

INTERNATIONAL TITLE COMPANY  
RECORDING DEPARTMENT

Recording requested by:

When recorded return to:

FREDERICK C. MOORE, ESQ.  
Gallagher & Moore  
2 Park Plaza, Suite 680  
Irvine, CA 92614

15481-KC

Certified to be a true and correct  
copy of CC & R's

Recorded June 11, 2012

As Instrument No. 2012-0337780  
of Official Records of San Diego  
County, California

By [Signature]  
FIDELITY NATIONAL TITLE CO.

DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS, AND  
RESERVATION OF EASEMENTS FOR  
LAS BRISAS AT COTTONWOOD

A Residential Condominium Project

NOTE: AS MORE FULLY DESCRIBED IN THIS DECLARATION OR OTHERWISE PROVIDED BY DECLARANT, IN THE EVENT OF ANY DISPUTE(S) ARISING HEREUNDER, OR RELATING TO THE DESIGN AND/OR CONSTRUCTION OF THE PROJECT, SUCH DISPUTE(S) SHALL BE SUBMITTED TO A NONADVERSARIAL PROCEDURE AND IF NOT RESOLVED, SUBMITTED THEREAFTER TO AN ALTERNATIVE DISPUTE RESOLUTION PROCEDURE (e.g., JUDICIAL REFERENCE OR BINDING ARBITRATION), AND AS A RESULT THEREOF, SUCH DISPUTE(S) WILL NOT BE LITIGATED IN A COURT BEFORE A JURY. ANY PERSON ACQUIRING PROPERTY IN THIS DEVELOPMENT KNOWINGLY AND VOLUNTARILY AGREES TO BE BOUND BY A PROCEDURE WHICH DOES NOT INCLUDE A RIGHT TO A JURY AND KNOWINGLY AND VOLUNTARILY CONSENTS TO THE PROJECT HOMEOWNERS ASSOCIATION'S AGREEMENT TO BE BOUND BY SUCH PROCEDURE.

IF THIS PROCEDURE IS UNACCEPTABLE, AN INDIVIDUAL OR ENTITY SHOULD NOT ACQUIRE PROPERTY IN THIS PROJECT.

# TABLE OF CONTENTS

ARTICLE I	DEFINITIONS . . . . .	2
1.	Annexation Property . . . . .	2
2.	Architectural Guidelines . . . . .	2
3.	Architectural Review Committee . . . . .	2
4.	Articles . . . . .	2
5.	Assessments . . . . .	3
6.	Best Management Practices . . . . .	4
7.	Board . . . . .	5
8.	By-Laws . . . . .	5
9.	City . . . . .	5
10.	Common Area . . . . .	5
11.	Common Expenses . . . . .	5
12.	Common Property . . . . .	6
13.	Condominium . . . . .	6
14.	Condominium Plan . . . . .	7
15.	Condominium Unit . . . . .	7
16.	Corporation . . . . .	7
17.	Corporation Property . . . . .	7
18.	County . . . . .	8
19.	Declarant . . . . .	8
20.	Declaration . . . . .	9
21.	Dispute . . . . .	9
22.	DRE . . . . .	9
23.	Exclusive Use Corporation Property . . . . .	9
24.	FHLMC . . . . .	9
25.	FNMA . . . . .	9
26.	GNMA . . . . .	10
27.	Include, Including . . . . .	10
28.	Improvements . . . . .	10
29.	Limited Warranty . . . . .	10
30.	Local Government Agency . . . . .	10
31.	Lot . . . . .	11
32.	Maintain, Maintenance . . . . .	11
33.	Maintenance Guidelines; Maintenance Manual; Maintenance Obligations . . . . .	11
34.	Member . . . . .	11
35.	Mortgage . . . . .	11
36.	Mortgagee . . . . .	11
37.	Mortgagor . . . . .	11
38.	Notice and Hearing . . . . .	12
39.	Notice of Annexation . . . . .	12
40.	Owner . . . . .	12
41.	Phase . . . . .	12
42.	Project . . . . .	12
43.	Rules and Regulations . . . . .	12
44.	VA/FHA . . . . .	12
45.	Water Quality Management Plans . . . . .	13
46.	Interpretation . . . . .	13
47.	Application of Definitions . . . . .	14

ARTICLE II	INTRODUCTION TO LAS BRISAS AT COTTONWOOD . . . . .	14
	1. General Plan of Development . . . . .	14
	2. Membership in Corporation . . . . .	15
	3. Annexation of Subsequent Phases Into the Corporation . . . . .	15
	4. Declarant's Use of Streets and Utilities . . . . .	15
	5. Development Control . . . . .	16
	6. Non-Liability of Declarant . . . . .	17
	7. Irrevocable Limited Power of Attorney . . . . .	17
	8. Mortgage Interest and Other Encumbrances to Take Subject to Power of Attorney . . . . .	20
ARTICLE III	DESCRIPTION OF THE CONDOMINIUMS . . . . .	20
	1. Condominium Unit . . . . .	20
	2. Presumption of Boundaries of Condominium Units . . . . .	21
	3. Common Area . . . . .	22
	4. Exclusive Use Corporation Property . . . . .	22
	5. Undivided Fractional Fee Interest in Common Area . . . . .	24
	6. Easements Over Corporation Property . . . . .	24
	7. Components of Condominium Ownership . . . . .	24
	8. Condominium Numbering . . . . .	24
	9. Guest Parking Areas . . . . .	24
	10. Reservation of Easements Over Corporation Property For Subsequent Phases . . . . .	24
ARTICLE IV	RESERVATION OF EASEMENTS AND OTHER PROPERTY RIGHTS IN THE CORPORATION PROPERTY . . . . .	25
	1. Owners' Easements . . . . .	25
	2. Limitations on Owners' Easement Rights . . . . .	25
	3. Delegation of Corporation Property Use Rights . . . . .	27
	4. Easements for Vehicular Traffic . . . . .	27
	5. Easements for Air Conditioners . . . . .	28
	6. Easements for Utilities . . . . .	28
	7. Easements for Maintenance of the Corporation Property and Performance of Duties By Corporation . . . . .	30
	8. Easements for Clustered Mailboxes . . . . .	30
	9. Easements Over Sidewalks . . . . .	30
	10. Easements for Drainage . . . . .	31
	11. Easement for Area Drains . . . . .	31
	12. Easements for Construction and Sales . . . . .	32
	13. Easements for Master Antennae, Cable Television and Alarm System Cabling . . . . .	32
	14. Reservation of Construction Rights by Declarant . . . . .	32
	15. Easement for Public Service Uses . . . . .	32
	16. Control of Corporation Property . . . . .	33
	17. Easements for Encroachments . . . . .	34

18.	Easements for Operation and Maintenance Inspections of Best Management Practices . . . . .	34
19.	Other Easements . . . . .	34
ARTICLE V	THE CORPORATION . . . . .	35
1.	Membership . . . . .	35
2.	Voting Rights . . . . .	35
3.	Special Procedures For Appointment to the Board . . . . .	36
4.	Adjustment of Voting Rights . . . . .	36
5.	Vesting of Voting Rights . . . . .	36
6.	Suspension of Voting Rights . . . . .	37
7.	Transfer . . . . .	37
8.	Record Dates . . . . .	37
ARTICLE VI	POWERS AND DUTIES OF THE CORPORATION . . . . .	37
1.	Management Body . . . . .	37
2.	Powers . . . . .	37
3.	Duties . . . . .	40
4.	Discretionary Powers . . . . .	49
5.	Notification by Corporation of Defects . . . . .	50
6.	Awards Rendered in Construction Defects Disputes . . . . .	51
7.	Special Meeting of the Corporation for Construction Defect Disputes . . . . .	51
8.	Delegations of Duties . . . . .	51
9.	Right of Entry for Emergency . . . . .	51
10.	Right of Entry for Repairs . . . . .	51
11.	Limitations on Board Action . . . . .	52
12.	Licenses, Easements and Rights-of-Way . . . . .	53
13.	New Improvements . . . . .	53
14.	Corporation Rules and Regulations . . . . .	54
15.	Nonliability and Indemnification . . . . .	54
16.	Judicial Reference of Disputes . . . . .	56
ARTICLE VII	ASSESSMENTS . . . . .	63
1.	Creation of the Lien and Personal Obligation of Assessment . . . . .	63
2.	Purpose of Regular Assessments: Levy and Collection . . . . .	63
3.	Regular Assessments - Basis . . . . .	63
4.	Special Assessments for Capital Improvements . . . . .	66
5.	Compliance Assessments . . . . .	67
6.	Utility Assessment Component . . . . .	67
7.	Notice of Increase in Assessments . . . . .	68
8.	Special Benefit Assessments . . . . .	68
9.	Date of Commencement of Regular Assessments: Due Dates . . . . .	69
10.	Date of Commencement of Regular Assessments for Models . . . . .	70
11.	Collection of Assessments . . . . .	70
12.	Certification of Payment . . . . .	70



13.	Delivery by Owner . . . . .	70
14.	Delivery of Statement . . . . .	71
15.	Delivery by Declarant . . . . .	71
16.	Reserves . . . . .	71
17.	Offsets and Waiver Prohibited . . . . .	72
18.	Exempt Property . . . . .	72

ARTICLE VIII	EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE CORPORATION . . . . .	72
--------------	---	----

1.	Effect of Nonpayment of Assessments: Remedies of the Corporation . . . . .	72
2.	Notice of Delinquent Assessments . . . . .	73
3.	Foreclosure Sale . . . . .	73
4.	Curing of Default . . . . .	73
5.	Cumulative Remedies . . . . .	73
6.	Mortgagee Protection . . . . .	74

ARTICLE IX	USE RESTRICTIONS . . . . .	74
------------	----------------------------	----

1.	Private Dwelling . . . . .	74
2.	Common Property Use . . . . .	74
3.	Conduct Affecting Insurance . . . . .	74
4.	Liability for Damage to the Common Property . . . . .	75
5.	Signs . . . . .	75
6.	Maintenance of Animals . . . . .	76
7.	Quiet Enjoyment . . . . .	76
8.	Structural Changes . . . . .	77
9.	Improvements . . . . .	77
10.	Window Coverings . . . . .	77
11.	Commercial Activity . . . . .	78
12.	Parking and Vehicular Restrictions . . . . .	78
13.	Regulation of Parking; Towing; Parking Management Plan . . . . .	80
14.	Compliance With Management Documents . . . . .	81
15.	Solar Power System . . . . .	81
16.	Antenna Restriction/Improvements . . . . .	81
17.	Water Softeners . . . . .	83
18.	Leasing . . . . .	83
19.	Drilling . . . . .	83
20.	Trash . . . . .	83
21.	Exemption of Declarant . . . . .	84
22.	No Easements For View Purposes; Disclaimer . . . . .	85
23.	Screen Doors . . . . .	85
24.	Pollutant Control . . . . .	85
25.	Corporation Property . . . . .	86
26.	Rights of Disabled . . . . .	87
27.	Water Beds . . . . .	87
28.	Automatic Fire Sprinkler and Alarm System . . . . .	87
29.	No Use of Hazardous Materials . . . . .	88
30.	Address Numbers . . . . .	88
31.	Illuminated Directory Map . . . . .	88
32.	Noise . . . . .	88
33.	No Warranty of Enforceability . . . . .	91

ARTICLE X	REPAIR AND MAINTENANCE . . . . .	91
	1. Repair and Maintenance by Corporation . . . . .	91
	2. Maintenance Manual . . . . .	95
	3. Project Inspections . . . . .	96
	4. Maintenance of Phases Subject to Construction Easement . . . . .	96
	5. Repair and Maintenance by Owner . . . . .	97
	6. Damage and Destruction Affecting a Condominium. . . . .	99
	7. Levy of Compliance Assessments . . . . .	100
	8. Maintenance of Public Utilities . . . . .	100
ARTICLE XI	ENVIRONMENTAL AND OTHER DISCLOSURES AND REQUIREMENTS . . . . .	100
	1. Environmental Requirements . . . . .	100
ARTICLE XII	ARCHITECTURAL REVIEW - APPROVAL . . . . .	102
	1. Exemptions From Architectural Review . . . . .	102
	2. Architectural Review . . . . .	102
	3. Architectural Review Committee . . . . .	102
	4. Meetings of the Architectural Review Committee . . . . .	103
	5. Architectural Approval - Review of Plans and Specifications . . . . .	103
	6. Decisions of the Architectural Review Committee . . . . .	105
	7. Submittal to Public Agencies - Right of Architectural Review Committee to Review . . . . .	105
	8. Conflicts Between Governmental Agencies and Architectural Review Committee . . . . .	105
	9. No Waiver of Future Approvals . . . . .	106
	10. Compensation of Members . . . . .	106
	11. Variances . . . . .	106
	12. Inspection of Work . . . . .	106
	13. Non-Liability of Architectural Review Committee Members . . . . .	107
	14. Appeal . . . . .	107
	15. Approval of City . . . . .	107
ARTICLE XIII	DAMAGE OR DESTRUCTION TO THE CORPORATION PROPERTY . . . . .	108
	1. Election to Restore Corporation Property . . . . .	108
	2. Election Not to Restore Corporation Property . . . . .	109
	3. Excess Insurance Proceeds . . . . .	109
ARTICLE XIV	CONDEMNATION . . . . .	109
	1. Distribution of Awards . . . . .	109
	2. Board of Directors as Attorney-in-Fact . . . . .	109

