy or collect any Assessment that exceeds the amount necessary for the purpose for which it is levied. All Assessments, together with late payment penalties, interest, costs, and reasonable attorneys' fees for the collection thereof, are a charge and a continuing lien on the Condominium against which such Assessment is made. Each Assessment, together with late payment penalties, interest, costs and reasonable attorneys' fees, is also the personal obligation of the Person who was the Owner of the Condominium when the Assessment accrued. The personal obligation for delinquent Assessments may not pass to any new Owner ("**Purchaser**") unless expressly assumed by the Purchaser or unless the Purchaser has actual or constructive knowledge of such delinquent Assessments, whether by virtue of the Recordation of a Notice of Delinquent Assessment or receipt from the Association of a certificate pursuant to Section 1368(a)(4) of the California Civil Code.

7.2. ASSOCIATION FUNDS. The Association shall establish no fewer than two (2) separate Association Maintenance Fund accounts into which shall be deposited all money paid to the Association and from which disbursements shall be made, as provided in this Declaration. The Association Maintenance Funds may be established as trust accounts at a banking or savings institution and shall include: (a) an Operating Fund for current Common Expenses, (b) an adequate Reserve Fund for the portion of Common Expenses allocated to (i) reserves for Improvements which the Board does not expect to perform on an annual or more frequent basis, and (ii) payment of deductible amounts for insurance policies which the Association obtains, and (c) any other funds which the Association may establish.

7.3. PURPOSE OF ASSESSMENTS. The Assessments shall be used exclusively to (a) promote the Owners' welfare, (b) operate, improve and maintain the Common Property, and (c) discharge any other Association obligations under the Declaration. All amounts deposited into the Maintenance Funds must be used solely for the common benefit of all Owners for purposes authorized by this Declaration. Disbursements from the Operating Fund shall be made by the Association for such purposes as are necessary for the discharge of its responsibilities in this Declaration for the common benefit of all Owners, other than those purposes for which disbursements from the Reserve Fund are to be used. Disbursements from the Reserve Fund

shall be made by the Association only for the purposes specified in this Article and in Section 1365.5(c) of the California Civil Code.

7.4. **WAIVER OF USE.** No Owner may exempt himself from personal liability for Assessments duly levied by the Association, nor release such Owner's Condominium from the liens and charges thereof, by waiving use and enjoyment of the Common Property or by abandoning such Owner's Condominium.

7.5. **LIMITS ON ANNUAL ASSESSMENT INCREASES.**

7.5.1 **Maximum Authorized Annual Assessment For Initial Year of Operations.** During the Fiscal Year in which Annual Assessments commence, the Board may levy an Annual Assessment per Condominium in an amount which exceeds one hundred twenty percent (120%) of the amount of Annual Assessments disclosed for the Neighborhood in the most current Budget filed with and approved by DRE only if the Board first obtains the approval of Owners casting a majority of votes at a meeting or election of the Association in which more than fifty percent (50%) of the Condominiums are represented ("**Increase Election**"). This Section does not limit Annual Assessment increases necessary for addressing an "Emergency Situation" as defined in Section 7.5.5.

7.5.2 **Maximum Authorized Annual Assessment For Subsequent Fiscal Years.** During the Fiscal Years following the Fiscal Year in which Annual Assessments commence, the Board may levy Annual Assessments which exceed the Annual Assessments for the immediately preceding Fiscal Year only as follows:

(a) If the increase in Annual Assessments is less than or equal to twenty percent (20%) of the Annual Assessments for the immediately preceding Fiscal Year, then the Board must either (i) have distributed the Budget for the current Fiscal Year in accordance with Section 1365(a) of the California Civil Code, or (ii) obtain the approval of Owners casting a majority of votes in an Increase Election.

(b) If the increase in Annual Assessments is greater than twenty percent (20%) of the Annual Assessments for the immediately preceding Fiscal Year, then the Board must obtain the approval of Owners casting a majority of votes in an Increase Election.

This Section does not limit Annual Assessment increases necessary for addressing an "Emergency Situation" as defined in Section 7.5.5.

7.5.3 **Supplemental Annual Assessments.** If the Board determines that the Association's essential functions may be properly funded by an Annual Assessment in an amount less than the maximum authorized Annual Assessment described above, it may levy such lesser Annual Assessment. If the Board determines that the estimate of total charges for the current year is or will become inadequate to meet all Common Expenses, it shall immediately determine the approximate amount of the inadequacy. Subject to the limits described in Sections 7.5.1, 7.5.2 and 7.5.5, the Board may levy a supplemental Annual Assessment reflecting a revision of the total charges to be assessed against each Condominium. To minimize the need for frequent adjustments in the amount of the Annual Assessments during the development of the Neighborhood, the Board may stabilize the amount of the Annual Assessments invoiced to the

Owners at a level amount calculated to defray annual Common Expenses during the time that Annual Assessments are fluctuating due to the periodic annexation of Condominiums and Common Property.

7.5.4 Automatic Assessment Increases. Despite any other provisions of this Section, on Declarant's annexation of the Annexable Territory pursuant to Article XV, the Annual Assessment shall be automatically increased by the additional amount, if any, necessary to maintain the Common Property in or abutting such Annexable Territory so long as (a) the annexation of such Annexable Territory is permitted by DRE, and (b) the amount of such increase does not result in the levy of an Annual Assessment which is greater than the maximum potential Annual Assessment disclosed in all Final Subdivision Public Reports for the Neighborhood.

7.5.5 Emergency Situations. For purposes of Sections 7.5.1, 7.5.2 and 7.7, an "Emergency Situation" is any one of the following:

- (a) An extraordinary expense required by an order of a court;
- (b) An extraordinary expense necessary to maintain the portion of the Neighborhood for which the Association is responsible where a threat to personal safety in the Neighborhood is discovered; and
- (c) An extraordinary expense necessary to maintain the portion of the Neighborhood for which the Association is responsible that could not have been reasonably foreseen by the Board when preparing the Budget. Before imposing or collecting an Assessment pursuant to this Subparagraph (c), the Board shall adopt a resolution containing written findings regarding the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The resolution shall be distributed to the Owners with the notice of the assessment.

7.6. COMMENCEMENT AND COLLECTION OF ANNUAL ASSESSMENTS. Upon the first day of the first calendar month following the first Close of Escrow in a Phase, Annual Assessments shall commence as to the Condominiums in that Phase only. All Annual Assessments shall be assessed uniformly and equally against the Owners and their Condominiums based on the number of Condominiums owned by each Owner, except as may be otherwise provided in a Notice of Addition. Annual Assessments for fractions of a month shall be prorated. Declarant shall pay its full pro rata share of the Annual Assessments on all unsold Condominiums for which Annual Assessments have commenced. The Board shall fix the amount of the Annual Assessment against each Condominium at least thirty (30) days in advance of each Annual Assessment period. However, unless otherwise established by the Board, the initial Annual Assessments shall be assessed in accordance with the most recent Budget on file with and approved by DRE. Written notice of any change in the amount of any Annual Assessment, Capital Improvement Assessment or Reconstruction Assessment shall be sent via first-class mail to every Owner subject thereto not less than thirty (30) nor more than sixty (60) days before the increased Assessment becomes due.

The Board may determine that funds in the Operating Fund at the end of the Fiscal Year be retained and used to reduce the following Fiscal Year's Annual Assessments. On dissolution of the Association incident to the abandonment or termination of the Neighborhood as a condominium, any amounts remaining in any of the Maintenance Funds shall be distributed to or for the benefit of the Owners in the same proportions as such money was collected from the Owners.

The Board may, at its sole discretion, in accordance with the Budget and Section 1366.1 of the California Civil Code, exempt Declarant, and any other Owner of a Unit which has not been constructed, from payment of that portion of the Annual Assessment which is allocated to defraying expenses and reserves directly attributable to the existence and use of the Unit. If granted, such exemption shall remain in effect only until the earlier to occur of (a) the Recordation of a notice of completion of the building containing the Unit, (b) the occupation or use of the Unit, or (c) completion of all elements of the Condominium structures that the Association is obligated to maintain.

The Board may, at its sole discretion, exempt each Owner (including Declarant) from paying that portion of any Annual Assessment allocated to defraying expenses and reserves directly attributable to the existence and use of any Improvement on Association Property the construction of which has not yet been completed. If granted, such exemption shall continue until the earlier to occur of (i) the Recordation of a notice of completion of such Improvement, or (ii) the placement of such Improvement into use.

Each Owner shall pay Annual Assessments in installments at such frequency and in such amounts and by such methods as are established by the Board. If the Association incurs additional expenses because of a payment method selected by an Owner, the Association may charge that expense to the Owner. The Association does not have to apportion the expense among all Owners as a part of Annual Assessments. Each installment of Annual Assessments may be paid to the Association in one check or in separate checks as payments attributable to specified Association Maintenance Funds. If any payment of an Annual Assessment installment (1) is less than the amount assessed and (2) does not specify the Association Maintenance Fund or Funds into which it should be deposited, then the amount received shall be credited in order of priority first to the Operating Fund, until that portion of the Annual Assessment has been satisfied, and second to the Reserve Fund.

7.7. CAPITAL IMPROVEMENT ASSESSMENTS. The Board may levy, in any Fiscal Year, a Capital Improvement Assessment or Reconstruction Assessment applicable to that Fiscal Year only to defray, in whole or in part, the cost of any construction, repair or replacement of a capital Improvement or other such addition to the Common Property. No Capital Improvement Assessments in any Fiscal Year which, if added to the Capital Improvement Assessments already levied during such Fiscal Year, exceed five percent (5%) of the Association's budgeted gross expenses for such Fiscal Year, may be levied without the vote or written consent of Owners casting a majority of votes at an Increase Election. The Board may levy in any Fiscal Year, a Capital Improvement Assessment applicable to that Fiscal Year which exceeds five percent (5%) of the Association's budgeted gross expenses for such Fiscal Year if such increase is necessary for addressing an Emergency Situation as defined in Section 7.5.5.

7.8. **CAPITAL CONTRIBUTIONS TO THE ASSOCIATION.** On the acquisition of record title to a Condominium from Declarant, each Owner of a Condominium shall contribute to the capital of the Association an amount equal to one-one hundred fifty fifth (1/155) of the product of two (2) monthly installments of Annual Assessments from the Phase 1 Budget (as reflected in the Final Subdivision Public Report for Phase 1), multiplied by the number of Condominiums in Phase 1. This amount shall be deposited by the buyer into the purchase and sale escrow and disbursed therefrom to the Association or to Declarant if Declarant has previously advanced such funds to the Association.

ARTICLE VIII INSURANCE

8.1. **DUTY TO OBTAIN INSURANCE; TYPES.** The Association shall obtain and keep in effect at all times the following insurance coverages:

8.1.1 **Public Liability.** Adequate public liability insurance (including coverage for medical payments), with limits acceptable to FNMA and as required by Section 1365.9 of the California Civil Code, insuring against liability for bodily injury, death and property damage arising from the activities of the Association and the Owners, with respect to the Common Property.

8.1.2 **Fire and Casualty Insurance.** Fire and casualty insurance with extended coverage, without deduction for depreciation, in an amount as near as possible to the full replacement value of the Common Property. The casualty insurance shall not include earthquake coverage unless the Board is directed to obtain earthquake coverage by a majority of the Association's voting power.

8.1.3 **Fidelity Insurance.** Fidelity insurance coverage for any Person handling funds of the Association, whether or not such persons are compensated for their services, in an amount not less than the estimated maximum of funds, including reserve funds, in the custody of the Person during the term of the insurance. The aggregate amount of the fidelity insurance coverage may not be less than the sum equal to one-fourth (1/4) of the Annual Assessments on all Condominiums in the Neighborhood, plus reserve funds.