ARTICLE XV	COVENANT AGAINST PARTITION . . . . .	110
	1. General Covenant Against Partition . . . . .	110
	2. Judicial Partition of the Project . . . . .	110
	3. Board of Directors' Power of Sale in Event of Judicial Partition . . . . .	110
ARTICLE XVI	INSURANCE . . . . .	111
	1. Required Insurance Coverage . . . . .	111
	2. Optional Insurance Coverage . . . . .	113
	3. Notice of Cancellation of Insurance . . . . .	113
	4. Review of Coverage . . . . .	114
	5. Waiver by Owners . . . . .	114
	6. Premiums, Proceeds and Settlement . . . . .	114
	7. Rights and Duties of Owners to Insure . . . . .	114
	8. Trustee for Policies . . . . .	115
	9. Mortgage Clause . . . . .	115
	10. Compliance With Requirements of FHLMC, FNMA and VA/FHA . . . . .	115
	11. Required Waiver . . . . .	117
	12. Annual Notification of Insurance . . . . .	118
ARTICLE XVII	MORTGAGEE PROTECTION . . . . .	118
	1. Mortgagee Protection Provisions . . . . .	118
	2. Violation of Mortgagee Protection Provisions . . . . .	123
	3. Effect of Amendments . . . . .	123
	4. Amendments to Conform With Mortgagee Requirements . . . . .	123
ARTICLE XVIII	ENFORCEMENT OF BONDED OBLIGATIONS . . . . .	124
	1. Enforcement of Bonded Obligations . . . . .	124
ARTICLE XIX	ANNEXATION OF ADDITIONAL PROPERTY . . . . .	125
	1. Phased Development of the Project . . . . .	125
	2. Annexation Pursuant to General Plan . . . . .	125
	3. Annexation Pursuant to Approval . . . . .	125
	4. Notice of Annexation . . . . .	125
	5. Effective Date of Annexation . . . . .	126
	6. Right of De-Annexation . . . . .	126
	7. Amendments to Notices of Annexation . . . . .	126
ARTICLE XX	VETERANS AFFAIRS PROVISIONS . . . . .	127
	1. Condominium Ownership . . . . .	127
	2. Condominium Documentation . . . . .	127
	3. Amendments . . . . .	127
	4. Description of the Condominium Units, Common Area, and Corporation Property . . . . .	127
	5. Corporation's Right of Termination of Certain Contracts . . . . .	128
	6. Corporation's Right of Entry and Other Rights . . . . .	128

7.	Assessments . . . . .	128
8.	Reserves and Working Capital . . . . .	129
9.	Voting Rights . . . . .	129
10.	Easements . . . . .	129
11.	Restrictions on Alienation . . . . .	129
12.	Rights of Action . . . . .	129
13.	Miscellaneous Requirements . . . . .	130

ARTICLE XXI      GENERAL PROVISIONS . . . . . 133

1.	Enforcement . . . . .	133
2.	Severability . . . . .	134
3.	Term . . . . .	135
4.	Construction . . . . .	135
5.	Singular Includes Plural . . . . .	135
6.	Amendments . . . . .	135
7.	Encroachments . . . . .	138
8.	Notices . . . . .	138
9.	Attorneys' Fees . . . . .	139
10.	Mergers or Consolidations . . . . .	139
11.	Corporation Property Claims . . . . .	139
12.	Right to Repair Law and As-Is Conveyance and Release Provisions . . . . .	139
13.	Maintenance Standards . . . . .	140
14.	No Representations or Warranties . . . . .	140
15.	Exhibits . . . . .	140
16.	Project Disclosures . . . . .	140
17.	Priorities and Inconsistencies . . . . .	143
18.	Declarant's Representative . . . . .	143
19.	Compliance with Requirements of FHLMC, FNMA, and VA/FHA . . . . .	144
20.	Declarant's Duty to Convey Easements . . . . .	144

EXHIBITS:

Exhibit A	Legal Description of Phase 1
Exhibit B	Annexation Property
Exhibit C	Sample Form of Limited Warranty
Exhibit D	Maintenance Matrix
Exhibit E	No Parking Areas
Exhibit F	Corporation Maintained Storm Drain
Exhibit G	Corporation Maintained Fences & Walls
Exhibit H	Intentionally Omitted
Exhibit I	Right to Repair Law and As-Is Conveyance and Release Provisions
Exhibit J	Recreational Improvements

DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS, AND  
RESERVATION OF EASEMENTS FOR  
LAS BRISAS AT COTTONWOOD

---

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, AND RESERVATION OF EASEMENTS FOR LAS BRISAS AT COTTONWOOD is made this 8th day of May, 2012, by ENCORE SANTEE HOLDINGS, LLC, a Delaware limited liability company (hereinafter referred to as the "Declarant").

W I T N E S S E T H:

A. Declarant owns that certain real property located in the City of Santee, County of San Diego, State of California, more particularly described on Exhibit "A" attached hereto (hereinafter referred to as the "Property" or "Phase 1").

B. Declarant desires to subdivide Lot 1 of Tract No. 2005-02, as authorized by Section 66427 of the California Government Code, into "condominiums," as defined in Section 783 of the California Civil Code, and to develop Phase 1 and any of the "Annexation Property," as hereinafter defined, which is subsequently annexed to Phase 1 pursuant to the Article herein entitled "Annexation of Additional Property" as a common interest development, more particularly described in Section 1351(f) of the California Civil Code as a "condominium project" (hereinafter referred to as the "Project"), as more particularly described below.

C. Declarant deems it desirable to impose a general plan for the development, maintenance, improvement, protection, use, occupancy and enjoyment of the Project, and to establish, adopt and impose covenants, conditions, restrictions, easements, equitable servitudes, liens and charges (hereinafter referred to as the "Protective Covenants") upon the Project for the purpose of enforcing, protecting and preserving the value, desirability and attractiveness of the Project.

D. Declarant deems it desirable for the efficient enforcement, protection and preservation of the value, desirability and attractiveness of the Project to create a corporation which shall be delegated and assigned the powers of administering and enforcing the Protective Covenants.

E. The Las Brisas at Cottonwood Community Corporation, a California nonprofit, mutual benefit corporation, has been or will be incorporated under the laws of the State of California for the purpose of exercising the aforesaid powers.

F. Declarant intends to convey Phase 1, and any and all real property annexed thereto, subject to the Protective Covenants set forth hereinbelow.

NOW, THEREFORE, pursuant to Sections 1350, et seq., of the California Civil Code, Declarant declares that it does hereby establish a general plan for the development, maintenance, care, improvement, protection, use, occupancy, management and enjoyment of the Project, and that all or any portion of the Project shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved, subject to the protective covenants set forth herein ("Protective Covenants"). Each and all of the Protective Covenants shall run with the Project, and shall be binding upon all persons having any right, title or interest in the Project, or any portion thereof, their heirs, successors and assigns, and shall inure to the benefit of and be binding upon Declarant, its successors and assigns, all subsequent owners of all or any portion of the Project, together with their grantees, heirs, executors, administrators, devisees, successors and assigns.

## ARTICLE I

### DEFINITIONS

Section 1. "Annexation Property" shall mean and refer to that certain real property described in Exhibit "B" attached hereto, including all Improvements (as defined below) constructed thereon, all or any portion of which may be annexed to Phase 1 as set forth in the Article herein entitled "Annexation of Additional Property."

Section 2. "Architectural Guidelines" shall, if used herein, mean and refer to those certain architectural standards, landscape standards and other general policies, procedures and criteria which may be adopted by the Board pursuant to this Declaration for use by the Architectural Review Committee in reviewing plans and specifications for proposed Improvements to an Owner's Condominium (e.g., Exclusive Use Corporation Property). The Architectural Guidelines are general guidelines and may be amended from time to time by a majority of the Board. A copy of the Architectural Guidelines may be obtained from the Architectural Review Committee.

Section 3. "Architectural Review Committee" shall mean and refer to the committee created pursuant to the Article herein entitled "Architectural Review - Approval."

Section 4. "Articles" shall mean and refer to the Articles of Incorporation of the Las Brisas at Cottonwood Community Corporation, as filed in the Office of the Secretary of State of the State of California, as such Articles may be amended, from time to time.

Section 5. "Assessments" shall be used as a generic term which shall mean and refer to the following:

(a) "Regular Assessment" shall mean and refer to the annual charge against each Owner and his respective Condominium representing a portion of the Common Expenses of the Corporation;

(1) "General Assessment Component." The General Assessment Component consists of the Common Expenses of the Corporation, exclusive of all Utility Assessment Components budgeted to the Condominiums, if applicable. The General Assessment Component shall be allocated equally among the Owners and their respective Condominiums based upon the number of Condominiums owned; and

(2) "Utility Assessment Component." The Utility Assessment Component consists of the Common Expenses of the Corporation incurred in connection with the provision of water to the Condominium Units. Domestic water will be supplied to the Condominiums through a master water meter installed within the Project, and water and sewer services will be billed to the Corporation based on readings from the master meter. The Corporation will assess a Utility Assessment Component to each Owner for water and sewer fees based upon the usage readings obtained from the submeter for the Owner's Condominium. Because each Owner's usage will vary, the Utility Assessment Component will not be the same for every Owner; rather, each Owner will pay an equitably proportionate share of the Common Expenses of the Corporation incurred in connection with the provision of water to the Condominium Units based on the readings obtained from the submeter for the Owner's Condominium;

(b) "Compliance Assessment" shall mean and refer to the personal charge against an Owner representing the costs incurred by the Corporation to repair any damage to the Common Property (as defined below) for which such Owner (or any member of his family, or his guests, invitees, tenants or lessees) was responsible, the costs incurred by the Corporation to bring such Owner and his Condominium into compliance with this Declaration, and/or any amount due the Corporation based upon disciplinary proceedings against an Owner in accordance with this Declaration, or any amount due the Corporation to reimburse the Corporation for administrative costs attributable to an Owner as provided herein;

(c) "Special Assessment" shall mean and refer to the charge against an Owner and his respective Condominium representing a portion of the cost of reconstructing any damaged or destroyed portion or portions of the Common

Property, of constructing or installing any capital improvements to the Common Property, or of taking any extraordinary action for the benefit of the Common Property or the membership of the Corporation, pursuant to the provisions of this Declaration. In addition, Special Assessment shall mean and refer to a reasonable fine or penalty assessed by the Board, plus interest and other charges on such Special Assessment as provided for herein; and

(d) "Special Benefit Assessment" shall mean and refer to a charge levied by the Corporation against an Owner and his respective Condominium to cover the expenses incurred by the Corporation in the operation, maintenance, repair and/or funding of reserves for a portion of the Project designated by Declarant or the Board as a "Special Benefit Area," which expenses are allocable only to the Owners and their Condominium within such an Area. Currently no Special Benefit Areas are contemplated by the Declarant.

Section 6. "Best Management Practices" shall mean and refer to those certain structural, treatment control, and non-structural water quality management practices set forth in, or otherwise required pursuant to, the Water Quality Management Plans ("WQMP") approved for or applicable to the Project. The structural and treatment control Best Management Practices may include, without limitation, landscape planting, hillside planting, roof runoff controls, efficient irrigation technology, slope and channel protection measures, storm drain signage, trash storage areas, litter control requirements, in-flow based treatment control BMPs (e.g., vegetated buffer strips, vegetated swales, multiple systems, bioretentions, and hydrodynamic separation systems), volume based treatment control BMPs (e.g., wet ponds, constructed wetlands, extended detention basins, water quality inlets, retention/irrigation, infiltration basins, infiltration trenches, media filters, and manufactured proprietary devices), detention basins, retention basins, debris basins, "V" ditches, bench drains, catch basins, catch basin media filters, fossil filters, inlet trash racks, drainpacs and other storm drain filtration devices, energy dissipaters, culverts, pipes, and related storm drain and water quality facilities constructed in the Project. The non-structural Best Management Practices generally require the Corporation and the Owners and other residents within the Project to be aware of the sensitive natural environment surrounding the Project and to take appropriate actions to control runoff from the Project. With respect to the Corporation, the non-structural Best Management Practices may include: (i) providing informational materials to the Owners and other residents within the Project regarding general good housekeeping practices for protection of storm water quality; (ii) restricting certain activities addressed in the informational materials to protect the quality of water entering the storm drain system; (iii) managing the landscaping on the Corporation Property, including, without limitation, using fertilizers and pesticides in accordance with the "Management Guidelines for Use of Fertilizers



and Pesticides" which is included, if applicable, in the appendix to the Water Quality Management Plans; (iv) performing on a regularly scheduled basis maintenance consisting, at a minimum, of litter control, emptying of common trash receptacles and sweeping of dumpster enclosures; (v) inspecting and cleaning the catch basins located on the Corporation Property; and (vi) sweeping any on-site private paved areas on a regular basis and prior to the rainy season (i.e., prior to October 15th of each year). With respect to the Owners and other residents within the Project, the non-structural Best Management Practices may include, among other things, restricting certain activities to protect the quality of water entering the storm drain system (e.g., prohibiting the disposal of motor oil, paint products, car detergents and other pollutants into the storm drains in the Project). The Best Management Practices are designed and intended to control runoff and must be implemented by the Corporation, and the Owners and other residents within the Project. The Best Management Practices may be modified from time to time by the Declarant or any public agency having jurisdiction regarding water quality for runoff waters from the Project in order to control runoff as the Project develops and runoff conditions change. Compliance by the Corporation and the Owners with the Best Management Practices, as they may be modified from time to time, may be monitored and enforced by any public agency having jurisdiction regarding water quality for runoff waters from the Project, including, without limitation, the City, County, Regional Water Quality Control Board, and State Water Resources Board.

Section 7. "Board" shall mean and refer to the Board of Directors of the Corporation, elected in accordance with the By-Laws of the Corporation and this Declaration.

Section 8. "By-Laws" shall mean and refer to the By-Laws of the Corporation which have been, or will be, adopted by the Board, as such By-Laws may be amended, from time to time.

Section 9. "City" shall mean and refer to the City of Santee, California and its various departments, divisions, employees and representatives.

Section 10. "Common Area" in Phase 1 shall mean and refer to that certain portion of Phase 1 described as "Common Area" on the Condominium Plan for Phase 1, as defined in Section 1351(b) of the California Civil Code and as more particularly described hereinbelow. Portions of the Annexation Property may be designated as additional "Common Area" for a subsequent Phase in any Notice of Annexation recorded in the Office of the County Recorder, in accordance with the Article herein entitled "Annexation of Additional Property."

Section 11. "Common Expenses" shall mean and refer to the actual and estimated costs to be paid by the Corporation for the common benefit of all Owners of Condominiums in the Project.

Except as otherwise provided in this Declaration, the Common Expenses shall include all costs and expenses incurred by the Corporation in connection with the following: (a) owning, maintaining, managing, operating, repairing and replacing the Corporation Property; (b) managing and administering the Corporation, including, but not limited to, compensation paid by the Corporation to managers, accountants, attorneys, budget preparers, and other consultants and any Corporation employees; (c) all general office and administrative expenses incurred by the Architectural Review Committee; (e) providing utilities and other services to the Corporation Property, and, if not separately provided, to the Condominium Units (e.g., water, trash, etc.); (f) providing insurance (and paying deductibles) as provided for herein; (g) paying that portion of any Assessment attributable to Common Expenses not paid by the Owner responsible for payment; (h) paying taxes for the Corporation; (i) paying all reasonable out-of-pocket expenses actually incurred by the members of the Board and officers of the Corporation in performing their duties as provided herein (e.g., postage and photocopying); (j) enforcing the provisions of this Declaration, the By-Law, and Rules and Regulations; and (k) paying for all other goods and services as reasonably required by the Corporation to perform its powers and duties as set forth herein. Additionally, the Common Expenses shall include adequate reserves, as the Board shall determine to be appropriate, for the repair and replacement of those elements of the Corporation Property which must be repaired or replaced on a periodic basis, rather than on a regular annual basis. The Common Expenses do not include any actual or estimated costs to be paid by the Corporation for those Improvements to the Corporation Property which constitute Special Benefit Improvements and which are allocable as Special Benefit Expenses to the Owners of Condominiums within a Special Benefit Area.

Section 12. "Common Property" as used herein shall mean and refer collectively to all Common Area and to all Corporation Property in the Project. Common Property shall also include any additional Corporation Property and Common Area which are designated and described as such and which are annexed into the Project pursuant to a Notice of Annexation recorded in the Office of the County Recorder, in accordance with the Article herein entitled "Annexation of Additional Property."

Section 13. "Condominium" shall mean an estate in real property, as defined in California Civil Code Sections 1351(f) and (1)(2), as same may be amended from time to time, consisting of a separate interest in a Condominium Unit, an undivided fractional fee interest in the Common Area of that Phase of the Project of which the Condominium is a part, as more particularly shown and described in a Condominium Plan affecting such Phase recorded in the Office of the County Recorder, together with all exclusive and nonexclusive easements appurtenant thereto. Condominiums in Phase 1 of the Project are more particularly described in Article III of this Declaration. Condominiums in any subsequent Phase may be des-

cribed in a Notice of Annexation which is recorded that affects such Phase.

Section 14. "Condominium Plan" shall mean and refer to each of those instruments entitled "Condominium Plan," prepared in accordance with Section 1351(e) of the California Civil Code, as the same may be amended, from time to time, and recorded in the Office of the County Recorder, affecting one (1) or more Phases of the Project, and shall consist of (a) a description or survey map of the Project, which shall refer to or show monumentation on the ground; (b) a three-dimensional description of the Project, one or more dimensions of which may extend for an indefinite distance upwards or downwards in sufficient detail to identify the Common Area, each Condominium Unit and the Corporation Property; and (c) a certificate consenting to the recordation thereof signed and acknowledged by the record owner of fee title to the property included in the Condominium Plan, and by either the trustee or the beneficiary of each recorded deed of trust and the Mortgagee of each recorded Mortgage encumbering property included in the Condominium Plan. The Condominium Plan for Phase 1 shall be recorded prior to or concurrently with this Declaration, and the Condominium Plan for each subsequent Phase shall be recorded prior to or concurrently with the Notice of Annexation for such Phase.

Section 15. "Condominium Unit" shall mean and refer to the elements of a Condominium which are not owned in common with the Owners of other Condominiums in the particular Phase in which the Condominium is located. Condominium Units in Phase 1 are more particularly described in the Article herein entitled "Description of the Condominiums" and in the Condominium Plan recorded for such Phase. Condominium Units in subsequent Phases shall be described in a Notice of Annexation and in the Condominium Plan recorded for each respective Phase of the Project. For purposes of this Declaration, the term "Condominium Unit" is deemed to be a "separate interest," as defined in Sections 1351(f) and (1)(2) of the California Civil Code, as same may be amended from time to time.

Section 16. "Corporation" shall mean and refer to the Las Brisas at Cottonwood Community Corporation, a California nonprofit, mutual benefit corporation, in which all Owners shall have a membership interest as more particularly described hereinbelow, provided that membership shall be limited to Owners. In the event the Corporation as a corporate entity is dissolved, a nonprofit, unincorporated association shall forthwith and without further action or notice be formed to succeed to all of the rights and duties of said Corporation, as set forth herein. The affairs of such unincorporated association shall be governed by the By-Laws and this Declaration as if they were created for the purpose of governing the affairs of an unincorporated association.

Section 17. "Corporation Property" shall mean and refer to all personal property now or hereinafter owned by the Corpora-

tion and all that real property (and all Improvements thereon) owned in fee by the Corporation or over which the Corporation has an easement for the use, care, maintenance or other purpose for the common use, benefit, and enjoyment of all members as provided herein. In this first phase of the Project, the Corporation Property which will be conveyed to the Corporation is that portion of Lot 1 of Tract No. 2005-02 shown and described as "Corporation Property" on the Condominium Plan (excepting therefrom the Condominium Units), together with all that certain real property over which the Corporation has easements for ingress, egress, access, drainage, utilities, irrigation, landscaping, and/or maintenance. The Corporation Property will be conveyed to the Corporation. The Corporation Property shall include, without limitation, all easements to the Corporation as set forth herein, the condominium buildings (excepting therefrom the Condominium Units), together with all Improvements including awnings, gutters and downspouts, bearing walls, columns, beams, roofs, slabs, foundations, chimneys, fences, exterior stairs and landings, reservoirs, tanks, pumps, private on-site water lines, fire sprinkler lines, the master meter and submeters, and main sewer lines, common mailbox structures, irrigation equipment, fire sprinklers, including sprinkler heads which protrude into the airspace of the Condominium Unit, if any, fire standpipes, fire alarm systems, fire extinguishers, and other fire prevention equipment and/or facilities located on or servicing/protecting the Corporation Property, and other central services, pipes, ducts, flues, chutes, conduits, wires, exterior lighting and other private utility installations wherever located (except all utility lines, installations and/or outlets thereof when located within or exclusively serving one Condominium Unit, including the internal and external telephone wiring designed to exclusively serve a Condominium Unit), fences, common recreational facilities (e.g., pool, spa, fountain, recreational building, etc.), common trash receptacles and recycling bins, sidewalks, sound walls, retaining walls, perimeter walls, private entry gate and associated access system, private drives and aisles, the private storm drain system for the Project (e.g., detention basin, rip rap, etc.), poles, signs, Project monument signs and directories, and landscaping located on the Corporation Property, excepting therefrom landscaping and improvements located in the Exclusive Use Corporation Property. Portions of the Annexation Property may be annexed separately or as part of a subsequent Phase and shall be designated as Corporation Property in any Notice of Annexation recorded in the Office of the County Recorder, in accordance with the provisions of the Article herein entitled "Annexation of Additional Property."

Section 18. "County" shall mean and refer to the County of San Diego, California, and its various departments, divisions, employees, and representatives.

Section 19. "Declarant" shall mean and refer to ENCORE SANTEE HOLDINGS, LLC, a Delaware limited liability company, and its successors and assigns, if such successors and assigns acquire any

or all of Declarant's interest in the Property for the purpose of purchase or sale, excluding any Owners, and Declarant has expressly transferred or assigned to such successors or assigns its rights and duties as Declarant to all or any portion of the Project. For any successor assignee of "Declarant" to be deemed a Declarant under the terms of this Declaration, Declarant shall record in the County a document so designating said successor or assignee as Declarant. A successor Declarant shall also be deemed to include the beneficiary under any deed of trust securing an obligation from a then existing Declarant encumbering all or any portion of the Property, which beneficiary has acquired any such property by foreclosure, power of sale or deed in lieu of such foreclosure or sale.

Section 20. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements, and to all amendments to this Declaration as may be recorded, from time to time, in the Office of the County Recorder, in accordance with Section 1351(h) and Section 1353 of the California Civil Code.

Section 21. "Dispute" shall have the meaning set forth herein below.

Section 22. "DRE" shall mean and refer to the Department of Real Estate of the State of California, which administers the sale of subdivided lands pursuant to Sections 11000, et seq., of the California Business and Professions Code, or any similar California statute hereinafter enacted.

Section 23. "Exclusive Use Corporation Property" shall mean those portions of the Corporation Property over which exclusive easements or licenses are reserved for the benefit of certain Owners, as described herein and shown on the Condominium Plan, including, without limitation, balconies, covered porches, parking spaces, air conditioning pads, and internal and external telephone wiring designed to serve a single Condominium Unit but located outside the boundaries of the Condominium Unit, if applicable, in accordance with California Civil Code Section 1351(i), as same may be amended from time to time. The location of the Exclusive Use Corporation Property air conditioning pads shall be those locations as originally constructed by Declarant.

Section 24. "FHLMC" shall mean and refer to the Federal Home Loan Mortgage Corporation (The Mortgage Corporation) created by Title III of the Emergency Home Finance Act of 1970, as same may be amended, from time to time, including any successors thereto.

Section 25. "FNMA" shall mean and refer to the Federal National Mortgage Association, a government-sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968, as amended, from time to time, including any successors thereto.

Section 26. "GNMA" shall mean and refer to the Government National Mortgage Association administered by the United States Department of Housing and Urban Development, including any successors thereto.

Section 27. "Include, Including" (whether capitalized or not) shall mean "includes without limitation" and "including without limitation," respectively.

Section 28. "Improvements" shall mean and refer to all structures and appurtenances thereto of every kind, including, but not limited to, Condominium buildings (excluding the Condominium Units), open parking areas, swimming pools, spas, cabanas, private streets, drives, and aisles, street lights, pavement, sidewalks, walls, fences, decorative or informative signs, retaining walls, mail kiosks, trellises, television and radio antenna, common trash receptacles, if any, screens, private utility line connections, poles, signs, all Corporation Property landscaping and irrigation systems. Improvements shall also mean and refer to all additions and/or modifications to the exterior of any Condominium building, including, but not limited to, (a) painting the exterior of any Condominium building or other structure, (b) changing the roofing material on any Condominium building, and/or (c) building, constructing, installing, altering or planting, as the case may be, any spas, patio covers, gazebos, stairs, screening walls or fences, shades, awnings, screen doors, exterior doors, skylights, solar heating panels, air conditioning and/or water softening or refining fixtures or systems, and all landscaping which left in its natural condition will grow to a height in excess of twenty feet (20') (unless otherwise determined by the Rules and Regulations).

Section 29. "Limited Warranty" shall mean and refer to the express written limited warranty to be provided to the initial Owners who acquire a residential Condominium from the Declarant, and, if applicable, to the Corporation. A sample copy of the version(s) currently available is attached hereto as Exhibit "C" and provided for illustrative purposes only. Each Owner shall be responsible to ensure that the subsequent purchaser of such Owner's Condominium, if applicable, is aware of the Limited Warranty and the procedures and forms which must be followed and executed to transfer such Limited Warranty, if applicable, to said subsequent purchaser. The Limited Warranty provided to Owners in certain DRE Phases may differ from the Limited Warranty to be provided to Owners in other DRE Phases because the Residences in certain Phases (e.g., Phases 1 and 2) were constructed by a builder other than Declarant.

Section 30. "Local Government Agency" shall mean and refer to the City, the County, a public school district, a public water district, and any other local or municipal government entity or agency including, without limitation, any community service area, special assessment district, maintenance district or community facilities district.

Section 31. "Lot" shall mean and refer to a plot of land which is separately described and numbered or lettered on a recorded tract map or parcel map as such plot of land may be modified or otherwise adjusted by a recorded lot line adjustment or recorded certificate of compliance.

Section 32. "Maintain, Maintenance" (whether capitalized or not) shall mean "inspect, maintain, repair and replace" and "maintenance, repair and replacement," respectively; provided, however, that "maintain" or "maintenance" shall not include inspection, repair and replace(ment) where the context or specific language of this Declaration provides another meaning.

Section 33. "Maintenance Guidelines; Maintenance Manual; Maintenance Obligations" shall mean and refer to any current written guidelines, setting forth procedures and standards for the maintenance and operation of Corporation Property Improvements or Condominiums that may be provided to the Corporation or Owners by Declarant (e.g., Corporation Property Maintenance Manual and/or Homeowners Resource Guide) or any governmental agency or manufacturer or set forth herein for the maintenance of Corporation Property or a Condominium and other Improvements Declarant has constructed on or in the Project. Maintenance Guidelines include any Maintenance Manual initially prepared at Declarant's direction, and recommended inspections and maintenance activities for components of the Corporation Property or Condominium and any Maintenance Obligations prepared by Declarant pertaining to same.