8.1.4 **Insurance Required by FNMA, GNMA and FHLMC.** Casualty, flood, liability and fidelity insurance meeting the insurance requirements for condominium projects established by FNMA, GNMA and FHLMC, so long as any of these entities is a Mortgagee or Owner of a Condominium in the Neighborhood, except to the extent such coverage is not reasonably available or has been waived in writing by the entity requiring the insurance coverage.

8.1.5 **Other Insurance.** Such other insurance insuring other risks customarily insured by associations managing condominium projects similar in construction, location and use. Such additional insurance shall include general liability insurance and director's and officer's errors and omissions insurance in the minimum amounts established in Section 1365.9 of the California Civil Code.

8.1.6 **Beneficiaries.** The Association's insurance shall be kept for the benefit of the Association, the Owners, and the Mortgagees, as their interests may appear as named insured, subject, however, to loss payment requirements established in this Declaration.

8.2. **WAIVER OF CLAIM AGAINST ASSOCIATION.** As to all policies of insurance kept by or for the benefit of the Association and the Owners, the Association and the Owners waive and release all claims against one another, the Board and Declarant, to the extent of the insurance proceeds available, whether or not the insurable damage or injury is caused by the negligence of or breach of any agreement by any of the Persons.

8.3. **RIGHT AND DUTY OF OWNERS TO INSURE.** Each Owner is responsible for insuring his personal property and all other property and Improvements in his Condominium for which the Association has not purchased insurance in accordance with Section 8.1. Nothing in this Declaration preclude any Owner from carrying any public liability insurance as he considers desirable; however, Owners' policies may not adversely affect or diminish any coverage under any of the Association's insurance policies. Duplicate copies of Owners' insurance policies shall be deposited with the Association on request. If any loss intended to be covered by the Association's insurance occurs and the proceeds payable are reduced due to insurance carried by any Owner, such Owner shall assign the proceeds of the Owner's insurance to the Association, to the extent of such reduction, for application to the same purposes as the reduced proceeds are to be applied.

8.4. **NOTICE OF EXPIRATION REQUIREMENTS.** If available, each of the Association's insurance policies must contain a provision that the policy may not be canceled, terminated, materially modified or allowed to expire by its terms, without at least ten (10) days' prior written notice to the Board and Declarant, and to each Owner and Mortgagee, insurer and guarantor of a first Mortgage who has filed a written request with the carrier for such notice and every other Person in interest who requests such notice of the insurer. In addition, fidelity insurance shall provide that it may not be canceled or substantially modified without at least ten (10) days' prior written notice to any insurance trustee named pursuant to Section 8.6 and to each FNMA servicer who has filed a written request with the carrier for such notice.

8.5. **INSURANCE PREMIUMS.** Premiums for insurance policies obtained by the Association are Common Expenses.

8.6. **TRUSTEE FOR POLICIES.** The Association is trustee of the interests of all named insureds under the Association's insurance policies. Unless an insurance policy provides for a different procedure for the filing of claims, all claims made under such policy must be sent to the insurance carrier or agent by certified mail and be clearly identified as a claim. The Association shall keep a record of all claims made. All insurance proceeds under any such policies provided for in Section 8.1 must be paid to the Board as trustees. The Board has the authority to negotiate loss settlements with insurance carriers, with participation, to the extent they desire, of first Mortgagees who have filed written requests within ten (10) days of receipt of notice of any damage or destruction as provided in Section 9.4. Any two (2) officers of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures are binding on all the named insureds. A representative chosen by the Board may be named as an insured, including a trustee with whom the Association may

enter into an insurance trust agreement and any successor to such trustee, who shall have exclusive authority to negotiate losses under any insurance policy and to perform such other functions necessary to accomplish this purpose.

8.7. ACTIONS AS TRUSTEE. Except as otherwise specifically provided in this Declaration, the Board has the exclusive right to bind the Association and the Owners in respect to all matters affecting insurance carried by the Association, the settlement of a loss claim, and the surrender, cancellation, and modification of all such insurance. Duplicate originals or certificates of all policies of fire and casualty insurance kept by the Association and of all renewals thereof, together with proof of payment of premiums, shall be delivered by the Association to all Owners and Mortgagees who requested them in writing.

8.8. ANNUAL INSURANCE REVIEW. The Board shall review the Association's insurance policies at least annually to determine the amount of the casualty and fire insurance referred to in Section 8.1. If economically feasible, the Board shall obtain a current appraisal of the full replacement value of the Improvements in the Neighborhood except for foundations and footings, without deduction for depreciation, from a qualified independent insurance appraiser, before each such annual review.

8.9. REQUIRED WAIVER. All of the Association's insurance policies insuring against physical damage must provide, if reasonably possible, for waiver of:

8.9.1 Subrogation of claims against the Owners and tenants of the Owners;

8.9.2 Any defense based on coinsurance;

8.9.3 Any right of setoff, counterclaim, apportionment, proration or contribution due to other insurance not carried by the Association;

8.9.4 Any invalidity, other adverse effect or defense due to any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act or omission of any named insured or the respective agents, contractors and employees of any insured;

8.9.5 Any right of the insurer to repair, rebuild or replace, and, if the Improvement is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the Improvements insured;

8.9.6 Notice of the assignment of any Owner of his interest in the insurance by virtue of a conveyance of any Condominium;

8.9.7 Any right to require any assignment of any Mortgage to the insurer;

8.9.8 Any denial of an Owner's claim because of negligent acts by the Association or other Owners; and

8.9.9 Prejudice of the insurance by any acts or omissions of Owners that are not under the Association's control.

**ARTICLE IX
DESTRUCTION OF IMPROVEMENTS**

9.1. **RESTORATION.** Except as otherwise authorized by the Owners, if any portion of the Neighborhood which the Association is responsible for maintaining is destroyed, the Association shall restore the same to its former condition as promptly as practical. The Association shall use the proceeds of its insurance for reconstruction or repair of the Neighborhood unless otherwise authorized in this Declaration. The Board shall prepare or obtain the documents necessary for commencing such reconstruction as promptly as practical. The Neighborhood shall be reconstructed or rebuilt substantially in accordance with the Condominium Plan and the original construction plans if they are available unless changes recommended by the Design Review Committee have been approved by at least sixty-seven percent (67%) of the Owners. If the insurance proceeds amount to at least ninety-five percent (95%) of the estimated cost of restoration and repair, the Board shall levy a Reconstruction Assessment to provide the additional funds necessary for such reconstruction. If the insurance proceeds amount to less than ninety-five percent (95%) of the estimated cost of restoration and repair, the Board may levy a Reconstruction Assessment and proceed with the restoration and repair only if both of the following conditions ("*Conditions to Reconstruction*") have been satisfied: (a) the levy of a Reconstruction Assessment to pay the costs of restoration and repair of the Neighborhood is approved by the Owners; and (b) within one (1) year after the date on which the destruction occurred, the Board Records a certificate of the resolution authorizing the restoration and repair ("*Reconstruction Certificate*"). If either of the Conditions to Reconstruction does not occur following a destruction for which insurance proceeds available for restoration and repair are less than ninety-five percent (95%) of the estimated cost of restoration and repair, then the Board shall proceed as provided in Section 9.2.

9.2. **SALE AND RIGHT TO PARTITION.** No Owner shall have the right to partition of his interest in the Condominium and there shall be no judicial partition of the Neighborhood, or any part thereof, except as provided in Section 1359(b) of the California Civil Code. For purposes of Subsection 4 of Section 1359(b), partition may occur only if all of the following conditions are satisfied: (a) either or both of the Conditions to Reconstruction described in Section 9.1 have failed to occur; (b) within six (6) months after the date on which destruction occurred, restoration or repair has not actually commenced; and (c) the Owners of at least sixty-seven percent (67%) of the Condominiums in the Neighborhood approve the partition. In such event, the Association shall prepare, execute and Record, as promptly as practical, the certificate stating that a majority of the Board may properly exercise an irrevocable power of attorney to sell the Neighborhood for the benefit of the Owners and execute such other documents and instruments as may be necessary for the Association to consummate the sale of the Neighborhood at the highest and best price obtainable, either in its damaged condition, or after damaged structures have been razed. Such certificate shall be conclusive evidence of such authority for any Person relying thereon in good faith. The net proceeds of such sale and the proceeds of any insurance carried by the Association shall be divided proportionately among the Owners, such proportions to be determined in accordance with the relative appraised fair market valuation of the Condominiums as of a date immediately before such destruction (or condemnation), expressed as percentages, and computed by dividing such appraised valuation of each Condominium by the total of such appraised valuations of all Condominiums in the Neighborhood. The Board is authorized to hire one (1) or more appraisers for such purpose and

the cost of such appraisals shall be a Common Expense of the Association. However, the balance then due on any valid Mortgage of Record shall be first paid in order of priority before the distribution of any proceeds to an Owner whose Condominium is so encumbered. Nothing in this Declaration prevent partition of a co-tenancy in any Condominium. Except as provided above, each Owner and the successors of each Owner, whether by deed, gift, devise, or by operation of law, for their own benefit and for the Condominiums and for the benefit of all other Owners, specifically waive and abandon all rights, interests and causes of action for a judicial partition of the tenancy in common ownership of the Neighborhood and do further covenant that no action for such judicial partition shall be instituted, prosecuted or reduced to judgment.

9.3. **INTERIOR DAMAGE.** With the exception of any casualty or damage covered by insurance kept by the Association, restoration and repair of any damage to the interior of any individual Condominium, including all fixtures, cabinets and improvements therein, together with restoration and repair of all interior paint, wall coverings and floor coverings, must be made by and at the individual expense of the Owner of the Condominium so damaged. If a determination to rebuild the Neighborhood after partial or total destruction is made, as provided in this Article, such interior repair and restoration shall be completed as promptly as practical and in a lawful and workmanlike manner in accordance with plans approved by the Design Review Committee as provided in this Declaration.

9.4. **NOTICE TO OWNERS AND LISTED MORTGAGEES.** The Board, immediately on having knowledge of any damage or destruction affecting a Unit or a material portion of the Common Property, shall promptly notify all Owners and Mortgagees, insurers and guarantors of first Mortgages on Condominiums in the Neighborhood who have filed a written request for such notice with the Board.

ARTICLE X EMINENT DOMAIN

The term "taking" as used in this Article means condemnation by exercise of the power of eminent domain or by sale under threat of the exercise of the power of eminent domain. The Board shall represent the Owners in any proceedings, negotiations, settlements, or agreements regarding takings. All takings proceeds shall be payable to the Association for the benefit of the Owners and their Mortgagees, and shall be distributed to such Owners and Mortgagees as provided in this Article.

10.1. **PROPERTY CONDEMNATION.** If (a) there is a taking of an interest in all or part of the Neighborhood such that the ownership, operation and use of the Neighborhood in accordance with this Declaration are substantially and adversely affected, and (b) within one hundred twenty (120) days after the effective date of the taking the Owners of Units (i) not taken, or (ii) only partially taken but capable of being restored to at least ninety-five percent (95%) of their floor area and to substantially their condition before the taking (collectively, the "**Remaining Units**") do not by affirmative vote of at least one-third (1/3) of their voting power approve the continuation of the Neighborhood and the repair, restoration and replacement to the extent feasible of the Association Property and the Remaining Units, then the Board shall proceed with the sale of that portion of the Neighborhood which was not taken and distribute the

net proceeds of such sale after deducting any incidental fees and expenses, in the same proportion and manner as provided in Section 9.2.

10.2. **CONDEMNATION OF COMMON PROPERTY.** If there is a taking of (a) the Common Area or any interest therein (other than the taking of an undivided interest therein taken as a result of the taking of a Condominium), or (b) the Association Property (other than Exclusive Use Areas) or any interest therein, then the award in condemnation shall be paid to the Association and shall be deposited in the Operating Fund.