Section 34. "Member" shall mean and refer to every person or entity who holds membership in the Corporation, as more particularly set forth in the Article herein entitled "The Corporation," and shall be synonymous with the term "Owner."

Section 35. "Mortgage" shall mean and include any mortgage or deed of trust, or other conveyance of a Condominium (or other portion of the Project) to secure the performance of an obligation, which conveyance will be reconveyed upon the completion of such performance, including an installment land sales contract (as described in Sections 2985 et seq. of the California Civil Code, as same may be amended, from time to time). The term "Deed of Trust," when used herein, shall be synonymous with the term "Mortgage."

Section 36. "Mortgagee" shall mean and refer to a person or entity to whom a Mortgage is made, and shall include the beneficiary of a Deed of Trust or the vendor under an installment land sales contract, as the case may be, and the assignees of a Mortgage, beneficiary or vendor.

Section 37. "Mortgagor" shall mean and refer to a person or entity who mortgages his or its Condominium to another, i.e., the maker of a Mortgage, and shall include a trustor of a Deed of Trust and the vendee under an installment land sales contract.

Section 38. "Notice and Hearing" shall mean and refer to written notice and the opportunity for a hearing before the Board or the Architectural Review Committee of the Corporation, as applicable, or other tribunal appointed by the Board in the manner provided in the By-Laws, at which the affected Owner shall have an opportunity to be heard in the manner provided herein and in the By-Laws.

Section 39. "Notice of Annexation" shall mean and refer to that certain document recorded for the purpose of annexing all or a portion of the Annexation Property into the Project, in accordance with the provisions of this Declaration, thereby subjecting said subsequent Phase to the provisions of this Declaration and to the jurisdiction of the Corporation.

Section 40. "Owner" shall mean and refer to one or more persons or entities who alone or collectively are the record owner, or owners, of fee simple title to a Condominium, excluding those persons or entities having any such interest merely as security for the performance of an obligation. If a Condominium has been sold under a land sales contract (as described in Sections 2985 et seq. of the California Civil Code, as same may be amended, from time to time), in which the State of California is the vendor, then the vendee shall be deemed to be the Owner of such Condominium. If a Condominium is leased by Declarant for a term of ten (10) or more years, including renewal periods, and the lease or memorandum thereof is recorded, the lessee or transferee of the leasehold interest and not the Declarant shall be deemed the Owner. If fee title to a Condominium is owned other than by Declarant, the Owner of the fee title and not the lessee of such Condominium shall be deemed the Owner regardless of the term of the lease.

Section 41. "Phase" shall mean and refer to a Lot, or Lots or portions thereof, improved with Condominiums or other Improvements which is (are) annexed into the Project in accordance with this Declaration, and which is (are) subject to a separate Final Subdivision Public Report issued by the DRE.

Section 42. "Project" shall mean and refer to Phase 1 (and to all Improvements, including the Condominium Units, constructed thereon), together with all Common Property and to all portions of the Annexation Property which are annexed to Phase 1 in accordance with the applicable provisions of this Declaration.

Section 43. "Rules and Regulations" shall mean and refer to the Rules and Regulations adopted by the Board pursuant to the By-Laws or this Declaration, as they may be amended, from time to time.

Section 44. "VA/FHA" shall mean and refer to the United States Department of Veterans Affairs and/or Federal Housing Administration, including the department or agency of the United States government as shall succeed to the VA and/or FHA. For



purposes of the FHA's requirements, including, without limitation, the certification by an attorney required by HUD Handbook 4150.1 Rev-1 that all "condominium legal documents" meet the HUD guidelines set forth in HUD Handbook 4265.1, Appendix 24, and state and local condominium laws, the Articles, By-Laws, Declaration, and Condominium Plan shall constitute the "condominium legal documents."

Section 45. "Water Quality Management Plans" shall mean and refer to all applicable plans and requirements for the management of storm water at the Project, including, without limitation, any applicable National Pollutant Discharge Elimination System ("NPDES") permit requirements, the City of Santee's Storm Water Management and Discharge Control Ordinance, Standard Urban Storm Water Mitigation Plan ("SUSMP"), Storm Water Facilities Maintenance Agreement, Storm Water Pollution Prevention Plan ("SWPPP"), Water Quality Management Plan ("WQMP"), Drainage Area Management Plan ("DAMP"), Local Implementation Plan ("LIP"), and other storm water quality management plans that may be prepared and approved for the Project in compliance with applicable federal, state and local laws. The Water Quality Management Plans address water runoff generated by the residential areas and other development Improvements within the Project and will be monitored by various public agencies (e.g., the Regional Water Quality Control Board and the City). The Water Quality Management Plans contain, among other things, certain Best Management Practices that must be followed by the Corporation, the Owners, and/or other residents within the Project. The Water Quality Management Plans and the related Best Management Practices may be modified at any time by the Declarant and/or the public agencies having jurisdiction over such matters.

Section 46. Interpretation.

(a) General Rules. This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for subdividing, maintaining, improving and selling the Condominiums. 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.

(b) Articles, Sections and Exhibits. The Article and Section headings are 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. Except as otherwise noted herein (e.g., the sample form of Limited Warranty, which is attached hereto for illustrative purposes only and is not incorporated by reference), all exhibits attached to this Declaration are incorporated in this Declaration by this reference. The locations and dimensions of any Improvements depicted on the Exhibits attached hereto and to

any Notice of Annexation are approximate only, and the as-built location and dimension of any such Improvements shall control.

(c) Priorities and Inconsistencies. If there are conflicts or inconsistencies between this Declaration and the Articles, Bylaws, or Rules and Regulations, then the provisions of this Declaration shall prevail.

(d) Severability. The provisions of this Declaration are independent and severable. A determination of invalidity, partial invalidity or unenforceability of any one (1) provision of this Declaration by a court of competent jurisdiction does not affect the validity or enforceability of any other provisions of this Declaration.

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

Section 47. Application of Definitions. The aforesaid definitions shall be applicable throughout this Declaration, and to any supplements or amendments hereto filed or recorded pursuant to the provisions of this Declaration, and to any Notice of Annexation for a subsequent Phase, unless otherwise indicated or the context shall prohibit such application.

## ARTICLE II

### INTRODUCTION TO LAS BRISAS AT COTTONWOOD

Section 1. General Plan of Development. Las Brisas at Cottonwood is presently planned as a multi-phase condominium project, as defined in Section 1351(f) of the California Civil Code, which, if completed as planned, may consist of approximately twenty-eight (28) attached Condominiums and various amenities. Nothing in this Declaration and/or Notice of Annexation is intended, or shall be interpreted, to constitute an "enhanced protection agreement" as defined in Section 901 of the California Civil Code. The Project will be developed in accordance with California Civil Code, Sections 1350, et seq., and in substantial conformance with the development plan, Condominium Plan, and the architectural plans and other plans submitted to and approved by the City and reviewed by the DRE (which plans may set forth the architectural style and the size of the Condominium Units). As of the recordation date of this Declaration, it is anticipated that the architectural style of the Condominiums will be two or three story townhome style Condominiums and that the square footages of the residential Condominium Units may range from approximately 1356 to 2225 square feet.

(a) As presently planned, Phase 1 will consist of approximately nine (9) Condominiums and Common Property. Each Condominium Unit will be completed prior to the close of escrow for the sale of such Condominium. The Condominiums are more particularly described in the Article herein entitled "Description of the Condominiums." The Owners in Phase 1 will receive title to their respective Condominium Units, various easements (exclusive and nonexclusive, as set forth in this Declaration), an undivided one-ninth (1/9th) interest in the Common Area, and a membership in the Corporation.

(b) As presently planned, subsequent Phases of Las Brisas at Cottonwood may be annexed as more particularly set forth in this Declaration, and the Condominium Units in such Phases may or may not be of similar construction, size, and appearance as the Condominium Units in Phase 1. The Owners in subsequent Phases will receive title to their respective Condominium Units, various easements (exclusive and non-exclusive, as set forth in this Declaration and the Notice of Annexation recorded on said Phase), an undivided interest in the Common Area of such Phase, and a membership in the Corporation.

Section 2. Membership in Corporation. As more particularly set forth in this Declaration, each Owner of a Condominium in the Project shall automatically become a Member of the Corporation, and shall be obligated for the payment of Assessments to the Corporation. In addition, except as otherwise provided herein, each Owner, his family members, lessees, tenants, guests and invitees, will be entitled to the use and enjoyment of the Corporation Property within the Project, in accordance with this Declaration, the By-Laws and Rules and Regulations adopted by the Board.

Section 3. Annexation of Subsequent Phases Into the Corporation. At such time as future Phases are developed, if ever, Declarant may annex said Phases into the Corporation pursuant to the terms and conditions set forth herein. If Declarant elects to annex said Phases, a Notice of Annexation shall be recorded on each Phase, which shall serve to impose the Protective Covenants set forth herein upon such Phase and to subject such Phase to the jurisdiction of the Corporation. The voting rights in the Corporation and the Assessments levied by the Corporation shall be adjusted as set forth herein.

Section 4. Declarant's Use of Streets and Utilities. Declarant hereby reserves, together with the right to grant and transfer all or a portion of the same, until the earlier of when Declarant no longer owns an interest in Lot 1 of Tract No. 2005-02 or the Annexation Property or five years from the recordation of this Declaration, easement rights to use the private drives and aisles and any private utilities within the Project for, including, but not limited to, access and connection of utilities by Declarant for purposes of developing the real property comprising Lot 1 of Tract No. 2005-02 and the Annexation Property.

Section 5. Development Control. Nothing in this Article or elsewhere in this Declaration shall limit, restrict, abridge or control, in any manner whatsoever, Declarant's right to complete the planning, development, grading, construction, advertising, marketing, leasing and sales of the Condominiums, and all other property within the Project (including any property which may be annexed thereto pursuant to the provisions of this Declaration), including, without limitation, the following specific rights, which may be exercised by Declarant, or by its agents and employees, in conjunction with such development and marketing of Condominiums in the Project. Therefore, Declarant shall have the right to: (a) complete construction of any Improvements in the Project; (b) redesign or otherwise alter the style, size, color or appearance of any Improvements in any portion of the Project owned by Declarant and implement an Assessment schedule thereon consistent with such development; (c) construct additional Improvements on any portion of Lot 1 of Tract No. 2005-02 and/or the Annexation Property owned by Declarant; (d) subdivide, resubdivide, adjust Lot lines, grade or re-grade any portion of the Project owned by Declarant; and (e) otherwise control all aspects of designing, constructing, and phasing the Improvements in the Project, and of marketing and conveying Condominiums in the Project. In furtherance thereof, Declarant hereby reserves, unto itself and its successors and assigns for so long as Declarant owns any interest in Lot 1 of Tract No. 2005-02 and/or the Annexation Property, however, not to exceed five years from the recordation of this Declaration, and is entitled to annex Annexation Property to the Project:

(a) A nonexclusive easement for ingress and egress on, over and across the Project as necessary to construct the Condominium Units and all other Improvements;

(b) The exclusive right to maintain one (1) or more sales office(s), model complex(es), construction trailer, interior design and decorator center(s) within property owned by Declarant, and parking area for employees, agents and prospective buyers;

(c) The exclusive right to place reasonable signs, flags, banners, billboards or other forms of advertising on any portion of the Project owned or controlled by Declarant and/or Corporation Property (specifically including the Project entry area), as Declarant deems necessary, irrespective of size, color, shape or materials of such items as long as such use does not unreasonably interfere with the Owners' reasonable use of the Corporation Property;

(d) A nonexclusive right to utilize the Corporation Property and any unassigned open parking spaces in connection with its program for the sale or leasing of Condominiums in the Project;

(e) The right to install, place, replace, construct, reconstruct, modify or remove any Improvement from any Condominium owned by Declarant, as Declarant may, in its sole discretion, deem appropriate;

(f) The right to conduct any commercial activity upon any Condominium owned by Declarant which reasonably relates to the development, marketing, leasing or sale of the Condominiums or other property in the Project; and

(g) The right to utilize the Corporation Property in the Project for marketing and promotional activities; however, if these activities could result in excluding an Owner from the reasonable use of the Corporation Property, the Declarant must first obtain approval from the Board, which approval may be withheld in the sole and absolute discretion of the Board.

Each Owner hereby grants, upon acceptance of his deed to his Condominium Unit, an irrevocable special power of attorney to Declarant, for as long as Declarant has any ownership interest in Lot 1 of Tract No. 2005-02 or the Annexation Property, to execute and record all documents and maps necessary to allow Declarant to exercise its rights under this Declaration or to further the development and/or maintenance of Lot 1 of Tract No. 2005-02 and the Annexation Property.

Section 6. Non-Liability of Declarant. Nothing in this Article or elsewhere in this Declaration shall be understood or construed to compel Declarant to construct any subsequent Phase of the Project, nor to compel Declarant to annex said Phases into the Project. The purpose of this Article is merely to describe the legal relationship between the first and any subsequent Phases of the Project in the event all or any of such Phases shall be constructed and annexed into the Project.