10.3. **CONDEMNATION OF EXCLUSIVE USE AREA.** If there is a taking of all or any portion of an Exclusive Use Area, the award in condemnation shall be paid to the Owner of the Condominium to which the taken Exclusive Use Area was appurtenant; however, such award shall first be applied to the balance then due on any Mortgages encumbering such Owner's Condominium, in order of priority.

10.4. **CONDEMNATION OF CONDOMINIUMS.** If there is a taking of a Condominium, the award in condemnation shall be paid to the Owner of the Condominium; however, such award shall first be applied to the balance then due on any Mortgages encumbering such Owner's Condominium, in order of priority.

10.5. **CONDEMNATION OF PORTIONS OF UNITS.**

10.5.1 **Minor Takings Within Limits.** If (a) there is a taking of a portion of one or more Units such that the intended use of the Units as residential dwellings is not substantially and adversely affected, and (b) restoration of such Units can be accomplished at a cost less than or equal to the sum of (i) the amount of the condemnation awards for such takings plus (ii) any amounts the Owners of the taken Units wish to contribute to restoration plus (iii) an amount less than or equal to five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year (collectively, the "*Allowable Cost*"), then the Board shall contract for such restoration and levy a Reconstruction Assessment in an amount equal to the Allowable Cost minus the amount of the condemnation awards and Owners' contributions, and the condemnation awards, Owners' contributions and Reconstruction Assessment shall be applied to such restoration. If the restoration is accomplished at a cost less than the amount of the condemnation awards, then that portion of the condemnation awards which exceeds the restoration costs shall be paid to the Owners of the partially taken Units in proportion to the decreases in the fair market values of their Condominiums; however, such awards shall first be applied to the balance then due on any Mortgages encumbering such Owners' Condominiums, in order of priority.

10.5.2 **Minor Takings Exceeding Limits.** If (a) there is a taking of a portion of one or more Units such that the intended use of the Units as residential dwellings is not substantially and adversely affected, and (b) restoration cannot be accomplished at a cost less than or equal to the Allowable Cost, then the Board shall call a Special Meeting of the Owners. If more than fifty percent (50%) of the voting power of the Association is represented at such Special Meeting, either in person or by proxy, and a majority of the votes cast at such Special Meeting are in favor of levying a Reconstruction Assessment in an amount equal to the restoration costs minus the sum of the amount of the condemnation awards and the amounts the Owners of the taken Units wish to contribute to such restoration, then the Board shall contract

for such restoration and levy a Reconstruction Assessment, and the condemnation awards, Owners' contributions and Reconstruction Assessment shall be applied to such restoration.

10.5.3 Major Takings. If the requisite approval is not obtained at the Special Meeting referred to in Section 10.5.2, or if there is a taking of a portion of one or more Units such that the Units are not capable of being restored such that the intended use of the Units as residential dwellings is not substantially and adversely affected, then the award in condemnation shall be paid to the Owners of the taken Units; however, such award shall first be applied to the balance then due on any Mortgages encumbering such Owner's Condominium, in order of priority. The Board shall have the remaining portions of the taken Units razed. The remaining portions of the taken Units (and appurtenant Exclusive Use Areas) shall become part of the Association Property, and the Owners of such taken Units in any Phase, by acceptance of the award allotted to them in taking proceedings, relinquish (a) to the other Owners in such Phase, on the basis of their relative ownership of the Common Area therein, such Owners' undivided interest in the Common Area, and (b) to the Association, the remaining portions of the Units and appurtenant Exclusive Use Areas. Each Owner relinquishing his interest in the Common Area pursuant to this Section shall, at the Board's request and at the Association's expense, execute and acknowledge such deeds and other instruments which the Board considers necessary or convenient to evidence such relinquishment. Each Owner of a taken Unit or Condominium is not liable for Assessments under this Declaration which accrue on or after the date such Owner accepts his condemnation award.

10.6. PORTIONS OF AWARDS IN CONDEMNATION NOT COMPENSATORY FOR VALUE OF REAL PROPERTY. Those portions of awards in condemnation which do not directly compensate Owners for takings of real property (e.g., awards for takings of personal property, relocation expenses, moving expenses, or other allowances of a similar nature intended to facilitate relocation) shall be paid to the Owners whose personal property is taken, or whose relocation is intended to be facilitated.

10.7. NOTICE TO OWNERS AND MORTGAGEES. The Board, on learning of any taking affecting a Unit or a material portion of the Neighborhood, or any threat thereof, shall promptly notify all Owners and those Mortgagees, insurers and guarantors of Mortgages on Condominiums in the Neighborhood who have filed a written request for such notice with the Association.

ARTICLE XI RIGHTS OF MORTGAGEES

11.1. GENERAL PROTECTIONS. No amendment or violation of this Declaration defeats or renders invalid the rights of the Mortgagee under any Mortgage encumbering one (1) or more Condominiums made in good faith and for value, provided that after the foreclosure of any such Mortgage such Condominium(s) will remain subject to this Declaration. For purposes of this Declaration, "first Mortgage" means a Mortgage with first priority over other Mortgages or Deeds of Trust on a Condominium, and "first Mortgagee" means the Mortgagee of a first Mortgage. For purposes of any provisions of the Restrictions which require the vote or approval of a specified percentage of first Mortgagees, such vote or approval is determined based on one (1) vote for each Condominium encumbered by each such first Mortgage.

11.2. **ADDITIONAL RIGHTS.** To induce VA, FHA, FHLMC, GNMA and FNMA to participate in the financing of the sale of Condominiums, the following provisions are added hereto (and to the extent these added provisions conflict with any other provisions of this Declaration or any other of the Restrictions, these added provisions control):

11.2.1 **Notices.** Each Mortgagee, insurer and guarantor of a Mortgage encumbering one (1) or more Condominiums, on filing a written request for notification with the Board, is entitled to written notice from the Association of: (a) any condemnation or casualty loss which affects either a material portion of the Neighborhood or the Condominium(s) securing the Mortgage; (b) any delinquency of sixty (60) days or more in the performance of any obligation under the Restrictions, including the payment of Assessments or charges owed by the Owner(s) of the Condominium(s) securing the Mortgage, which notice each Owner consents to and authorizes; (c) a lapse, cancellation, or material modification of any insurance policy kept by the Association; and (d) any proposed action of the Association which requires consent by a specified percentage of first Mortgagees who have submitted a written request to the Association for notice of such proposed action.

11.2.2 **Right of First Refusal.** Each Owner, including each first Mortgagee of a Mortgage encumbering any Condominium who obtains title to such Condominium pursuant to (a) the remedies provided in such Mortgage, (b) foreclosure of the Mortgage, or (c) deed or assignment in lieu of foreclosure, is exempt from any "right of first refusal" created or purported to be created by the Restrictions.

11.2.3 **Unpaid Assessments.** Each first Mortgagee of a Mortgage encumbering any Condominium who obtains title to such Condominium pursuant to the remedies provided in such Mortgage or by foreclosure of such Mortgage shall take title to such Condominium free of any claims for unpaid Assessments or charges against such Condominium which accrued before the time such Mortgagee acquires title to such Condominium.

11.2.4 **Approvals.** Unless at least sixty-seven percent (67%) of the first Mortgagees or sixty-seven percent (67%) of the Owners have given their prior written approval, the Association may not:

(a) by act or omission seek to abandon or terminate the Neighborhood; or

(b) change the method of determining the obligations, Assessments, dues or other charges which may be levied against any Owner; or

(c) partition or subdivide any Condominium; or

(d) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Property. (The granting of easements for public utilities or for other purposes consistent with the intended use of the Common Property under this Declaration, the granting of exclusive easements to Owners over the Common Property to conform the boundaries of the Common Property to the as-built location of authorized Improvements and any grant made in connection with any lawful lot line adjustment are not transfers within the meaning of this clause); or

(e) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design, the exterior appearance or the maintenance of the Units or the Common Property; or

(f) fail to keep Fire and Extended Coverage insurance on insurable Common Property as provided in Article VIII; or

(g) use hazard insurance proceeds for losses to any Condominium property (i.e., Improvements to the Units or Common Property) for other than the repair, replacement or reconstruction of such Condominium property, subject to the provisions of Article IX; or

(h) change the pro rata interest or obligations of any Condominium to levy Assessments or charges, allocate distributions of hazard insurance proceeds or condemnation awards or determine the pro rata share of ownership of each Condominium in the Common Area.

11.2.5 Association Records. All Mortgagees, insurers and guarantors of first Mortgages, on written request to the Association may:

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

(b) require the Association to submit an annual audited financial statement for the preceding Fiscal Year if one is available, or have one prepared at the expense of the requesting entity if such statement is not otherwise prepared by the Association; provided that, on annexation of additional Condominiums to the Neighborhood such that fifty (50) or more Condominiums are subject to this Declaration, the Association may be required to submit such a statement without expense to the requesting entity within one hundred twenty (120) days of the end of the Fiscal Year;

(c) receive written notice of all meetings of Owners; and

(d) designate in writing a representative authorized to attend all meetings of Owners.

11.2.6 Material Changes. All Mortgagees, insurers and guarantors of first Mortgages, on written request, shall be given thirty (30) days' written notice before the effective date of (a) any proposed material amendment to the Restrictions or Condominium Plans; (b) any termination of an agreement for professional management of the Neighborhood following any decision of the Owners to assume self-management of the Neighborhood; and (c) any proposed termination of the Neighborhood as a condominium project.

11.2.7 Reserves. The Reserve Fund described in Article VII must be funded by regular scheduled monthly, quarterly, semiannual or annual payments rather than by special Assessments.

11.2.8 **Fidelity Insurance.** The Board shall secure fidelity insurance for any person handling Association funds, including, but not limited to, employees of the professional Manager.

11.2.9 **Contracts.** The Board may enter into such contracts or agreements on behalf of the Association as are required to satisfy the guidelines of VA, FHA, FHLMC, FNMA or GNMA or any similar entity, so as to allow for the purchase, guaranty or insurance, as the case may be, by such entities of first Mortgages encumbering Condominiums. Each Owner agrees that it will benefit the Association and the Owners, as a class of potential Mortgage borrowers and potential sellers of their residential Condominiums, if such agencies approve the Neighborhood as a qualifying subdivision under their respective policies, rules and regulations. Each Owner authorizes his Mortgagees to furnish information to the Board concerning the status of any Mortgage encumbering a Condominium.

11.2.10 **Professional Management.** When professional management has been required by a Mortgagee, insurer, or guarantor of a first Mortgage, any decision to establish self-management by the Association shall require the approval of at least sixty-seven percent (67%) of the voting power of the Association and the Mortgagees of at least fifty-one percent (51%) of the first Mortgages of Condominiums in the Neighborhood.

11.2.11 **Intended Improvements.** All intended Improvements in any Phase other than Phase 1 must be substantially completed or the completion of such Improvements must be secured by a bond or other arrangement acceptable to DRE before the first Close of Escrow in such Phase. All such Improvements shall be substantially consistent with the Improvements in Phase 1 in structure type and quality of construction. The requirements of the immediately preceding sentence are for the benefit only of and may be enforced only by FNMA.

11.2.12 **Payment of Taxes.** First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Property and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for Common Property, and the Association shall immediately reimburse first Mortgagees making such payments.

ARTICLE XII ENFORCEMENT

12.1. **ENFORCEMENT OF RESTRICTIONS.** All disputes arising under the Restrictions, other than those described in Section 12.4 or regulated by Civil Code Section 1375, shall be resolved as follows.