Section 7. Irrevocable Limited Power of Attorney. Each Owner of a Condominium in the Project, by accepting a deed to a Condominium, hereby irrevocably appoints Declarant as his attorney-in-fact, for himself and each of his Mortgagees, optionees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, and hereby grants to Declarant an irrevocable limited power of attorney coupled with an interest for Declarant to act as his attorney-in-fact in connection with any modification to the development plans of all or any portion of the Project. Each Owner hereby acknowledges and agrees that this irrevocable limited power of attorney is: (a) retained for the benefit of the Declarant and not the Owner; and (b) created by Owner's acceptance of a deed to a Condominium and as part of the consideration for the purchase and sale of a Condominium. Based on the foregoing, each Owner further acknowledges and agrees that this

irrevocable limited power of attorney is "coupled with an interest" and, pursuant to Section 2356 of the California Civil Code, as same may be amended, from time to time, may not be terminated by: (a) the Owner's revocation of such limited power of attorney; (b) the Owner's death; or (c) the Owner's incapacity to contract. In furtherance thereof and subject to the limitations and restrictions set forth in this Article, Declarant shall have the right and power as a duly authorized attorney-in-fact to perform any of the following actions:

(a) To prepare, execute, acknowledge and record any map or record of survey affecting the Project required or permitted by the provisions of the Subdivision Map Act of the State of California in effect on the date of the recording of this Declaration, and as thereafter amended, and any ordinances, rules or regulations of the City, and any other governmental entities and authorities having jurisdiction over the Project, in effect on the date of the recording of this Declaration, and as thereafter enacted or amended, or which may be required or permitted by any title insurer, and, in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, State and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute, acknowledge and deliver any improvement agreements and bonds, and post deposits securing the performance of any such conditions and obligations;

(b) To prepare, execute, acknowledge and record any amendment to a Condominium Plan, including, without limitation, any amendments necessary to cause such Condominium Plan to conform with the Improvements as actually built, which may be required or permitted by the laws of the State of California as in effect on the date of the recording of this Declaration, as thereafter enacted or amended, and any ordinances, rules and regulations of the City, and any other governmental entities and authorities having jurisdiction over the Project, as in effect on the date of the recording of this Declaration, and as thereafter enacted or amended, or which may be required or permitted by any title insurer, and, in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, State and local governmental entities and authorities; and to execute, acknowledge and deliver any improvement agreements and bonds, and post deposits securing the performance of any such conditions and obligations;

(c) To prepare, execute, acknowledge and file for approval any application for zoning or setback changes or lot line adjustments, or condominium plan amendments, or variance or conditional use permits, or any other permits or reports required or permitted by the laws of the State of California

as in effect on the date of the recording of this Declaration, as thereafter enacted or amended, and any ordinances, rules and regulations of the City, and any other governmental entities and authorities having jurisdiction over the Project, as in effect on the date of the recording of this Declaration, and as thereafter enacted or amended, or which may be required or permitted by any title insurer, and, in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, State and local governmental entities and authorities; and to execute, acknowledge and deliver any improvement agreements and bonds, and post deposits securing the performance of any such conditions and obligations;

(d) To make applications for any property reports or public reports, or amendments thereto, or exemption from the requirements therefor required or permitted by federal and State statutes, rules and regulations relating to the sale, lease, transfer or other disposition of subdivided lands, and, in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, State and local governmental entities and authorities; and to execute, acknowledge and deliver any improvement agreements and bonds, and post deposits securing the performance of any such conditions and obligations;

(e) To deliver any public reports or property reports, or amendments thereto, obtain receipts and offer and administer rescission rights required by law;

(f) To prepare, execute, acknowledge and file for approval any registration or application for any permit, approval, exemption, ruling or entitlement, which registration or application is required or permitted pursuant to any law or regulation in effect as of the date of the recording of this Declaration, and as hereafter enacted or amended by any federal, State and local governmental entities and authorities, and, in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by such governmental body, and by any such laws and regulations; to appear before any such governmental bodies, and to execute and deliver any improvement agreements and bonds, and post deposits securing the performance of any such conditions and obligations; and to do all other things now or thereafter permitted or required by any such governmental body and any such laws and regulations;

(g) To prepare, execute, acknowledge and record any deeds or waivers which may be permitted or required to clear title to any constructed or unconstructed Condominium Units in the Project; and

(h) To do any and all things necessary or desirable under the circumstances to effect and accomplish development of the Project (e.g., condominium plan amendments, recordation of maintenance guidelines for the Common Property and/or Condominiums).

Section 8. Mortgage Interest and Other Encumbrances to Take Subject to Power of Attorney. 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 hereinabove.

### ARTICLE III

#### DESCRIPTION OF THE CONDOMINIUMS

Declarant, in order to establish a plan of Condominium ownership for Phase 1, does hereby declare that it has divided, and does hereby divide, Phase 1 into the following freehold estates:

Section 1. Condominium Unit. Each Condominium Unit shall be a separate interest, as defined in Sections 1351(f) and (1)(2) of the California Civil Code, as same may be amended from time to time, consisting of the Residential Airspace Element and, in some cases, the Garage Airspace Element defined below in accordance with the plans and specifications for each Condominium Unit within Phase 1, as more particularly shown and described on the Condominium Plan:

(a) Residential Airspace Element. The residential airspace element is bound by and contained within the interior unfinished surfaces of the perimeter walls, floors, ceilings, windows, and doors of said element, and the airspace encompassed thereby, identified on the Condominium Plan by the letter "U" or the word "Unit" and its respective Condominium Unit number. The lower and upper boundaries of each residential airspace element are horizontal or sloped planes, the elevations of which are indicated in the diagrams (e.g., vertical sections) and/or tables, if any, set forth in the Condominium Plan. The lateral boundaries of each residential airspace element are vertical planes at the limits of the horizontal dimensions shown in the Condominium Plan for each residential airspace element.

(b) Garage Airspace Element. If applicable, the garage airspace element is bound by and contained within the interior unfinished surfaces of the perimeter walls, floors, ceilings, and garage door of said element, and the airspace encompassed thereby, identified on the Condominium Plan by the letter "G" or the word "Garage." The lower and upper boundaries of each garage airspace element are horizontal or



sloped planes, the elevations of which are indicated in the diagrams (e.g., vertical sections) and/or tables, if any, set forth in the Condominium Plan. The lateral boundaries of each garage airspace element are vertical planes at the limits of the horizontal dimensions shown in the Condominium Plan for each garage airspace element. No portion of the garage may be used for or converted to a habitable space.

Each Condominium Unit includes both the portion of the building so described and the airspace so encompassed, all windows and doors of said Condominium Unit (including all locks, handles, latches, screens, weatherstripping, exterior doors, and the garage door), the forced air heating unit, the air conditioning compressor, if any, the hot water heater, all utility laterals, lines, pipes and/or outlets when located within or exclusively serving said Condominium Unit (including the internal and external telephone wiring designed to exclusively serve the Condominium, no matter where such are located), all built-in appliances and fixtures, the garage door opener, the chimney flue and firebox portion of the fireplace in or servicing the Condominium Unit, if any, and the interior staircase, if any, within the airspace of the Condominium Unit, but the following are not a part of the Condominium Unit: awnings, gutters and downspouts, bearing walls, columns, beams, floors, roofs, slabs, foundations, chimneys, fences, exterior stairs and landings, reservoirs, tanks, pumps, private on-site main sewer laterals and lines, common mailbox structures, irrigation equipment, fire sprinklers, including sprinkler heads which protrude into the airspace of the Condominium Unit, if any, fire standpipes, fire alarm systems, fire extinguishers, and other fire prevention equipment and/or facilities located on or servicing/protecting Corporation Property, and other central services, pipes, ducts, flues, chutes, conduits, wires, exterior lighting, and other utility installations wherever located (except all utility installations and/or outlets thereof when located within or exclusively serving one Condominium Unit, including the internal and external telephone wiring designed to exclusively serve a Condominium Unit, and/or as set forth above), fences, common recreational facilities (e.g., pool, spa, fountain, recreational building, etc.), common trash receptacles and recycling bins (if any), sidewalks, sound walls, retaining walls, perimeter walls, private entry gates and access system, private drives and aisles, the private storm drain system for the Project (e.g., detention basin, rip rap, etc.), poles, signs, Project monument signs and directories, and landscaping located on the Corporation Property, excepting therefrom landscaping and improvements located in the Exclusive Use Corporation Property.

Section 2. Presumption of Boundaries of Condominium Units. In interpreting this Declaration, the Condominium Plan, and all instruments of conveyance, the existing physical boundaries of the Condominium Unit, or of a Condominium Unit reconstructed in substantial accordance with the original Condominium Plan thereof,

shall be conclusively presumed to be its boundaries, rather than the metes and bounds (or other description) expressed in this Declaration, Condominium Plan, or instrument of conveyance, regardless of settling or lateral movement of the condominium building and regardless of minor variances between the boundaries shown in the Condominium Plan, in the deed and/or in this Declaration, and the actual boundaries of the condominium building.

Section 3. Common Area. As described and referred to hereinabove, the Common Area in Phase 1 consists of the "Common Area," as depicted on the Phase 1 Condominium Plan, but does not include any of the Condominium Units or Corporation Property. The Common Area is comprised of a three-dimensional airspace volume, the dimensions of which are more particularly described in the Condominium Plan.

Section 4. Exclusive Use Corporation Property. Exclusive Use Corporation Property shall mean and refer to that portion of the Corporation Property which is reserved for the exclusive use of the Owners of particular Condominium Units. An Exclusive Use Corporation Property constitutes an exclusive easement or license appurtenant to its assigned Condominium Unit, subject to the exclusive uses and purposes set forth herein. Each Exclusive Use Corporation Property balcony, covered porch, parking space, and air conditioning pad and the Condominium Unit within Phase 1 to which such items are appurtenant (as applicable - the Condominiums may not have all of the Exclusive Use Corporation Property areas described below) is identified in the Condominium Plan as follows:

(a) Balcony. If applicable, the balcony area bound by and contained within the exterior finished surfaces of the perimeter walls, doors and/or windows of the adjoining residential element, and the interior finished surfaces of the balcony perimeter walls and/or railings and doors, identified in the Condominium Plan by the letter "B" and its respective Condominium Unit number, is hereby assigned to such Condominium Unit as shown on the Condominium Plan. Any storage areas located in said balcony area are considered part of the balcony area even if not specifically depicted on the Condominium Plan.

(b) Covered Porch. If applicable, the covered porch area bound by and contained within the exterior finished surfaces of the perimeter walls, doors and/or windows of the adjoining residential element, and the interior finished surfaces of the covered porch perimeter walls and/or railings and doors, identified in the Condominium Plan by the letter "P" and its respective Condominium Unit number, is hereby assigned to such Condominium Unit as shown on the Condominium Plan. Any storage areas located in said covered porch area are considered part of the covered porch area even if not specifically depicted on the Condominium Plan.

(c) Parking Space. If applicable, the location of the Exclusive Use Corporation Property parking spaces shall be those locations as originally constructed by Declarant and assigned by Declarant to a Condominium Unit on an exhibit attached hereto, a Condominium Plan, or in a separate instrument recorded by Declarant.

(d) Air Conditioning Pad. The location of the Exclusive Use Corporation Property air conditioning pads shall be those locations as originally constructed by Declarant.

Subject to the provisions herein, including but not limited to the Article entitled "Repair and Maintenance," it shall be the obligation of each and every Owner to keep his respective Exclusive Use Corporation Property in a neat, clean, safe and attractive condition at all times, except for the structural integrity of the balcony area (if applicable), unless otherwise agreed by an unanimous vote of the Board. The Corporation shall be responsible for maintenance of the structural components of the Exclusive Use Corporation Property balcony area unless otherwise determined by a unanimous vote of the Board; provided however, if any maintenance or repairs are required due to willful or negligent acts or omissions of any Owner, his family, lessees, tenants, guests, or invitees, the Corporation shall levy a Compliance Assessment against the Owner for such costs. Should landscaping be placed in or on a balcony, the Owner must take adequate steps to capture water from such plants and to prevent any damage to the Project or unsightly conditions. The Board shall have the right to restrict pots or other items from being placed on top of or attached to any fence or railing or to allow the potted plants to grow on the exterior of any balcony or covered porch railing, fence or all or portions of the building. Each Owner shall be responsible to pay for the repairs of any damage which may be caused by the placing of landscaping (including potted plants) in his or her Exclusive Use Corporation Property area. No Owner shall make any improvements to his or her balcony or covered porch area, or other Exclusive Use Corporation Property area unless and until the Architectural Review Committee has approved plans of such Improvements showing such detail as the Architectural Review Committee or its consultant deems appropriate. The Architectural Review Committee shall have the right to restrict or prohibit any items from being placed on or attached to a balcony area which are within view of other Owners and which the Architectural Review Committee deems to be unattractive or not appropriate. Each Owner assumes all risks which may result from Improvements he or she makes to his or her Exclusive Use Corporation Property area or Condominium Unit, and each Owner indemnifies and holds harmless the Corporation, the Architectural Review Committee, Declarant and each other Owner from any claims, demands, liabilities, judgments, attorney's fees and other obligations which arise out of or are incurred in connection with the installation, existence or removal of such Improvements.

Section 5. Undivided Fractional Fee Interest in Common Area. The interest in the Common Area of Phase 1 hereby established and which shall be conveyed with each respective Condominium Unit in Phase 1 is a one/ninth (1/9th) undivided fractional fee interest. The above respective undivided fractional fee interest established and to be conveyed with the respective Condominium Units, as indicated above, cannot be changed. Declarant, for and on behalf of itself, and its successors, assigns and grantees, covenants and agrees that neither the Condominium Unit nor the respective undivided fractional fee interest in the Common Area shall be separately conveyed or encumbered. An otherwise valid conveyance or encumbrance referring only to the Condominium Unit shall also convey or encumber the respective undivided fractional fee interest in the Common Area. Any attempt to convey or encumber the undivided fractional fee interest in the Common Area without the respective Condominium Unit shall be null and void.

Section 6. Easements Over Corporation Property. Each Owner shall have a nonexclusive easement appurtenant to his or her Condominium for ingress, egress, use, and enjoyment in, on, over, under, across, and through the Corporation Property in the Project, except those portions of the Corporation Property set aside as Exclusive Use Corporation Property, subject to the provisions in this Declaration.