12.1.1 **Violations Identified by the Association.** If the Board determines that there is a violation of the Restrictions or the Design Review Committee, or determines that an Improvement which is the maintenance responsibility of an Owner needs installation, maintenance, repair, restoration or painting, then the Board shall give written notice to the responsible Owner identifying (a) the condition or violation complained of, and (b) the length of time the Owner has to remedy the violation including, if appropriate, the length of time the Owner has to submit plans to the Design Review Committee and the length of time the Owner

has to complete the work proposed in the plans submitted to the Design Review Committee. If an Owner does not perform such corrective action as is required by the Board within the allotted time, the Board and the Design Review Committee, after Notice and Hearing, may remedy such condition or violation complained of, and the cost thereof shall be charged to the Owner as a Special Assessment. If the violation involves nonpayment of any Assessment, then the Board may collect such delinquent Assessment pursuant to the procedures established in Section 12.2.

12.1.2 Violations Identified by an Owner. If an Owner alleges that another Person is violating the Restrictions (other than nonpayment of any Assessment), the complaining Owner must first submit the matter to the Board for Notice and Hearing before the complaining Owner may resort to alternative dispute resolution, as required by Section 1354 of the California Civil Code, or litigation for relief.

12.1.3 Legal Proceedings. Failure to comply with any of the terms of the Restrictions by any Person is grounds for relief which may include an action to recover damages, injunctive relief, foreclosure of any lien, or any combination thereof; however, the procedures established in Section 1354 of the California Civil Code and in Sections 12.1.1 and 12.1.2 must first be followed, if they apply.

12.1.4 Additional Remedies. The Board may adopt a schedule of reasonable fines or penalties which, in its reasonable discretion, the Board may assess against a Person for the failure of such Person to comply with the Restrictions. Such fines or penalties may only be assessed after Notice and Hearing. After Notice and Hearing, the Board may direct the officers of the Association to Record a notice of noncompliance (if allowed by law) against the Condominium owned by any Owner who has violated any provision of this Declaration. The notice shall include a legal description of the Condominium and shall specify the provision of the Declaration that was violated, the violation committed, and the steps required to remedy the noncompliance. Once the noncompliance is remedied or the noncomplying Owner has taken such other steps as reasonably required by the Board, the Board shall direct the officers of the Association to Record a notice that the noncompliance has been remedied.

12.1.5 No Waiver. Failure to enforce any provision of this Declaration does not waive the right to enforce that provision, or any other provision of this Declaration.

12.1.6 Right to Enforce. The Board, the Declarant, and any Owner may enforce the Restrictions as described in this Article, subject to Section 1354 of the California Civil Code. Each Owner has a right of action against the Association for the Association's failure to comply with the Restrictions. Each remedy provided for in this Declaration is cumulative and not exclusive or exhaustive.

12.1.7 Limit on Expenditures. The Association may not incur litigation expenses, including attorneys' fees, or borrow money to fund litigation, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings, unless the Association first obtains the consent of the Owners (excluding the voting power of any Owner who would be a defendant in such proceedings), and, if applicable, complies with the requirements of Section 1354 of the California Civil Code. Such approval is not necessary if the legal proceedings are initiated (a) to enforce the use restrictions contained in Article II, (b) to enforce the architectural

and landscaping control provisions contained in Article V, (c) to collect any unpaid Assessments levied pursuant to the Restrictions, (d) for a claim, the total value of which is less than five hundred thousand dollars (\$500,000), or (e) as a cross-complaint in litigation to which the Association is already a party. If the Association decides to use or transfer reserve funds or borrow funds to pay for any litigation, the Association must notify the Owners of the decision by mail. Such notice shall provide an explanation of why the litigation is being initiated or defended, why operating funds cannot be used, how and when the reserve funds will be replaced or the loan will be repaid, and a proposed budget for the litigation. The notice must state that the Owners have a right to review an accounting for the litigation which will be available at the Association's office. The accounting shall be updated monthly.

12.2. NONPAYMENT OF ASSESSMENTS.

12.2.1 **Delinquency.** Assessments are delinquent if not paid within fifteen (15) days after the due date established by the Association. Assessments not paid within thirty (30) days after the due date, plus all reasonable costs of collection (including attorneys' fees) and late charges bear interest at the maximum rate permitted by law commencing thirty (30) days after the due date until paid. The Association may also require the delinquent Owner to pay a late charge in accordance with California Civil Code Section 1366(d)(2). The Association need not accept any tender of a partial payment of an Assessment and all costs and attorneys' fees attributable thereto. Acceptance of any such tender does not waive the Association's right to demand and receive full payment.

12.2.2 **Creation and Release of Lien.**

(a) **Priority of Lien.** All liens levied in accordance with this Declaration shall be prior and superior to (i) any declaration of homestead Recorded after the Recordation of this Declaration, and (ii) all other liens, except (1) all taxes, bonds, Assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any first Mortgage of Record (meaning any Recorded Mortgage with first priority or seniority over other Mortgages) made in good faith and for value and Recorded before the date on which the "Notice of Delinquent Assessment" (described in this Section) against the respective Condominium was Recorded.

(b) **Prerequisite to Creating Lien.** Before the Association may place a lien on an Owner's Condominium to collect a past due Assessment, the Association shall send written notice ("**Notice of Intent to Lien**"), at least thirty (30) days prior to recording of such lien, to the Owner by certified mail which contains the following information: (i) the fee and penalty procedure of the Association, (ii) an itemized statement of the charges owed by the Owner, including the principal owed, any late charges, any interest, and the method of calculation, any attorneys' fees, (iii) the collection practices used by the Association, (iv) a statement that the Association may recover reasonable costs of collecting past due Assessments, (v) a statement that the Owner has the right to inspect the Association's records, pursuant to California Corporations Code Section 8333, (vi) the following statement in 14-point boldface type or all capital letters: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION," (vii) a statement that the Owner shall not

be liable to pay the charges, interest and costs of collection if it is determined the Assessment was paid on time to the Association, and (viii) a statement that the Owner has the right to request a meeting with the Board, as provided by California Civil Code Section 1367.1(c) and Section 12.2.2(d) below.

(c) **Dispute by Owner.** An Owner may dispute the Notice of Intent to Lien by submitting to the Board a written explanation of the reasons for the Owner's dispute. The Board shall respond in writing to the Owner within fifteen (15) days of the date of the postmark of the explanation, if the explanation is mailed within fifteen (15) days of the postmark of the Notice of Intent to Lien.

(d) **Owner's Right to Request Meeting.** An Owner may submit a written request to meet with the Board to discuss a payment plan for the debt noticed in Section 12.2.2(b) above. The Association shall provide the Owner with the standards for payment plans, if any exist. The Board shall meet with the Owner in executive session within forty-five (45) days of the postmark of the request, if the request is mailed within fifteen (15) days of the date of the postmark of the Notice of Intent to Lien, unless there is no regularly scheduled Board meeting within that period, in which case the Board may designate a committee of one or more members to meet with the Owner, the Association may place a lien on an Owner's Condominium to collect a past due Assessment, the Association shall send a written notice to the Owner by certified mail which contains the following information: (i) the fee and penalty procedure of the Association, (ii) an itemized statement of the charges owed by the Owner, including the principal owed, any late charges and the method of calculation, any attorneys' fees, (iii) the collection practices used by the Association, and (iv) a statement that the Association may recover the reasonable costs of collecting past due Assessments.

(e) **Notice of Delinquent Assessment.** The lien becomes effective on Recordation of a Notice of Delinquent Assessment ("**Notice of Delinquent Assessment**") securing the payment of any Assessment or installment thereof levied by the Association against any Condominium Owner, as provided in Section 1367 or 1367.1 of the California Civil Code. The Notice of Delinquent Assessment must identify (i) the amount of the Assessment and other authorized charges and interest, including the cost of preparing and Recording the Notice of Delinquent Assessment, (ii) the amount of collection costs incurred, including reasonable attorneys' fees, (iii) a sufficient description of the Condominium that has been assessed, (iv) the Association's name and address, (v) the name of the Owner of the Condominium that has been assessed, and (vi) if the lien is to be enforced by nonjudicial foreclosure, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice of Delinquent Assessment must be signed by an authorized Association officer or agent and must be mailed in the manner required by Section 2924b of the California Civil Code to the Owner of record of the Condominium no later than ten (10) calendar days after Recordation. The lien relates only to the individual Condominium against which the Assessment was levied and not to the Neighborhood as a whole.

(f) **Exceptions.** Assessments described in Section 1367.1(e) of the California Civil Code and Section 2792.26(c) of the California Code of Regulations may not become a lien against an Owner's condominium enforceable by sale of the Condominium under Sections 2924, 2924(b) and 2924(c) of the California Civil Code.

(g) **Release of Lien.** Within twenty-one (21) days of payment of the full amount claimed in the Notice of Delinquent Assessment, or other satisfaction thereof, the Board shall cause to be Recorded a Notice of Satisfaction and Release of Lien ("**Notice of Release**") stating the satisfaction and release of the amount claimed. The Association shall provide the Owner with a copy of the Notice of Release or any other notice that the full amount claimed in the Notice of Delinquent Assessment has been satisfied. The Board may require the Owner to pay a reasonable charge for preparing and Recording the Notice of Release. Any purchaser or encumbrancer who has acted in good faith and extended value may rely on the Notice of Release as conclusive evidence of the full satisfaction of the sums identified as owed in the Notice of Delinquent Assessment.

12.2.3 **Enforcement of Liens.** The Board shall enforce the collection of amounts due under this Declaration by one (1) or more of the alternative means of relief afforded by this Declaration. The lien on a Condominium may be enforced by foreclosure and sale of the Condominium after failure of the Owner to pay any Assessment, or installment thereof, as provided in this Declaration. The sale shall be conducted in accordance with the provisions of the California Civil Code applicable to the exercise of powers of sale in Mortgages, or in any manner permitted by law. The Association (or any Owner if the Association refuses to act) may sue to foreclose the lien if (a) at least thirty (30) days have elapsed since the date on which the Notice of Delinquent Assessment was Recorded and (b) at least ten (10) days have elapsed since a copy of the Notice of Delinquent Assessment was mailed to the Owner affected thereby. The Association may bid on the Condominium at foreclosure sale, and acquire and hold, lease, mortgage and convey the same. On completion of the foreclosure sale, the Association or the purchaser at the sale may file suit to secure occupancy of the defaulting Owner's Condominium, and the defaulting Owner shall be required to pay the reasonable rental value for the Condominium during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. A suit to recover a money judgment for unpaid Assessments may be brought without foreclosing or waiving any lien securing the same, but this provision or any suit to recover a money judgment does not affirm the adequacy of money damages. Any recovery resulting from a suit at law or in equity initiated pursuant to this Section may include reasonable attorneys' fees as fixed by the court.

12.2.4 **Priority of Assessment Lien.** Mortgages Recorded before a Notice of Delinquent Assessment have lien priority over the Notice of Delinquent Assessment. Sale or transfer of any Condominium does not affect the Assessment lien, except that the sale or transfer of any Condominium pursuant to judicial or nonjudicial foreclosure of a first Mortgage extinguishes the lien of such Assessments as to payments which became due before such sale or transfer. No sale or transfer relieves such Condominium from liens for any Assessments thereafter becoming due. No Person who obtains title to a Condominium pursuant to a judicial or nonjudicial foreclosure of the first Mortgage is liable for the share of the Common Expenses or Assessments chargeable to such Condominium which became due before the acquisition of title to the Condominium by such Person. Such unpaid share of Common Expenses or Assessments is a Common Expense collectible from all Owners including such Person. The Association may take such action as is necessary to make any Assessment lien subordinate to the interests of the Department Veterans Affairs of the State of California under its Cal-Vet loan contracts as if the Cal-Vet loan contracts were first Mortgages of record.