Section 7. Components of Condominium Ownership. Each Condominium in Phase 1 includes: (a) a separate interest in a Condominium Unit, as defined in Section 1 hereinabove; (b) all easements, exclusive and nonexclusive, appurtenant to the respective Condominium Unit; (c) a one/ninth (1/9th) undivided fractional fee interest as tenants-in-common in the Common Area; and (d) a membership in the Corporation.

Section 8. Condominium Numbering. The nine (9) individual Condominium Units which are hereby established and which shall be individually conveyed are described and numbered on the Condominium Plan.

Section 9. Guest Parking Areas. Except as otherwise provided in this Declaration, the Condominium Plan, or determined by the Board, any unassigned open parking areas shall be used on a first come, first serve basis by guests and residents. Residents are required to first park in their garages. No parking areas are depicted on Exhibit "E" attached hereto.

Section 10. Reservation of Easements Over Corporation Property For Subsequent Phases. Declarant hereby reserves the right to grant nonexclusive easements over the Corporation Property in Phase 1 (except any portions of the Corporation Property set aside as Exclusive Use Corporation Property and except for any portions subject to the rights reserved by Declarant as set forth in this Declaration) in favor of each Owner of a Condominium in a subsequent Phase at such time as the annexation of such Phase becomes

effective, and the Owners of the Condominiums described in this Declaration shall automatically obtain nonexclusive easements over all Corporation Property which is a part of such subsequent Phase, except any portions of the Corporation Property set aside as Exclusive Use Corporation Property or subject to rights reserved by Declarant.

#### ARTICLE IV

##### RESERVATION OF EASEMENTS AND OTHER PROPERTY RIGHTS IN THE CORPORATION PROPERTY

Section 1. Owners' Easements. Every Owner shall have a nonexclusive right and easement of access, use and enjoyment in and to the Corporation Property in the Project. Said right and easement shall be appurtenant to and shall pass with title to every Condominium, subject to the limitations set forth in Section 2 below.

Section 2. Limitations on Owners' Easement Rights. The rights and easements of access, use and enjoyment set forth in Section 1 hereinabove shall be subject to the provisions of this Declaration, including, but not limited to, the following:

(a) The right of Declarant to designate additional Common Area and Corporation Property by recordation of one (1) or more Notices of Annexation, pursuant to the provisions of the Article herein entitled "Annexation of Additional Property";

(b) The right of the Corporation to reasonably limit the number of guests of Owners;

(c) The right of the Corporation to establish and enforce reasonable Rules and Regulations pertaining to the use of the Corporation Property and Exclusive Use Corporation Property, including all facilities located thereon and to enact uniform and reasonable Architectural Guidelines, in accordance with the Article herein entitled "Architectural Review";

(d) The right of the Corporation, in accordance with its Articles, By-Laws and this Declaration, to borrow money with the assent of sixty-seven percent (67%) of the voting power of the Corporation, excluding Declarant, and/or to Mortgage, pledge, deed in trust or otherwise hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, for the purpose of improving or repairing the Corporation Property and related facilities;

(e) The right of the Corporation to suspend the voting rights and rights and easements of any Member (and the

persons deriving such rights and easements from any Member) to use and enjoy any amenities on the Corporation Property (except for reasonable rights of access to such Member's Condominium) for the period during which any Assessment against such Member's Condominium remains unpaid and delinquent; and after Notice and Hearing, to impose monetary penalties or suspend such use rights and easements for a period not to exceed thirty (30) days for any noncontinuing violation of this Declaration or Rules and Regulations, it being understood that any suspension for either nonpayment of any Assessments or breach of such Rules shall not constitute a waiver or discharge of the Member's obligations to pay Assessments as provided herein;

(f) Subject to the terms and provisions of the Article herein entitled "Mortgagee Protection," the right of the Corporation to dedicate or transfer all or any part of the Corporation Property to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless: (1) an instrument approving said dedication or transfer is signed by two authorized officers of the Corporation attesting that Owners representing at least sixty-seven percent (67%) of the voting power of the Corporation, excluding Declarant, approved such action and is recorded in the Office of the County Recorder, and (2) a written notice of the proposed dedication or transfer is sent to every Owner not less than fifteen (15) days nor more than thirty (30) days in advance; provided, however, that the dedication or transfer of easements for utilities or for other public purposes consistent with the intended use of the Corporation Property shall not require the prior approval of the Members of the Corporation;

(g) The right of Declarant (and its respective sales agents, representatives and prospective purchasers) to the nonexclusive use of the Corporation Property, and the facilities located thereon, without charge for sales, display access and exhibit purposes; provided, however, that such use shall cease upon the date that Declarant no longer owns a Condominium in the Project, nor any Annexation Property. Such use shall not unreasonably interfere with the rights of enjoyment of the Corporation Property by other Owners;

(g) The right of the Corporation to perform and exercise its duties and powers as set forth herein;

(h) The right of Declarant to designate additional Corporation Property, pursuant to the terms of the Article herein entitled "Annexation of Additional Property";

(i) The right of the Corporation to approve, which approval shall not be unreasonably withheld, and impose

various conditions on access to the Corporation Property for the purpose of allowing an Owner to maintain the Exclusive Use Corporation Property designed to exclusively serve his particular Condominium Unit. In addition, the right of the Corporation, acting through the Board, to reasonably restrict access to roofs, maintenance and landscaped areas, and similar areas of the Corporation Property, and to prohibit any modification to any portion of the Corporation Property (e.g., the condominium buildings);

(j) Other rights of the Corporation, the Architectural Review Committee, the Board, the Owners and Declarant with respect to the Corporation Property as may be provided for in this Declaration; and

(k) Any limitations, restrictions or conditions affecting the use, enjoyment or maintenance of the Corporation Property imposed by Declarant, or by the City, or other governmental agency having jurisdiction to impose any such limitations, restrictions or conditions, including, but not limited to, the rights of the City or such other governmental agency having jurisdiction to use their vehicles or appropriate equipment over those portions of the Corporation Property designed for vehicular movement to perform municipal functions or emergency or essential public services.

Section 3. Delegation of Corporation Property Use Rights. Subject to the rights reserved to the Corporation as set forth herein, any Owner who resides within the Project may delegate his rights of use and enjoyment to the Corporation Property to the members of his immediate family and their guests and invitees. In the event an Owner has rented or leased his Condominium, his rights to use and enjoy common amenities on the Corporation Property shall be automatically delegated to his tenants or lessees for the duration of their tenancy, and the Owner shall forfeit any rights to use and enjoy any common amenities on the Corporation Property (except those portions reasonably necessary to access said Owner's Condominium to perform normal functions of a landlord) for the duration of such tenancy. With respect to an installment land sales contract, the seller under the contract shall be deemed to have delegated his rights to use and enjoy any common amenities on the Corporation Property to the purchaser under the contract.

Section 4. Easements for Vehicular Traffic. In addition to the general right and easements for access, use and enjoyment granted herein, there shall be, and Declarant hereby reserves unto itself, and its successors and assigns, together with the right to grant and transfer all or a portion of the same, a nonexclusive appurtenant easement for vehicular ingress, egress and access over the private drives and aisles within the Project to among other things, (i) access any portion of the Annexation Property not annexed to the Project and (ii) provide ingress, egress and access

to and from any portion of the Annexation Property not annexed into the Project.

Section 5. Easements for Air Conditioners. As to any air conditioning compressor which is located on or within a portion of the Common Property (e.g., on the roof of a building), there is hereby created, established and granted an exclusive easement on, over and across said portion of the Common Property for the permanent placement of such air conditioning compressor in accordance with the as-built condition by Declarant. Additionally, and subject to restrictions, conditions, and limitations which may be imposed by the Board, each such affected Owner is granted an easement for ingress, egress and access on and over the Common Property to maintain, repair and replace his or her respective air conditioning compressor. The locations of the air conditioner pads shall be the as-built conditions of the air conditioner pads by Declarant.

Section 6. Easements for Utilities. The rights and duties of the Owners of Condominiums within the Project with respect to sanitary sewer, water, electricity, gas, television cable and telephone lines, and other facilities, shall be governed by the following:

(a) Each respective utility company shall maintain all utility facilities and connections on the Project owned by such utility company; provided, however, that if any company shall fail to do so, it shall be the obligation of each Owner to maintain those facilities and connections located upon, within or exclusively servicing such Owner's Condominium (e.g., sewer/water laterals) which may be located within Corporation Property, and it shall be the obligation of the Corporation to maintain those facilities and connections located upon the Corporation Property and/or which provide service to more than one (1) Condominium (e.g., trunk/main line utilities). Notwithstanding the foregoing, internal and external telephone wiring designed to serve a single Condominium Unit, but located outside the boundaries of the Condominium Unit, shall be maintained by the Owner of said Condominium Unit. Additionally, the Corporation shall maintain, repair and replace any stamped concrete in the Corporation Property that is damaged, destroyed or altered in any manner as a result of repair or maintenance work to utility facilities or connections performed by a utility company, unless such repair or maintenance work is caused by or the result of an Owner's, his family members', guests' or invitees' negligence or intentional conduct.

(b) Wherever sanitary sewer, water or gas connections, fire alarm, suppression, or protection facilities, television cables, electricity or telephone lines are installed within the Project and it becomes necessary to gain access to said connections, cables and/or lines through a



Condominium Unit or Exclusive Use Corporation Property owned by someone other than the Owner of the Condominium Unit served by said connections, cables and/or lines, the Owner of the Condominium Unit served by said connections, cables and/or lines shall have the right, and is hereby granted an easement to the full extent necessary therefor, to enter upon such other Condominium Unit and/or Exclusive Use Corporation Property or to have the utility companies enter upon such other Condominium Unit and/or Exclusive Use Corporation Property to repair, replace and generally maintain said connections, cables and/or lines; provided, that any entry pursuant to such easement rights shall be made after reasonable notice to the Owner of the Condominium Unit or Exclusive Use Corporation Property to be entered and at a reasonable hour of the day, and such entry shall be made with as little inconvenience to the Owner of the Condominium Unit or Exclusive Use Corporation Property to be entered as is practicable, and in the event that any damage shall be proximately caused by such entry, such damage shall be repaired at the expense of the Owner making such entry.

(c) Whenever sanitary sewer, water or gas connections, fire alarm, suppression, or protection facilities, television cables, electricity or telephone lines are installed within the Project, and said connections, facilities, cables and/or lines serve more than one (1) Condominium Unit, the Owner of each Condominium Unit served by said connections, facilities, cables and/or lines shall be entitled to the full use and enjoyment of such portions of same as service his Condominium Unit.

(d) In the event of a dispute between Owners respecting the repair or rebuilding of the aforesaid connections, facilities, cables and/or lines, or the sharing of the cost thereof, upon written request of one (1) of such Owners addressed to the Corporation, the matter shall be submitted to the Board who shall decide the dispute, and the decision of the Board shall be final and conclusive on the Owners.

(e) Easements over the Project for the installation and maintenance of electric and telephone lines, water, gas, fire alarm, suppression, and protection facilities; drainage and sanitary sewer connections and facilities, and television antenna cables and facilities, all as shown on the recorded map of the Project and/or the improvement plans submitted by Declarant and approved by the City, and as may be hereafter required or needed to service the Project, are hereby reserved by Declarant, together with the right to grant and transfer all or a portion of the same.

(f) To the extent required by the City, all utility distribution facilities shall be placed and maintained underground in accordance with the City's Municipal Code (e.g.,

Section 16.28.030 of the City's Municipal Code, as the same may be amended from time to time).

Section 7. Easements for Maintenance of the Corporation Property and Performance of Duties By Corporation. There is hereby created, granted and reserved a nonexclusive easement in favor of the Corporation for ingress, egress and access on, over and across all portions of the Project (including but not limited to the Condominiums and Exclusive Use Corporation Property) as reasonably required by the Corporation to perform its maintenance and other obligations set forth in this Declaration or adopted by the Board (including, without limitation, Best Management Practices, the inspection and maintenance of fire sprinkler heads in the Condominium Units and the inspection, maintenance, and repair of the storm drainage facilities described and/or depicted on Exhibit "F" attached hereto and incorporated by this reference or on an Exhibit to a recorded Notice of Annexation, and the reading, repair, realignment and/or replacement of sub-meters). In the event it becomes necessary for the Corporation to enter upon any Condominium Unit or Exclusive Use Corporation Property for purposes of: (a) performing its maintenance or other obligations as set forth in this Declaration and/or the Rules and Regulations; or (b) bringing an Owner and/or his Condominium into compliance with this Declaration, in accordance with the provisions set forth herein, the Corporation, and its duly authorized agents and employees, shall have the right, after reasonable notice to the Owner and at a reasonable hour of the day, to enter upon or within such Owner's Condominium Unit for the performance of such work. Such entry shall be made with as little inconvenience to the Owner as is practicable, and in the event that any damage shall be proximately caused by such entry, the Corporation shall repair the same at its expense. Notwithstanding the foregoing, in the event of an emergency, or for regular maintenance obligations (e.g., the inspection of the fire sprinkler heads within the Condominium Units, Best Management Practices, the inspection, maintenance, and repair of the storm drainage facilities described and/or depicted on Exhibit "F" attached hereto and incorporated by this reference or on an Exhibit to a recorded Notice of Annexation, reading of sub-meters, etc.), such right of entry shall be immediate.