12.2.5 Alternative Dispute Resolution. An Owner may dispute the Assessments imposed by the Association if such Owner pays in full (a) the amount of the Assessment in dispute, (b) any late charges, (c) any interest, and (d) all reasonable fees and costs associated with preparing and filing a Notice of Delinquent Assessment (including mailing costs and reasonable attorneys' fees not to exceed the maximum amount allowed by law) and states by written notice that such amount is paid under protest, and the written notice is mailed by certified mail not more than thirty (30) days after Recording the Notice of Delinquent Assessment. On receipt of the written notice, the Association shall inform the Owner in writing that the dispute may be resolved through alternative dispute resolution as established in Civil Code Section 1354. The right of any Owner to use alternative dispute resolution under this Section may not be exercised more than two (2) times in any single calendar year, and not more than three (3) times within any five (5) calendar years unless the Owner and the Association mutually agree to use alternative dispute resolution when this limit is exceeded. An Owner may request and be awarded through alternative dispute resolution reasonable interest to be paid by the Association in the total amount paid under items (a) through (d) above, if it is determined that the Assessment levied by the Association was not correctly levied.

12.2.6 Receivers. In addition to the foreclosure and other remedies granted the Association in this Declaration, each Owner, by acceptance of a deed to such Owner's Condominium, conveys to the Association all of such Owner's right, title and interest in all rents, issues and profits derived from and appurtenant to such Condominium, subject to the right of the Association to collect and apply such rents, issues and profits to any delinquent Assessments owed by such Owner, reserving to the Owner the right, before any default by the Owner in the payment of Assessments, to collect and retain such rents, issues and profits as they may become due and payable. On any such default the Association may, on the expiration of thirty (30) days following delivery to the Owner of the "Notice of Delinquent Assessment" described in this Declaration, either in person, by agent or by receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness secured by the lien described in this Declaration, (a) enter in or on and take possession of the Condominium or any part thereof, (b) in the Association's name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and (c) apply the same, less allowable expenses of operation, to any delinquencies of the Owner, and in such order as the Association may determine. The entering upon and taking possession of the Condominium, the collection of rents, issues and profits and the application thereof, shall not cure or waive any default or notice of default under this Declaration or invalidate any act done pursuant to such notice.

12.3. ENFORCEMENT OF CERTAIN BONDED OBLIGATIONS.

12.3.1 Consideration by the Board. If (a) the Common Property Improvements in any Phase are not completed before the issuance of a Final Subdivision Public Report for such Phase by DRE, and (b) the Association is obligee under a bond or other arrangement ("**Bond**") required by DRE to secure performance of Declarant's commitment to complete such Improvements, then the Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any such Improvement for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for that Improvement in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any Common

Property Improvement, then the Board shall be directed to consider and vote on the question if a Notice of Completion has not been filed within thirty (30) days after the expiration of the extension.

12.3.2 Consideration by the Owners. A special meeting of Owners for voting to override a decision by the Board not to initiate action to enforce the obligations under the Bond or the Board's failure to consider and vote on the question shall be held no fewer than thirty-five (35) nor more than forty-five (45) days after the Board receives a petition for such a meeting signed by Owners representing five percent (5%) of the Association's total voting power. A vote of a majority of the Association's voting power residing in Owners other than Declarant to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association, and the Board shall thereafter implement such decision by initiating and pursuing appropriate action in the Association's name.

12.4. DISPUTE WITH DECLARANT PARTIES.

12.4.1 Disputes Re Damage To Property. Not later than thirty (30) days prior to the filing of any civil action by the Association against the Declarant or other developer of the Neighborhood for alleged damage to Common Property, alleged damage to any portion of a Unit that the Association is obligated to maintain or repair, or alleged damage to a Condominium that arises out of, or is integrally related, to damage to the Association Property or to any portion of a Condominium that the Association is obligated to maintain or repair, the Board shall provide written notice to each Member who appears on the records of the Association at the time notice is given, specifying (a) that a meeting of Members will be held to discuss problems that may lead to the filing of a civil action, (b) the options, including civil actions, that are available to address the problems, and (c) the time and place of the meeting. If the Association has reason to believe that the applicable statute of limitations will expire before the Association files the civil action, the Association may give the foregoing notice not later than thirty (30) days after the filing of the action.

12.4.2 Dispute Resolution. Any disputes between all or any of the Association, Owner(s), the Declarant, or any director, officer, partner, employer, contractor, design professional, consultant, subcontractor or agent of the Declarant (each, a "*Declarant Party*" and collectively "*Declarant Parties*"), arising under this Declaration or relating to the Neighborhood, shall be subject to the following provisions of this Section 12.4.2 and the following Sections 12.4.3, 12.4.4 and 12.4.5.

12.4.3 Construction Defect Disputes.

(a) **Notice of Construction Claims Statute.** The Construction Claims Statute, delineates standards for how various components of Units should be constructed and function, limits the time frames for bringing various claims against the builder to anywhere from one year to ten years (as listed in the Construction Claims Statute) from the Close of Escrow for the Units, imposes an obligation on all Owners to follow Declarant's Maintenance Recommendations and schedules, or other applicable Maintenance Guidelines, and establishes a non-adversarial claims resolution procedure that must be followed by an Owner before the Owner can initiate an adversarial claim and proceed to judicial reference or binding arbitration,

as described in Section 12.4.5 below. THE CONSTRUCTION CLAIMS STATUTE AFFECTS EACH OWNER'S LEGAL RIGHTS. OWNERS ARE ADVISED TO READ THE STATUTE CAREFULLY AND SEEK LEGAL ADVICE IF OWNER HAS ANY QUESTIONS REGARDING ITS EFFECT ON OWNER'S LEGAL RIGHTS. PURSUANT TO CALIFORNIA CIVIL CODE SECTION 914, DECLARANT IS PERMITTED TO ELECT TO USE ALTERNATE CONTRACTUAL NON-ADVERSARIAL PROCEDURES INSTEAD OF USING THE STATUTORY PRE-LITIGATION PROCEDURES PROVIDED IN THE CONSTRUCTION CLAIMS STATUTE, AND DECLARANT HAS ELECTED TO DO SO.

(b) *Owners' Construction Defect Claims.* Prior to the commencement of any legal proceeding by any Owner against Declarant or any Declarant Party based upon a claim for defects in the design or construction of any Unit, Common Property, or any Improvements thereon, the Owner must first comply with the provisions of this paragraph. If at any time during the ten (10) year period following the Close of Escrow for the original Owner's purchase of such Owner's Condominium from Declarant, as such period may be extended by any applicable tolling statute or provision, or any shorter period as provided by applicable law, such Owner believes Declarant has violated any of the standards set forth in the Construction Claims Statute ("*Claimed Defect*"), which such Owner feels may be the responsibility of Declarant, such Owner shall promptly notify Lennar Corporation, 700 NW 107 Avenue, 4th Floor, Miami, FL 33172, attention General Counsel in writing, with a copy thereof to Lennar Corporate – Western Region DRE, 25 Enterprise, Suite 300, Aliso Viejo, California 92656. Such notice shall be deemed a notice of intention to commence a legal proceeding and shall include: (a) a detailed description of the Claimed Defect, (b) the date upon which the Claimed Defect was first discovered, and (c) dates and times when Owner or Owner's agent will be available during ordinary business hours, so that service calls or inspections by Declarant can be scheduled. Declarant shall, in its sole discretion, be entitled to inspect the applicable property regarding the reported Claimed Defect and, within its sole discretion, shall be entitled to cure such Claimed Defect. Nothing contained in this Article shall obligate Declarant to perform any such inspection or repair, nor shall this Section be deemed to increase Declarant's legal obligations to Owner. Owner's written notice delivered to Declarant shall be a condition precedent to Owner's right to institute any legal proceeding and to proceed to judicial reference or binding arbitration as set forth Section 12.4.5 below, and Owner shall not pursue any other remedies available to it, at law or otherwise, including without limitation the filing of any legal proceeding or action, until Declarant has had the reasonable opportunity to inspect and cure the Claimed Defect. During the term of any written Limited Warranty provided to the original Owner of the Condominium by Declarant, any conflict between the provisions of this Section and the Limited Warranty shall be resolved in favor of the Limited Warranty. Declarant shall not be liable for any general, special or consequential damage, cost, diminution in value or other loss which Owner may suffer as a result of any Claimed Defect in the Condominium, which reasonably might have been avoided had Owner given Declarant the notice and opportunity to cure as described above within a reasonable time of discovering the Claimed Defect. Except as otherwise provided in the written Limited Warranty, if any, provided to Owner, nothing contained herein shall establish any contractual duty or obligation on the part of Declarant to repair, replace or cure any Claimed Defect. If an Owner sells or otherwise transfers ownership of such Owner's Condominium to any other person during such ten (10) year period, as such period may be extended by any applicable tolling statute or provision, Owner covenants and agrees to give such other person written notice of these procedures by personal delivery.

Owner's continuing obligation under this covenant shall be binding upon Owner and Owner's successors and assigns.

(i) Obligation to Deliver Documents to Subsequent Owners. All Owners who originally purchased a Condominium from Declarant were provided copies of certain documents through escrow in conjunction with the purchase of the Condominium, including copies of this Declaration, Maintenance Recommendations from Declarant, Maintenance Recommendations for manufactured products or appliances included with the Condominium, a limited warranty, claim forms, and other documentation relating to the Construction Claims Statute. All Owners are required by the Construction Claims Statute to retain these documents and provide copies of such documents to Owner's successors in interest upon the sale or transfer of such Owner's Condominium.

(ii) Maintenance Recommendations. All Owners are obligated by Section 907 of the Construction Claims Statute to follow Declarant's Maintenance Recommendations and schedules, including the Maintenance Recommendations and schedules for manufactured products and appliances provided with the Condominium, as well as all commonly accepted maintenance practices (for purposes of this Section, collectively, "*Maintenance Recommendations*"). Per Section 945.5 of the Construction Claims Statute, failure to follow the Maintenance Recommendations may reduce or preclude Owner's right to recover damages relating to such Owner's Condominium; which could have been prevented or mitigated had the Maintenance Recommendations been followed.

(c) *Association's Construction Defect Claims.* DECLARANT ELECTS TO USE THE ALTERNATE CONTRACTUAL NON-ADVERSARIAL PROCEDURES CONTAINED IN CIVIL CODE SECTION 1375, EXCEPT AS OTHERWISE PROVIDED HEREIN, RATHER THAN THE STATUTORY PRE-LITIGATION PROCEDURES OF THE CONSTRUCTION CLAIMS STATUTE, WITH RESPECT TO CLAIMS BY THE ASSOCIATION. Prior to the commencement of any legal proceeding by the Association against Declarant or any Declarant Party based upon a claim for defects in the design or construction of the, Common Property, or any Improvements thereon, or any other area within the Neighborhood for which the Association has standing to make a claim for defects in design or construction, the Association must first comply with all of the applicable requirements of Civil Code Section 1375, as the same may be amended from time to time, or any successor statute thereto. In addition to the requirements of said Section 1375, Declarant shall have an absolute right, but not an obligation, to repair any alleged defect or condition claimed by the Association to be in violation of the standards set forth in the Construction Claims Statute, within a reasonable period of time after completion of the inspection and testing provided for in such Section and prior to submission of builder's settlement offer under such Section. If the parties to such dispute are unable to resolve their dispute in accordance with the procedures established under Civil Code Section 1375, as the same may be amended from time to time, or any successor statute, the dispute shall be resolved in accordance with the judicial reference or binding arbitration provisions of Section 12.4.5 below and the parties to the dispute shall each be responsible for their own attorneys' fees. The Association shall have the power to initiate claims against a Declarant Party for violations of Construction Claims Statute, as soon as the Association has one (1) Class A Member other than Declarant. Upon the written request of any Class A member to the Board of Directors, the Board shall establish a committee consisting

exclusively of Class A Members other than Declarant to investigate claimed violations of the standards of the Construction Claims Statute. Upon the committee's determination that cause exists to initiate a claim, the decision of whether to initiate a claim shall be made by a vote of the Class A members other than Declarant. A majority of the votes cast shall be deemed to be the decision of the Association, which the Board shall carry out by submitting the necessary claim to Declarant or the appropriate Declarant Party; provided, however, that the vote is either conducted at a properly convened meeting with the requisite quorum in accordance with the provisions of the Bylaws relating to meetings and voting, or the vote was conducted without a meeting in accordance with California Corporations Code Section 7513, as authorized by the Bylaws.

12.4.4 Other Disputes. Any other disputes arising under this Declaration, or otherwise, between the Association or any Owner on the one hand, and Declarant or any Declarant Party on the other hand (except for any action taken by the Association against Declarant for delinquent Assessments, or any action involving enforcement of any completion bonds) shall be resolved in accordance with the alternate dispute resolution provisions of Section 12.4.5 below. The dispute resolution procedure in Section 12.4.5, as it applies solely to disputes under this Section 12.4.4, shall be deemed to satisfy the alternative dispute requirements of Civil Code Section 1354, or any successor statute, as applicable.

12.4.5 Alternate Dispute Resolution Procedures.

(a) **Judicial Reference.** Subject to compliance with the provisions of Sections 12.4.1 through 12.4.4, to the extent applicable, it is the intention of Declarant that, except as otherwise expressly provided herein, any and all disputes, based upon which litigation is filed, shall be resolved by judicial reference under California law. Accordingly, except as otherwise expressly provided in this Declaration (such as the collection of delinquent Assessments), any dispute, between the Association or any Owner(s), on the one hand, and any Declarant Party, on the other hand, or between the Association and any Owner with respect to the interpretation of any of the provisions of this Declaration, or with respect to any alleged breach hereof, or with respect to any other claim related to a Condominium or the Common Property, including, without limitation, any alleged latent or patent construction or design defect in the Neighborhood, any Condominium or any part thereof, any alleged violation of the standards set forth in the Construction Claims Statute, any judicial determination to be made under California Civil Code Section 1375(h), or for alleged damage to the Common Property, alleged damage to Condominiums that arises out of, or is integrally related to the Common Property or portions of Condominiums that the Association is obligated to maintain or repair shall be heard by a referee pursuant to the provisions of California Code of Civil Procedure Sections 638 through 645.1. Notwithstanding any other provision of this Declaration, this Article shall not be amended without the written consent of Declarant. In the event litigation is filed based upon any such dispute, the following shall apply:

(i) **Venue.** The proceeding shall be brought and held in the County in which the Neighborhood is located, unless the parties agree to an alternative venue.

(ii) **Procedures.** The parties shall use the procedures adopted by JAMS/ENDISPUTE ("*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).

(iii) Referee Qualification. The referee must be a retired judge or a licensed attorney with substantial experience in relevant real estate matters.

(iv) Selection of Referee. The parties to the litigation shall agree upon a single referee who shall have the power to try any and all of the issues raised, whether of fact or of law, which may be pertinent to the matters in dispute, and to issue a statement of decision thereon to the court. Any dispute regarding the selection of the referee shall be resolved by JAMS or the entity providing the reference services, or, if no entity is involved, by the court with appropriate jurisdiction in accordance with California Code of Civil Procedure Sections 638 and 640.

(v) Remedies. The referee shall be authorized to provide all remedies available in law or equity appropriate under the circumstances of the controversy.

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

(vii) 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.

(viii) Stenographic Record. A stenographic record of the trial shall be made.

(ix) Statement of Decision. The referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable.

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

(xi) Cooperation. The parties shall promptly and diligently cooperate with each other and the referee and perform such acts, as may be necessary for an expeditious resolution of the dispute.

(xii) Fees. Except as otherwise agreed by the parties or as required by applicable law, neither the Association nor any Owner shall be required to pay any fee of the judicial reference proceeding except to the extent of the cost that would be imposed upon the Association or Owner if the dispute had been resolved as a dispute in court. The referee may not award against the Association or any Owner any expenses in excess of those that would be recoverable as costs if the dispute had been litigated to final judgment in court. Each party to the judicial reference proceeding shall bear its own attorney fees and costs in connection with such proceeding.

(xiii) Binding Decision. The statement of decision of the referee upon all of the issues considered by the referee shall be binding upon the parties, and

upon filing of the statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon. The decision of the referee shall be appealable as if rendered by the court. This provision shall in no way be construed to limit any valid cause of action that may be brought by any of the parties. Owners, by accepting a deed to a Condominium in the Neighborhood, and Declarant acknowledges and accepts that they are waiving their right to a jury trial.

(b) **Binding Arbitration.** If for any reason the judicial reference procedures in Section 12.4.5(a) are legally unavailable at the time a dispute would otherwise be referred to judicial reference, then such dispute shall be submitted to binding arbitration under the rules and procedures in this Section 12.4.5(b) Any dispute submitted to binding arbitration shall be administered by the AAA in accordance with the AAA's Construction Industry Arbitration Rules in effect on the date of the submission. If such entity is not then in existence, then the dispute shall be submitted to JAMS, and administered in accordance with either the Streamlined Arbitration Rules and Procedures, or (if applicable) the Comprehensive Arbitration Rules of JAMS. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such dispute. If the claimed amount exceeds \$250,000.00 or includes a demand for punitive damages, the dispute shall be heard and determined by three arbitrators. Otherwise, unless mutually agreed to by the parties, there shall be one arbitrator. Arbitrators shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved. All decisions concerning the arbitrability of any dispute shall be decided by the arbitrator(s). At the request of any party, the award of the arbitrator(s) shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither party nor the arbitrator(s) may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

(c) **Interpretation.** The binding arbitration procedures contained in Sections 12.4.5(b) are implemented for the Neighborhood in accordance with the philosophy and intent of the Federal Arbitration Act (9 U.S.C. Section 1 et seq.) ("**FAA**"), which is designed to encourage the use of alternative methods of dispute resolution and avoid costly and potentially lengthy traditional court proceedings. The binding arbitration procedures in said Section are to be interpreted and enforced as authorized by the FAA. Parties interpreting this Section shall follow the federal court rulings, which provide among other things that: (1) the FAA is a congressional Declaration of liberal federal policy favoring alternate dispute resolution notwithstanding substantive or procedural state policies or laws to the contrary, (2) alternate dispute resolution agreements are to be rigorously enforced by state courts; and (3) the scope of issues subject to alternate dispute resolution are to be interpreted in favor of alternate dispute resolution.

12.4.6 Disputes Relating To Enforcement Of Governing Documents. In the event of a dispute between the Association and an Owner, or between an Owner and another Owner, relating to the enforcement of the governing documents of the Association, the parties shall comply with the provisions of California Civil Code Section 1354(b) through (j), prior to filing of any civil action.

12.4.7 **Civil Codes Sections 1368.4, 1375, 1375.05 and 1375.1.** Nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code Sections 1368.4, 1375, 1375.05, or 1375.1.

12.4.8 **Use of Damage Award Amounts.** Any and all amounts awarded to a claimant on account of a claimed construction or design defect in the Neighborhood, or damage suffered as a result thereof, shall be expended by such claimant for the attorney fees and costs of the proceeding and the repair, rehabilitation, or remediation of the claimed defect or damage.

12.4.9 **Miscellaneous.** Nothing in the Article shall constitute a waiver of any of the benefits of statute of Limitations or equitable defense of any party. Furthermore, notwithstanding any other provision of this Declaration, this Article may not be amended without the prior written consent of the Declarant.

12.5. **APPROVAL OF AMENDMENTS.** No amendment may be made to Sections 12.4, 12.5 and 12.6 without the prior written approval of Declarant.

12.6. **NO ENHANCED PROTECTION AGREEMENT.** No provisions of this Declaration, any Notice of Addition and any Supplemental Declaration are intended, or shall be interpreted, to be an "enhanced protection agreement" as defined in Section 901 of the California Civil Code.

ARTICLE XIII DURATION AND AMENDMENT

13.1. **DURATION.** This Declaration shall continue in full force for a period of sixty (60) years from its recordation unless a declaration of termination satisfying the requirements of an amendment to this Declaration established in Section 13.2 is Recorded.

13.2. TERMINATION AND AMENDMENT.

13.2.1 **Amendment Approval.** Notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form must be included in the notice of any Association meeting or election at which a proposed amendment is to be considered. To be effective, a proposed amendment must be adopted by the vote, in person or by proxy, or written consent of Owners representing not less than (i) sixty-seven percent (67%) of the voting power of each Class of the Association and (ii) sixty-seven percent (67%) of the Association's voting power represented by Owners other than Declarant, provided that the specified percentage of the Association's voting power necessary to amend a specific provision of this Declaration may not be less than the percentage of affirmative votes prescribed for action to be taken under the provision that is the subject of the proposed amendment.

13.2.2 **Mortgagee Consent.** In addition to the notices and consents required by Section 13.2.1, the Mortgagees of fifty-one percent (51%) of the first Mortgages on all the Condominiums in the Neighborhood who have requested the Association to notify them of proposed action requiring the consent of a specified percentage of first Mortgagees must approve any amendment to this Declaration which is of a material nature, as follows:

(a) Any amendment which affects or purports to affect the validity or priority of Mortgages or the rights or protection granted to Mortgagees, insurers or guarantors of first Mortgages.

(b) Any amendment which would require a Mortgagee after it has acquired a Condominium through foreclosure to pay more than its proportionate share of any unpaid Assessment or Assessments accruing before such foreclosure.

(c) Any amendment which would or could result in a Mortgage being canceled by forfeiture, or in a Condominium not being separately assessed for tax purposes.

(d) Any amendment relating to (i) the insurance provisions in Article VIII, (ii) the application of insurance proceeds in Article IX, or (iii) the disposition of any money received in any taking under condemnation proceedings.

(e) Any amendment which would or could result in partition or subdivision of a Condominium in any manner inconsistent with this Declaration.

(f) Any amendment which would subject any Owner to a right of first refusal or other such restriction, if such Condominium is proposed to be transferred.

(g) Any amendment concerning:

(i) Voting rights;

(ii) Rights to use the Common Property;

(iii) Reductions in reserves for maintenance, repair and replacement of the Common Property;

(iv) Responsibility for maintenance and repairs;

(v) Redefinition of boundaries of any Unit;

(vi) Reallocation of interests in the Common Area or rights to its use;

(vii) Convertibility of Common Property into Units or Units into Common Property;

(viii) Imposition of restrictions on leasing of Units;

(ix) Establishment of self-management by the Association if professional management has been required by the Restrictions or any Mortgagee of a first Mortgage;

(x) Expansion or contraction of the Neighborhood or addition, annexation or deannexation of real property to or from the Neighborhood;

(xi) Increases in Assessments that raise the previously assessed amount by more than twenty-five percent (25%), Assessment liens, or the priority of such liens; or

(xii) Restoration or repair of the Neighborhood (after damage or partial condemnation) in a manner other than that specified in this Declaration.

13.2.3 Amendment of Defect Claims Provisions. Except for any amendment made by Declarant as authorized in Section 15.7, neither this Section 13.2.3 nor Sections 1.1.38, 4.2.8, 4.6.1 and 4.6.4, may be amended without the vote or approval by written ballot of at least (a) sixty-seven percent (67%) of the voting power of the Members of the Association other than Declarant, and (b) at least sixty-seven percent (67%) of the Mortgagees.