Section 8. Easements for Clustered Mailboxes. In order to comply with the various requirements of the City and the United States Postal Service, clustered mailboxes may be installed within the Project. Easements are hereby created on and over the affected portions of the Project and granted in favor of all Owners and the United States Postal Service for delivery, deposit and retrieval of mail. The Corporation shall maintain mailboxes in the Project if not otherwise maintained by the United States Postal Services.

Section 9. Easements Over Sidewalks. There are hereby created and reserved non-exclusive reciprocal appurtenant easements, granted in favor of all Owners, the members of their families, their lessees and tenants and/or their respective guests

and invitees, for pedestrian access, use and enjoyment on, over and across all walkways within the Corporation Property, if any.

Section 10. Easements for Drainage. There are hereby created, granted and reserved over the Corporation Property easements for drainage according to the established patterns for drainage created by the approved grading and/or building plans for the Project, as well as according to Declarant's as-built condition, actual, natural, existing drainage patterns. Each Owner shall maintain his respective Condominium and Exclusive Use Corporation Property in such a manner to ensure that no water collects or ponds in any location adjacent to any walls or fences, if any, of the immediately adjacent Condominium. Without limiting potential liability as a result of other activities or actions, each Owner shall be liable for any damage that occurs to the Corporation Property and/or a Condominium Unit as a result of an Owner's modifications to such Owner's Condominium or Exclusive Use Corporation Property. Each Owner covenants and agrees that he shall not obstruct or otherwise interfere with the drainage patterns of waters over the balcony or covered porch of his Condominium, or, in the alternative, that in the event it is necessary and essential to alter said drainage patterns, he will make adequate provisions for proper drainage and submit such plans for written approval by the Architectural Review Committee.

Section 11. Easement for Area Drains. Declarant hereby establishes, reserves, and grants to the Corporation and Owners, nonexclusive reciprocal easements over the Corporation Property for drainage purposes to accommodate the drainage system, including, but not limited to area drains and pipes, originally installed by Declarant. The Condominium Owner served by said drainage system shall be responsible to maintain and preserve said system (e.g., within his Condominium or Exclusive Use Corporation Area) in an operating condition to ensure proper drainage on, over, under, across and through the balcony and covered porch areas of his Condominium (if applicable) in accordance with the drainage patterns created by the as-built condition by Declarant for the Project, and shall bear the cost of the maintenance, repair or replacement associated with the drainage system which affects his Condominium. No Owner shall alter in any manner whatsoever, or remove the drainage system. In the event any portion of the drainage system is damaged, destroyed or not properly maintained, any Condominium Owner affected by such drainage system may cause said repair, restoration or maintenance work to be completed and shall be entitled to recover the appropriate expenses from the Owner responsible for such damage, destruction or improper maintenance. Notwithstanding the foregoing, if any portion of the drainage system is damaged or destroyed as a proximate result of any act or omission of any Owner, or any member of his family, guests, tenants, lessees and/or invitees (without regard to fault), such Owner shall immediately notify the Corporation of such damage or destruction and shall bear all of the costs related thereto, including any cost and/or expense related to the repair of the

drainage system and any personal injury or property damage to any person or Condominium in the Project.

Section 12. Easements for Construction and Sales. Declarant hereby reserves unto itself, and its successors and assigns, together with the right to grant and transfer all or a portion of the same, until the earlier of such time as Declarant no longer has an ownership in Lot 1 of Tract No. 2005-02 or the Annexation Property or five years from the recordation of this Declaration, nonexclusive easements for access, ingress and egress on and over the Project to carry on normal sales activity, including the operation of a models complex, sales office and parking area, and the display of promotional signs and exhibits in connection with the sale or lease of Condominiums in the Project.

Section 13. Easements for Master Antennae, Cable Television and Alarm System Cabling. There are hereby reserved for the benefit of Declarant, and its successors and assigns, nonexclusive easements of access, ingress and egress to the Project for purposes of installation, operation, maintenance, repair, inspection, replacement and removal of master antennae, cable television service lines, alarm system cabling and all related facilities and equipment. Such easements shall be freely transferable to any other person or entity for the purpose of providing such services. All such master antennae, cable television service lines and alarm system cabling shall remain the property of Declarant or its successors and assigns. The exercise of all rights reserved hereunder shall not unreasonably interfere with the reasonable use and enjoyment of the Project. Declarant, or its successors and assigns, shall be responsible for any damage in any way arising out of, or in connection with, the rights and activities reserved hereunder.

Section 14. Reservation of Construction Rights by Declarant. In addition to the rights reserved by Declarant to control development of the Project as set forth in the Article hereinabove entitled "Introduction to Las Brisas at Cottonwood," nothing in this Declaration shall limit the right of Declarant to maintain temporary fences, limit access by Owners to portions of the Corporation Property, establish, reserve and/or grant additional licenses, easements and rights-of-way in favor of Declarant, utility companies or others as may, from time to time, be reasonably necessary for the development of the Project. The foregoing rights established and reserved by Declarant shall be subject only to the applicable regulations and requirements of the City and the DRE and shall not result in the interference with the reasonable and regular use and enjoyment of the Corporation Property by Owners.

Section 15. Easement for Public Service Uses. In addition to the foregoing easements over the Corporation Property, there are hereby created, established and granted easements for public services, including, but not limited to, the right of police, fire, ambulance and other public services to enter upon any

part of the Corporation Property for purposes of serving the health and welfare of all Owners in the Project.

Section 16. Control of Corporation Property. Control and/or title of the Corporation Property in any Phase (excluding those portions of the Corporation Property which are subject to the various rights reserved by Declarant as set forth in this Declaration) shall be turned over by Declarant to the Corporation prior to or simultaneously with the first close of escrow for the sale of a Condominium in the applicable Phase. Without limiting the generality of the foregoing, Declarant shall convey fee title to Corporation Property to the Corporation free and clear of all encumbrances and liens, except property rights in and to the Corporation Property which are of record or created herein, and any current real property taxes, which shall be prorated to the date of transfer. As more particularly set forth in the Article herein entitled "Enforcement of Bonded Obligations," in the event that Improvements proposed to be constructed within the Corporation Property have not been completed prior to the first close of escrow in the applicable Phase, as may be evidenced by a Notice of Completion recorded in the Official Records of the County, the completion of such Improvements shall be assured in accordance with Section 11018.5 of the California Business and Professions Code, or any similar statute hereinafter enacted, and the applicable regulations of the DRE. The Corporation shall be obligated to undertake all maintenance responsibilities for the Corporation Property when the Corporation levies Assessments for the maintenance thereof, or when the City approves the Corporation Property Improvements (as evidenced by the release by the City of any bonds posted by Declarant as required by City) installed by Declarant, whichever is first to occur. Notwithstanding the foregoing, if the contractors or subcontractors of Declarant are contractually obligated to maintain or warrant the landscaping or other Improvements on the Corporation Property for a specified period in which said contractors or sub-contractors shall perform such maintenance, the Corporation shall not interfere with the performance of such warranty or other contractual maintenance obligations. Maintenance performed by such contractors or subcontractors shall not serve to postpone the commencement of Assessments pursuant to this Declaration, nor entitle an Owner to claim any offset or reduction in the amount of such Assessments. Declarant is not obligated to install any Corporation Property Improvements other than those required by the City pursuant to the Project approval requirements. The nature, design, quality and quantity of all Improvements to the Corporation Property shall be determined by Declarant in its sole discretion in accordance with the terms of the Project approvals. In the event that a dispute arises between Declarant and the Corporation with respect to the nature, design, quality or quantity of the Improvements, or the acceptance of maintenance responsibilities therefor, the Corporation shall be obligated to accept ownership and/or control of the Corporation Property and undertake maintenance responsibilities pending resolution of the dispute. Notwithstanding anything to the contrary herein or in the By-Laws

for the Board; commencing on the date of the first annual meeting of the Owners, Declarant shall relinquish control over the Corporation's ability to decide whether to initiate a construction defect claim under Division 2, Part 2, Title 7 (commencing with Section 895) of the California Civil Code. Therefore, the Declarant, current employees and agents of Declarant, Board members who are appointed by Declarant, Board members elected by a majority of votes cast by Declarant, and all other persons whose vote or written consent is inconsistent with the intent of the preceding sentence, are prohibited from participating and voting in any decision of the Corporation or Owners to initiate a defect claim.

Section 17. Easements for Encroachments. Declarant reserves for its benefit and the benefit of the Owners, and hereby creates, establishes, and grants to the Owners a reciprocal easement appurtenant to each Condominium over the Condominium Units and Common Property for the purpose of (i) accommodating any existing encroachment of any wall, eave, overhangs, wing walls and/or chimneys of any Improvement existing only as of the date the escrow initially closed for the sale of the Condominium from the Declarant to an Owner, and (ii) maintaining the same and accommodating authorized construction, reconstruction, repair, shifting, movement, or natural settling of such encroachments or Improvements. Declarant further reserves reciprocal easements for utility (including, without limitation, sanitary sewer, water or gas lines or connections, fire alarm, suppression, or protection lines or facilities, television cables, and electricity or telephone lines) services and repairs, replacement and maintenance of the same over the Common Property for the benefit of the Owners. Use of the foregoing easements may not unreasonably interfere with each Owner's use and enjoyment of Owner's respective Condominium.

Section 18. Easements for Operation and Maintenance Inspections of Best Management Practices. There are hereby created, established and granted easements in favor of the City and the Regional Water Quality Control Board over the Corporation Property for purposes of performing operation and maintenance inspections of the installed stormwater treatment systems, and Best Management Practices (if any).

Section 19. Other Easements. In addition to the foregoing, the Project is subject to all easements set forth on Tract No. 2005-02, as recorded in the County, and the maps of any Annexation Property annexed into the Project in accordance with the provisions of this Declaration, as well as any and all other easements recorded against the property comprising the Project in the Office of the County Recorder.

## ARTICLE V

### THE CORPORATION

Section 1. Membership. Every person or entity who or which is an Owner, as defined hereinabove, shall be a Member of the Corporation. The foregoing is not intended to include persons or entities who hold an interest in a Condominium in the Project merely as security for the performance of an obligation.

Section 2. Voting Rights. The Corporation shall have two (2) classes of voting membership, as follows:

Class A. Class A Members shall be all Owners, with the initial exception of the Declarant until the conversion of the Class B Members to Class A Members, and shall be entitled to one (1) vote for each Condominium owned. When more than one (1) person holds an interest in any Condominium, all such persons shall be Members. The vote for such Condominium shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Condominium. The Corporation shall recognize the vote cast by a co-Owner, unless another co-Owner shall cast a conflicting vote, in which case both votes shall be null and void, and not recognized by the Corporation. The nonvoting co-Owner or co-Owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly-owned Condominium.

Class B. The Class B Member shall be the Declarant and shall be entitled to three (3) votes for each Condominium owned in the Project upon which Declarant is then paying the appropriate monthly Assessments provided for hereinbelow. The Class B membership shall cease and be converted to Class A membership upon the happening of any of the following events, whichever occurs earliest:

(a) The second anniversary of the first close of escrow for the sale of a Condominium pursuant to the original issuance by the DRE of the most recently issued Final Subdivision Public Report for a Phase of the Project;

(b) The fourth anniversary of the first close of an escrow for the sale of a Condominium pursuant to the original issuance by the DRE of a Final Subdivision Public Report for Phase 1; or

(c) December 31, 2016.

Any action by the Corporation which must have the approval of the membership of the Corporation before being undertaken shall require the vote or written assent of both a majority of the Class B membership as well as a majority of the Class A membership,

so long as there are two (2) outstanding classes of membership, unless a specific provision of this Declaration or the By-Laws or Articles of the Corporation requires (i) the approval of a greater percentage of the voting membership, or (ii) a vote by Members other than Declarant, or (iii) a specific approval percentage of all the Members. Notwithstanding the foregoing, any action by the Corporation pursuant to the Article contained herein entitled "Enforcement of Bonded Obligations" shall only require a majority of the voting power of the Owners, other than Declarant.

Section 3. Special Procedures For Appointment to the Board. The Declarant shall be entitled to solely appoint a majority of the members of the Board until the first to occur of the following events:

(a) The election of the Board immediately following the close of escrow by Declarant of at least twenty-one (21) Condominiums in the Project; or

(b) December 31, 2016.

In the event Declarant shall not have sold and closed escrows for at least twenty-one (21) Condominiums by December 31, 2016, Declarant's right to elect a majority of the members of the Board shall be automatically extended until the aforesaid number of Condominiums have been sold, but in no event later than December 31, 2017.

Notwithstanding the foregoing, the Class A Members shall be entitled to elect at least one of the members of the Board, so long as there are two (2) classes of membership outstanding in the Corporation, and all members of the Board (including those appointed by Declarant) shall be subject to removal, with or without cause, as provided in the By-Laws and California law. The requirements of this Section 3, as well as Section 2 above, of this Article V are intended and shall be construed to comply with the time frame and other requirements set forth in California law and the regulations of the California Commissioner of Real Estate (e.g., DRE Regulation 2792.18, 2792.19, etc.) regarding the transfer of control of the Corporation from the Declarant to the Members.

Section 4. Adjustment of Voting Rights. The voting rights in the Corporation shall be adjusted on the first day of the first month immediately following the first close of an escrow for the sale of a Condominium in each Phase of the Project.

Section 5. Vesting of Voting Rights. The voting rights attributable to any given Condominium in the Project, as provided for herein, shall not vest until the Assessments provided for hereinbelow have been levied by the Corporation against said Condominium.



Section 6. Suspension of Voting Rights. As more particularly set forth in the Article entitled "General Provisions," the Board shall have the authority, among other things, to suspend the voting rights of any Member to vote at any meeting of the Members for any period during which such Owner is delinquent in the payment of any Assessment, regardless of type, it being understood that any suspension for nonpayment of any Assessment shall not constitute a waiver or discharge of the Member's obligation to pay the Assessments provided for in this Declaration.