13.2.4 Termination Approval. Termination of this Declaration requires approval of the Owners as provided in Section 13.2.1. No such termination is effective unless it is also approved in advance either by fifty-one percent (51%) of the Mortgagees of the first Mortgages on all Condominiums in the Neighborhood who have submitted a written request to the Association that they be notified of proposed actions requiring the consent of a specified percentage of such Mortgagees (if termination is proposed due to substantial destruction or condemnation of the Neighborhood) or by sixty-seven percent (67%) of such Mortgagees (if termination is for reasons other than such substantial destruction or condemnation).

13.2.5 Notice to Mortgagees. Each Mortgagee of a first Mortgage on a Condominium in the Neighborhood which receives proper written notice of a proposed amendment or termination of this Declaration with a return receipt requested is deemed to have approved the amendment or termination if the Mortgagee fails to submit a response to the notice within thirty (30) days after the Mortgagee receives the notice.

13.2.6 Certificate. A copy of each amendment (except for any amendment described in Section 15.7) must be certified by at least two (2) Association officers. The amendment becomes effective when a Certificate of Amendment is Recorded. The certificate, signed and sworn to by two (2) Association officers that the requisite number of Owners and Mortgagees have approved the amendment, when Recorded, is conclusive evidence of that fact. The Association shall keep in its files for at least four (4) years the record of all such approvals. The certificate reflecting any termination or amendment which requires the written consent of any of the Mortgagees of first Mortgages must include a certification that the requisite approval of such first Mortgagees was obtained.

ARTICLE XIV GENERAL PROVISIONS

14.1. MERGERS OR CONSOLIDATIONS. In a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the covenants,

conditions and restrictions established by this Declaration governing the Neighborhood, together with the covenants and restrictions established on any other property, as one (1) plan.

14.2. **NO PUBLIC RIGHT OR DEDICATION.** Nothing in this Declaration is a gift or dedication of all or any part of the Neighborhood to the public, or for any public use.

14.3. **NOTICES.** Except as otherwise provided in this Declaration, notice to be given to an Owner must be in writing and may be delivered personally to the Owner. Personal delivery of such notice to one (1) or more co-Owners, or any general partner of a partnership owning a Condominium, constitutes delivery to all Owners. Personal delivery of such notice to any officer or agent for the service of process on a corporation or limited liability company constitutes delivery to the corporation or limited liability company. Such notice may also be delivered by regular United States mail, postage prepaid, addressed to the Owner at the most recent address furnished by such Owner to the Association or, if no such address has been furnished, to the street address of such Owner's Condominium. Such notice is deemed delivered three (3) business days after the time of such mailing, except for notice of a meeting of Owners or of the Board, in which case the notice provisions of the Bylaws control. Any notice to be given to the Association may be delivered personally to any member of the Board, or sent by United States mail, postage prepaid, addressed to the Association at such address as may be fixed and circulated to all Owners.

14.4. **CONSTRUCTIVE NOTICE AND ACCEPTANCE.** Every Person who owns, occupies or acquires any right, title, estate or interest in or to any Condominium or other portion of the Neighborhood does consent and agree, and shall be conclusively deemed to have consented and agreed, to every limit, restriction, easement, reservation, condition and covenant contained in this Declaration, whether or not any reference to these restrictions is in the instrument by which such person acquired an interest in the Neighborhood.

ARTICLE XV DECLARANT'S RIGHTS AND RESERVATIONS

If there is a conflict between any other portion of the Restrictions and this Article, this Article shall control.

15.1. **CONSTRUCTION RIGHTS.** Declarant has the right to (a) subdivide or resubdivide the Neighborhood, (b) complete or modify Improvements to and on the Common Property or any portion of the Neighborhood owned solely or partially by Declarant, (c) alter Improvements and Declarant's construction plans and designs, (d) modify Declarant's development plan for the Neighborhood and the Annexable Territory, including designating and redesignating Phases and the Units and the Common Property therein and constructing Condominiums of larger or smaller sizes, values, and of different types, and (e) construct such additional Improvements as Declarant considers advisable in the course of development of the Neighborhood so long as any Condominium in the Neighborhood or the Annexable Territory remains unsold.

15.2. **SALES AND MARKETING RIGHTS.** Declarant's rights under this Declaration include, but are not limited to, the right to install and maintain such structures,

displays, signs, billboards, flags and sales offices as may be reasonably necessary to conduct Declarant's business of completing the work and disposing of the Condominiums or the Annexable Territory by sale, resale, lease or otherwise. Declarant may use any Condominiums owned or leased by Declarant in the Neighborhood as model home complexes, real estate sales offices or leasing offices.

15.3. **CREATING ADDITIONAL EASEMENTS.** At any time before acquisition of title to a Condominium in the Neighborhood by a purchaser from Declarant, Declarant has the right to establish on that Condominium additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others as Declarant determines are reasonably necessary to the Neighborhood proper development and disposal.

15.4. **ARCHITECTURAL RIGHTS.** Declarant and any Person to whom Declarant may assign all or a portion of its exemption under this Declaration need not seek or obtain Design Review Committee approval of any Improvements constructed anywhere on the Neighborhood by Declarant or such Person. Declarant may exclude portions of the Neighborhood from jurisdiction of the Design Review Committee in the applicable Notice of Addition or Supplemental Declaration. Declarant, may, at its option, establish an additional design review committee for any area exempted from the jurisdiction of the Design Review Committee.

15.5. **USE RESTRICTION EXEMPTION.** Declarant and any Person to whom Declarant may assign all or a portion of its exemption under this Declaration are exempt from the restrictions established in Article II.

15.6. **ASSIGNMENT OF RIGHTS.** Declarant may assign its rights under the Restrictions to any successor in interest to any portion of Declarant's interest in the Neighborhood by a written assignment.

15.7. **AMENDMENTS.** No amendment may be made to this Article without the prior written approval of Declarant. At any time before the first Close of Escrow in Phase 1, Declarant may unilaterally amend or terminate this Declaration by Recording a written instrument which effects the amendment or termination and is signed and acknowledged by Declarant. For so long as Declarant owns any portion of the Neighborhood or the Annexable Territory, Declarant may unilaterally amend this Declaration by Recording a written instrument signed by Declarant to (a) conform this Declaration to the rules, regulations or requirements of DRE, VA, FHA, FNMA, GNMA or FHLMC, (b) amend Article III, (c) amend any of the Exhibits to this Declaration that depict portions of the Neighborhood in a Phase in which Assessments have not commenced, (d) comply with any City, County, State or Federal laws or regulations, (e) correct any typographical errors, and (f) supplement this Declaration with provisions which pertain to rights and obligations of Declarant, the Association or Owners arising under the Construction Claims Statute.

15.8. **EXERCISE OF RIGHTS.** Each Owner grants an irrevocable, special power of attorney to Declarant to execute and Record all documents and maps necessary to allow Declarant to exercise its rights under this Article.

15.9. USE OF NEIGHBORHOOD. Declarant and its prospective purchasers of Condominiums are entitled to the nonexclusive use of the Common Property and any recreational facilities thereon, without further cost for access, ingress, egress, use or enjoyment, to (a) show the Neighborhood to prospective purchasers, (b) dispose of the Neighborhood as provided in this Declaration, and (c) develop and sell the Annexable Territory. Declarant, and prospective purchasers, are also entitled to the nonexclusive use of any portions of the Neighborhood which are private streets, drives and walkways for ingress, egress and accommodating vehicular and pedestrian traffic to and from the Neighborhood and the Annexable Territory. The use of the Common Property by Declarant may not unreasonably interfere with the use thereof by the other Owners.

15.10. PARTICIPATION IN ASSOCIATION. The Association shall provide Declarant with written notice of the transfer of any Condominium and all notices and other documents to which a Mortgagee is entitled pursuant to this Declaration, provided that Declarant shall be provided such notices and other documents without making written required therefor. For a period of ten (10) years after the Close of Escrow for the sale of the last Condominium in the Neighborhood covered by a Final Subdivision Public Report, in addition to Declarant's rights as an Owner, Declarant shall have the following rights: (1) access to and the right to inspect the Association books and financial records, (2) access to and the right to inspect the Association's maintenance records; (3) access to and the right to inspect the Common Property of the Neighborhood; (4) right to receive notice of, attend and speak at all regular and special meetings of the Board of Directors and meetings of the Owners, and (5) right to receive copies of the minutes of the meetings of the Board of Directors and meetings of the Owners, upon request and payment of the actual costs to copy and distribute such records. The provisions of this Section shall not be amended without the prior written consent of Declarant.

15.11. DECLARANT APPROVAL OF ACTIONS.

15.11.1 General Rights. Until Declarant no longer owns a portion of the Neighborhood or the Annexable Territory, Declarant's prior written approval is required for any amendment to the Restrictions which would impair or diminish Declarant's rights to complete the Neighborhood or the Annexable Territory or sell or lease dwellings therein.

15.11.2 Limit on Actions. Until Declarant no longer owns any Condominiums in the Neighborhood, or the Annexable Territory, the following actions, before being undertaken by the Association, must first be approved in writing by Declarant:

(a) Any amendment or action requiring the approval of first Mortgagees;

(b) The annexation to the Neighborhood of real property other than the Annexable Territory pursuant to Section 16.2;

(c) The levy of a Capital Improvement Assessment for the construction of new facilities not constructed on the Common Property by Declarant;

(d) Any significant reduction of Association maintenance or other services; or

(e) Any modification or termination of any provision of the Restrictions benefiting Declarant.

15.12. **MARKETING NAME.** The Neighborhood shall be marketed under the general name "Willow Haven." Declarant may change the marketing name of the Neighborhood or designate a different marketing name for any Phase at any time in Declarant's sole discretion. Declarant shall notify the DRE of any change in or addition to the marketing name or names of the Neighborhood or any Phase.

ARTICLE XVI ANNEXATION OF ADDITIONAL PROPERTY

Additional real property may be annexed to Phase 1 and such additional real property may become subject to this Declaration by any of the following methods:

16.1. **ADDITIONS BY DECLARANT.** Declarant may add the Annexable Territory to the Neighborhood and bring such added territory within the general plan of this Declaration without the approval of the Association, the Board or Owners so long as Declarant, its successors or assigns owns the Annexable Territory.

16.2. **OTHER ADDITIONS.** Additional real property may be annexed to the Neighborhood and brought within the general plan of this Declaration on the approval by vote or written consent of Owners entitled to exercise no less than two-thirds (2/3) of the Association's voting power.

16.3. **RIGHTS AND OBLIGATIONS-ADDED TERRITORY.** Subject to the provisions of Section 16.4, when a Notice of Addition containing the provisions required by this Section is Recorded, all provisions in this Declaration will apply to the real property described in the Notice of Addition (the "*Added Territory*") in the same manner as if the real property were originally covered by this Declaration. Thereafter, the rights, powers and responsibilities of the parties to this Declaration with respect to the Added Territory will be the same as with respect to the property originally covered by this Declaration, and the rights, powers and responsibilities of the Owners, lessees and occupants of Condominiums in the Added Territory, as well as in the property originally subject to this Declaration, will be the same as if the Added Territory were originally covered by this Declaration. After the first day of the month following the first Close of Escrow in the Added Territory, the Owner of Condominiums located in the Added Territory shall share in the payment of Assessments to the Association to meet Common Expenses of the entire Neighborhood. Voting rights attributable to the Condominiums in the Added Territory may not be exercised until Annual Assessments have commenced on such Condominiums.

16.4. **NOTICE OF ADDITION.** The additions authorized under Sections 16.1 and 16.2 must be made by Recording a Notice of Addition which will extend the general plan of this Declaration to such Added Territory. The Notice of Addition for any addition under Section 16.1 must be signed by Declarant. The Notice of Addition for any addition under Section 16.2 must be signed by at least two (2) officers of the Association to certify that the Owner approval required under Section 16.2 was obtained. Recordation of the Notice of Addition effectuates annexation of the property described in the Notice of Addition as Added Territory. After the

first Close of Escrow in the Added Territory covered by a Notice of Addition, the Added Territory will constitute a part of the Neighborhood, become subject to this Declaration and encompassed within the general plan of covenants, conditions, restrictions, reservation of easements and equitable servitudes contained in this Declaration, and become subject to the Association's functions, powers and jurisdiction; and the Owners of Condominiums in the Added Territory will automatically acquire Membership. In no event, however, may any Notice of Addition revoke, modify or add to the covenants, conditions, restrictions, reservation of easements, or equitable servitudes established by this Declaration as the same pertain to the real property originally covered by this Declaration.

16.5. POWER OF ATTORNEY. Each Owner, by accepting and recording a Grant Deed to a Condominium in the Neighborhood, is deemed to constitute and irrevocably appoint Declarant, for so long as Declarant owns all or any portion of the Neighborhood or the Annexable Territory as Owner's Attorney-in-Fact, for Owner and for each of Owner's mortgagees, optionees, Owners, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, and each Owner is deemed thereby to have conveyed to Declarant a special power of attorney coupled with an interest authorizing Declarant to act as each Owner's attorney in fact to prepare, execute, acknowledge and record any amendment to or restatement of a Condominium Plan, as Declarant deems to be reasonably necessary in order to correct errors, to conform to as-built conditions, or to bring the Condominium Plan into compliance with any City, County, State or Federal laws or regulations. The acceptance or creation of any Mortgage or other encumbrance, whether or not voluntary, created in good faith, or given for value, shall be deemed to be accepted or created subject to each of the terms and conditions of the Power of Attorney described in this Section. Nothing set forth in this special power of attorney shall be deemed or construed to be an agreement by Declarant that Owner or any other party is entitled to participate in or exercise discretion over the preparation and recordation of Condominium Plans for any portion of the Annexable Territory. Owner agrees and acknowledges that the Owner owns no interest in the Annexable Territory, and that the Annexable Territory may be developed, if at all, by Declarant in its sole and absolute discretion.

16.6. DEANNEXATION AND AMENDMENT. Declarant may amend a Notice of Addition or delete all or a portion of a Phase from coverage of this Declaration and the Association's jurisdiction, so long as Declarant is the owner of all of such Phase, and (a) an amending instrument or a Notice of Deletion of Territory, as applicable, is Recorded in the same manner as the Notice of Addition was Recorded, (b) Declarant has not exercised any Association vote with respect to any portion of such Phase, (c) Assessments have not commenced with respect to any portion of such Phase, (d) Close of Escrow has not occurred for the sale of any Condominium in such Phase, and (e) the Association has not made any expenditures or incurred any obligations with respect to any portion of such Phase.

ARTICLE XVII CITY PROVISIONS

17.1. ASSESSMENTS. The Association shall have the right to access the Owners of each individual Condominium for the reasonable cost of maintaining the Association Property,

which includes the private parking areas and recreational facilities, and shall have the right to lien the property of any such Owner who defaults in the payment of such Assessment. The assessment lien, once recreated, shall be prior to all other liens recorded subsequent to the notice of the assessment or other document creating the assessment lien.

17.2. **TERMINATION OR AMENDMENTS.** This Declaration shall not be terminated or substantially amended without prior written consent of the Development Services Director of the City or the City's successor-in-interest. A proposed amendment shall be considered substantial if it affects the extent, usage or maintenance of the Association Property, which includes the private streets and recreational facilities.

17.3. **CONFLICTS.** In the event of any conflict between this Declaration and the Articles, Bylaws or Neighborhood Guidelines, this Declaration shall control.

[SIGNATURES ON FOLLOWING PAGE]

EXHIBIT A

LEGAL DESCRIPTION OF ANNEXABLE TERRITORY

All that real property in the City of Murrieta, County of Riverside, State of California, described as follows:

Lots 24 to 31, inclusive, Lots 33 and 34, and Lots H to M, inclusive, of Tract No. 31177, as shown on a Subdivision Map, filed in Book 347, Pages 80 to 85, inclusive, of Maps, in the Office of the Riverside County Recorder.

EXHIBIT B

**OWNER MAINTENANCE, REPAIR AND REPLACEMENT
RESPONSIBILITY**

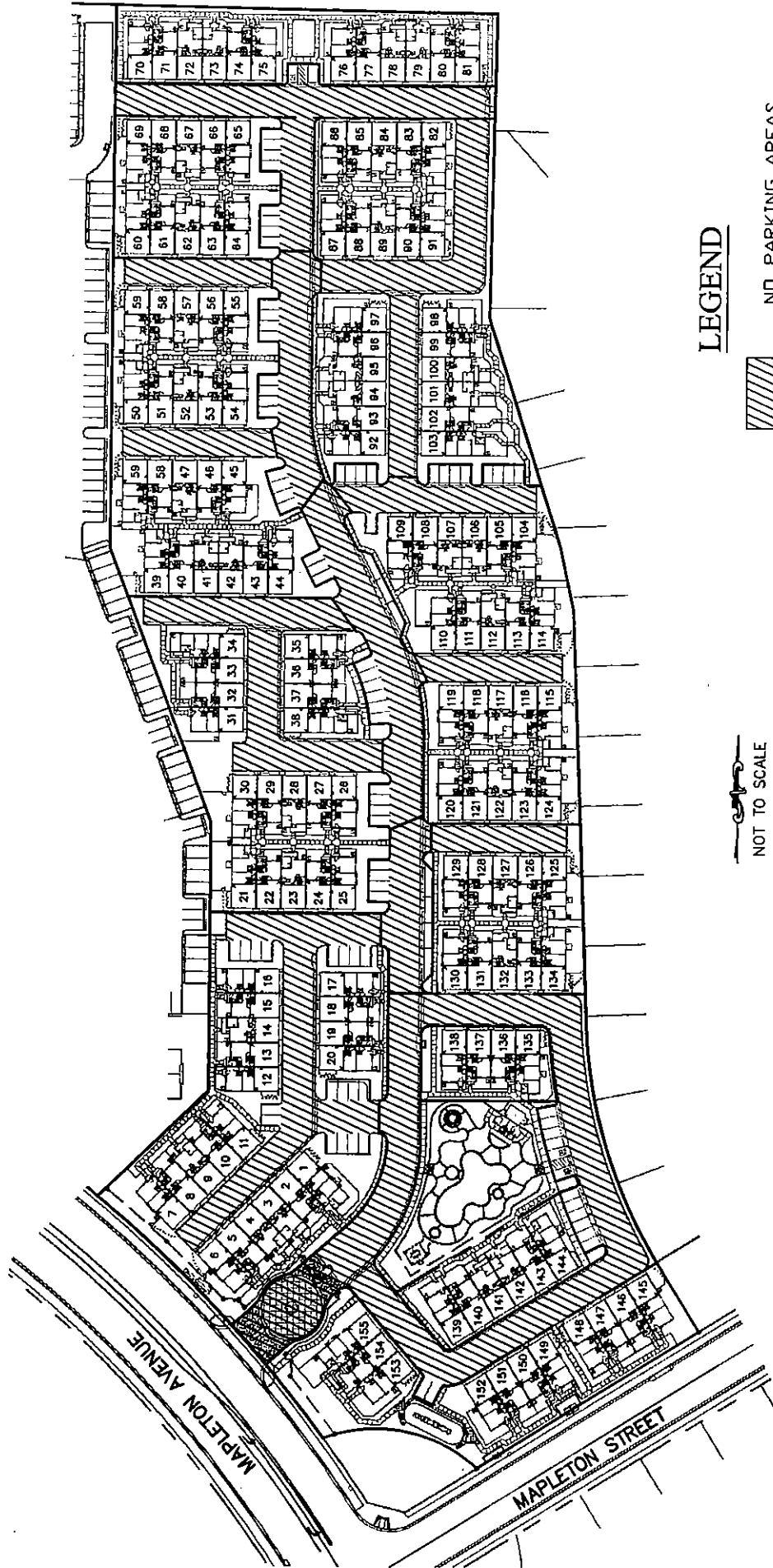
ITEM	OWNER RESPONSIBILITY
BUILDING EXTERIOR	
Unit entry doors (excluding entry door located in garage)	Maintain and replace, as necessary, interior surfaces. Owner maintenance obligations do not include responsibility for painting, staining or waterproofing exterior surface.
Unit entry door located in garage	Maintain and replace as necessary.
Garage Door	Maintain interior surface. Maintain, repair and replace all hardware, weather proofing, sheathing and opening mechanism. Maintain, repair and replace garage door opener(s). Owner maintenance obligation does not include responsibility for painting, staining or waterproofing exterior surface.
Exclusive Use Area patio	Sweep concrete walkway and keep free of debris and trash. Owner shall keep the surfaces of the wood fence and wood gate facing the patio clean and free of dust and dirt. Owners may not allow vegetation to attach to the wood fences or gate. Owner maintenance does not include the structural repair, resurfacing, sealing, caulking, replacement or painting of the concrete walkway, wood fence or wood gate surfaces unless damaged by Owner or Owner's family, guests, or tenants. Owner maintains landscape area in patio. Owners to keep patio drains clean and clear of debris.
Exclusive Use Area side yard	Keep free of debris and trash. Owner shall keep the surface of the wood gate and the surfaces of the walls or wood fence (as applicable) facing the side yard clean and free of dust and dirt. Owners may not allow vegetation to attach to the walls or wood fences. Owner maintenance does not include the structural repair, resurfacing, sealing, caulking, replacement or painting of wood gate, block wall or wood fence surfaces unless damaged by Owner or Owner's family, guests, or tenants. Owner maintains landscape area in side yard. Owners to keep drains in side yard clean and clear of debris.

ITEM	OWNER RESPONSIBILITY
Exclusive Use Area Deck	Keep free of debris and trash. Owner shall keep all surfaces of the deck free of dust and dirt. Owner maintenance does not include the structural repair, resurfacing, sealing, caulking, replacement or painting of deck surfaces unless damaged by Owner or Owner's family, guests, or tenants.
Sliding glass doors and screen doors	Clean exterior and interior surfaces. Maintain, repair and replace all hardware, weather proofing, sheathing, frame and any glass. Seal or otherwise weatherproof exterior surfaces.
Mailbox	Owner is responsible for replacement of key and lock, in the event of lost key.
Windows	Clean exterior and interior surfaces. Maintain, repair and replace broken glass. Repair and replace frame, screens, weather stripping, all caulking.
Air conditioning compressor and pad in Exclusive Use Areas	Maintain and repair.
Exterior Building Lighting	Maintain, repair and replace light fixtures controlled by switches in Unit or separately metered to Unit. Replace light bulbs as necessary.
BUILDING INTERIOR	
Unit interior	Maintain, repair and replace all interior doors, interior wall surfaces, drywall, cabinets, floor coverings, ceilings, permanent fixtures, door frames, firebox, and door hardware.
Garage	Maintain and repair.
Water, gas and sewer pipes, water pressure regulator, water heater, plumbing outlets and fixtures, ducts (HVAC, dryer, stove, oven), electrical, circuit breakers, electrical outlets and fixtures.	Maintain, repair and replace portions which are submetered to the Unit, or located within, or otherwise exclusively serve Unit.
UTILITIES	
Telephone Wiring	Maintain and repair portions within or which exclusively serve Unit.
Gas, Telephone	Owner responsible for obtaining and having serviced.

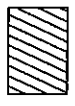
ITEM	OWNER RESPONSIBILITY
Electric and Water Service	Owner responsible for obtaining and having serviced.

EXHIBIT C
RESTRICTED PARKING AREAS

EXHIBIT C RESTRICTED PARKING AREAS TRACT 31177



LEGEND



NO PARKING AREAS

NOT TO SCALE