Section 7. Transfer. The Corporation membership held by any Owner of a Condominium shall not be transferred, pledged or alienated in any way, except as incidental to the sale of such Condominium. In the event of such sale, the Corporation membership may only be transferred, pledged or alienated to the bona fide purchaser or purchasers of the Condominium, or to the Mortgagee (or third party purchaser) of such Condominium upon a foreclosure sale. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Corporation. The Corporation may levy a reasonable transfer fee against new Owners and their Condominiums (which fee shall be a Compliance Assessment chargeable to such new Owner) to reimburse the Corporation for the actual administrative cost of transferring the memberships to the new Owners on the records of the Corporation.

Section 8. Record Dates. For the purposes of determining Members entitled to notice of any meeting, to vote or to exercise any other rights in respect of any lawful action, the Board may fix in advance record dates as provided in the By-Laws.

## ARTICLE VI

### POWERS AND DUTIES OF THE CORPORATION

Section 1. Management Body. The Corporation is hereby designated as the management body of the Project. The Members of the Corporation shall be the Owners in the Project as provided herein, and the affairs of the Corporation shall be managed by a Board of Directors, as more particularly set forth in the By-Laws. The initial Board shall be appointed by the Declarant. Thereafter, the Directors shall be elected as provided in the By-Laws.

Section 2. Powers. The Board, for and on behalf of the Corporation, shall have the right and power to do all things necessary to conduct, manage and control the affairs and business of the Corporation. Subject to the provisions of the Articles, the By-Laws and this Declaration, the Board shall have all general powers authorized under the California Corporations Code for nonprofit, mutual benefit corporations, and shall have the following specific powers:

(a) Enforce the provisions of this Declaration (including, but not limited to, the ability to record a notice of noncompliance or violation, unless otherwise provided by common law), including any amendments thereto, and all contracts or any agreements to which the Corporation is a party;

(b) Acquire, manage, maintain, repair and replace all Corporation Property and Improvements located thereon, including all personal property, in a neat, clean, safe and attractive condition at all times, and pay all utilities, gardening and other necessary services for the Corporation Property, all as more specifically set forth herein, including the Article entitled "Repair and Maintenance", and any recorded Notice of Annexation;

(c) Maintain fire, casualty, liability and fidelity bond coverage, and other insurance coverage pursuant to the terms of that Article herein entitled "Insurance";

(d) Obtain, for the benefit of the Corporation Property, all commonly metered water (domestic and fire), sewer, gas and electric services, refuse collection and cable (or master antenna) television service, if any;

(e) Employ and retain a professional manager and/or management company to perform all or any portion of the duties and responsibilities of the Board and engage such other personnel (including attorneys, budget preparers, and accountants) as necessary for the operation of the Project and administration of the Corporation;

(f) Pay all taxes and special assessments which would be a lien upon the entire Project or the Corporation Property, and discharge any lien or encumbrance levied against the entire Project or the Corporation Property;

(g) Pay for reconstruction of any portion of the Corporation Property damaged or destroyed;

(h) Delegate its powers;

(i) Adopt reasonable Rules and Regulations concerning the maintenance, improvement, use and/or occupancy of the Project and election procedures in compliance with California Civil Code Section 1363.03;

(j) Enter into any Condominium when necessary in connection with maintenance or construction for which the Corporation is responsible;

(k) Execute lot line and condominium boundary adjustments (and corresponding deeds), enter into a mainte-

nance and/or other agreement with Declarant or a third party, subject to Civil Code Section 1363.07, if applicable, grant fee title to or easements over the Corporation Property to Declarant or a third party, and/or receive fee title to or an easement over real property owned by Declarant or a third party as reasonably necessary due to those conditions in the field where it is not readily apparent where Lot lines are located and the respective party's maintenance responsibilities commence and end, and such adjustments, deeds and/or agreements will promote a clearly defined and uniform maintenance plan by the respective parties or as otherwise determined appropriate by a majority vote of the Board;

(l) Grant exclusive easements or licenses over portions of the Corporation Property in accordance with California Civil Code Section 1363.07, as same may be amended from time to time, and (where required by law) with the assent of sixty-seven percent (67%) of the voting power of the Corporation;

(m) Levy and collect Assessments on all Condominiums in the Project for which Assessments have commenced, and enforce payment of such Assessments in accordance with the terms and provisions set forth in the Article herein entitled "Effect of Nonpayment of Assessments: Remedies of the Corporation";

(n) Subject to compliance with Section 1369.510 et seq. of the California Civil Code, as same may be amended from time to time, institute, defend, settle or intervene on behalf of the Corporation in any dispute resolution proceeding in matters pertaining to (i) enforcement of the Declaration, Rules and Regulations and By-Laws; (ii) damage to the Common Property; (iii) damage to the Condominium Units which arises out of, or is integrally related to, damage to the Common Property that the Corporation is obligated to maintain or repair;

(o) Negotiate and enter into agreements for Telecommunication Services, with terms not in excess of ten (10) years, provided that Declarant does not have a direct or indirect ownership interest in the supplier of such services or equipment equal to or greater than ten percent (10%);

(p) Negotiate and enter into agreements with any nonprofit corporations (e.g., governing portions of Tract No. 2005-02 and/or the Annexation Property), including the streets and recreational amenities located thereon) or Local Government Agencies;

(q) Negotiate and enter into contracts in which the Corporation enters into litigation or any alternative dispute resolution procedure when the Corporation's obligation to pay

for services is set in whole or in part on a contingency basis except (i) contracts for collection of assessment or other accounts receivable; (ii) contracts involving evaluation of services; or (iii) contracts with a total amount to be paid by the Corporation not in excess of Forty Thousand Dollars (\$40,000.00);

(r) As applicable, comply with terms and provisions of California Civil Code Section 1375, as amended, in connection with any potential litigation based upon a claim for defects in the design or construction of the Corporation Property;

(s) Execute all necessary documents in order to effectuate the Limited Warranty or other express written warranty, if any, provided by Declarant;

(t) Authorize an agent, management company representative, or bookkeeper to appear and participate in a small claims court action on behalf of the Corporation in accordance with California Code of Civil Procedure Section 116.540(i), (j);

(u) Without any limitation of the foregoing powers, (i) operate, maintain, and inspect the Corporation Property and its various components in conformance with any Maintenance Guidelines and any Maintenance Manual, and (ii) review any Maintenance Manual for necessary or appropriate revisions as deemed necessary by the Board (Declarant recommends at least an annual review);

(v) Perform any and all other acts and things that a nonprofit, mutual benefit corporation organized under the laws of the State of California is empowered to do, which may be necessary, convenient or appropriate in the administration of its affairs for the specific purposes of meeting its duties as set forth in this Declaration.

Section 3. Duties. The Board shall perform and execute the following duties for and on behalf of the Corporation:

(a) Provide or cause to be provided (e.g., by a private or public entity), water, sewer, gas, electricity, garbage and trash collection, regular periodic drainage device clearing and other necessary utility services for the Corporation Property, if any, and, if not separately provided, for the Condominium Units (subject to reimbursement - e.g., reimbursement for water through the Utility Assessment Component);

(b) Provide insurance for the Corporation and its Members in accordance with the provisions of the Article

hereinbelow entitled "Insurance," and distribute notices as may be required by law;

(c) Acquire, own, maintain and repair all portions of the Corporation Property (including any Corporation Property which is annexed into the Project) in a neat, clean, safe, attractive, sanitary and orderly condition at all times. Without limiting the generality of the foregoing, the Corporation shall be responsible for maintaining the condominium buildings (excluding the Condominium Units), fire sprinklers, including sprinkler heads which protrude into the airspace of the Condominium Unit, if any, fire standpipes, fire alarm systems, fire extinguishers, and other fire prevention equipment and/or facilities located on Corporation Property, awnings, fences, common walkways, common trash receptacles and recycling bins, sidewalks, sound walls, retaining walls, perimeter walls, private entry gates and access system, private drives and aisles, private common domestic water lines and master meter and submeters, the private storm drain system for the Project (e.g., detention basin, rip rap, etc.), poles, signs, Project monument signs and directories, and landscaping located on the Corporation Property, excepting therefrom landscaping and improvements located in the Exclusive Use Corporation Property, in a condition comparable to the condition initially approved by the City;

(d) Retain a professional property management company to manage the Corporation and the inspection, repair, and maintenance of the Corporation Property in accordance with the provisions of this Declaration;

(e) Levy and collect Assessments on all Condominiums in the Project for which Assessments have commenced, and enforce payment of such Assessments in accordance with the terms and provisions set forth in the Article herein entitled "Effect of Nonpayment of Assessments: Remedies of the Corporation;"

(f) Contract for any other material, supplies, furniture, labor, services, maintenance, repairs, structural alterations and insurance which the Corporation is required to pay for pursuant to the terms and provisions of this Declaration or by law;

(g) Pay all real and personal property taxes and Assessments which the Corporation is required to pay for pursuant to the terms and provisions of this Declaration or by law, unless separately assessed to Owners; provided, however, that it shall be the obligation of each Owner to pay his respective share of the tax assessment levied on the Project prior to separate assessments by the tax assessor pursuant to Section 2188.6 of the California Revenue and Taxation Code, as same may be amended, from time to time;

(h) Cause a yearly inspection to be made, by a licensed engineer or otherwise qualified individual, of any slope areas and drainage devices located within the Corporation Property;

(i) Accept, as part of the Project, all property included in or annexed to the Project, in accordance with the terms and provisions of this Declaration, and accept all Owners as Members of the Corporation. In addition, the Corporation shall accept all Corporation Property, conveyed, leased or otherwise transferred to it, if any, by Declarant, its successors or assigns, or an appropriate governmental agency;

(j) Except as required by law, cause financial statements and a reserve funding plan (e.g., substantially consistent with the requirements of California Civil Code Section 1365.5 and FHLMC, FNMA, GNMA and VA/FHA) for the Corporation to be regularly prepared and copies distributed to each Member of the Corporation, regardless of the number of Members or the amount of assets of the Corporation:

(1) A pro forma operating statement (budget) for the immediately following fiscal year shall be distributed within the time period specified by statute prior to the beginning of the fiscal year (e.g., not less than 30 days nor more than 90 days prior to the beginning of the fiscal year), and shall contain the following information:

i) An itemized estimate of the Corporation's revenue and expenses (including, without limitation, adequate funding for insurance coverage and deductibles), determined on an accrual basis;

ii) A summary, printed in bold type, of the current status of the Corporation's reserves, based upon the most recent review or study conducted pursuant to California Civil Code Section 1365.5 ("Study"), as may be amended, from time to time, and prepared in accordance with all requirements of law (e.g., Civil Code Section 1365, 1365.2.5);

iii) A statement prepared in accordance with all requirements of law (e.g., Civil Code Section 1365, 1365.2) as to all of the following:

(A) Whether the Board has determined to defer or not undertake repairs or replacement of any major component with a remaining life of 30 years or less, including a justification for the deferral or decision not to undertake the repairs or replacement.

(B) Whether the Board, consistent with the reserve funding plan adopted pursuant to subdivision (e) of Section 1365.5, has determined or anticipates that the levy of one (1) or more Special Assessments will be required to repair, replace or restore any major component (e.g., Improvement to the Corporation Property) or to provide adequate reserves therefor. If so, the statement shall also set out the estimated amount, commencement date, and duration of the Special Assessments; and

(C) The mechanism or mechanisms by which the Board will fund reserves to repair or replace major components, including assessments, borrowing, use of other assets, deferral of selected replacement of repairs, or alternative mechanisms.

(D) Whether the Corporation has any outstanding loans with an original term of more than one year, including the payee, interest rate, amount outstanding, annual payment, and when the loan is scheduled to be retired.

iv) A general statement prepared in accordance with all requirements of law (e.g., Civil Code Section 1365, 1365.2) setting forth the procedures utilized by the Corporation to calculate and establish reserves to defray the costs of future repairs, replacements or additions to the Corporation Property Improvements;

v) A statement as to whether the Board has determined or anticipates that the levy of one (1) or more Special Assessments will be required to repair, replace or restore any major Improvements to the Corporation Property, or to provide adequate reserves therefor; and

vi) A summary of the reserve funding plan adopted by the Board in accordance with Civil Code Section 1365.5. The summary shall include notice to the Owners that the full reserve study plan is available upon request, and the Corporation shall provide the full reserve study plan to any Owner upon request.

Notwithstanding the foregoing, in lieu of distributing the pro forma operating budget required hereinabove, the Board may elect to distribute a summary of the pro forma budget to all Members with a written

notice, in at least 10-point bold type on the front page, that the pro forma budget is available at the business office of the Corporation, or at another suitable location within the Project, and that copies will be provided upon request and at the expense of the Corporation. If any Member requests that a copy of the pro forma budget required herein be mailed to said Member, the Corporation shall mail the copy to the Member by first-class mail at the expense of the Corporation, within five (5) days of the receipt of said request;

(2) A balance sheet as of an accounting date which is the last day of the month closest in time to six (6) months from the date of the close of escrow for the first sale of a Condominium, and an operating statement for the period from the date of the first close of escrow to the said accounting date, shall be distributed within sixty (60) days after the accounting date. This operating statement shall include a schedule of Assessments received, and receivable, identified by the number of the Condominiums assessed;

(3) An annual report consisting of the following shall be distributed within one hundred twenty (120) days after the close of the fiscal year:

i) A balance sheet as of the last day of the Corporation's fiscal year;

ii) An operating (income) statement for the fiscal year;

iii) A statement of changes in financial position for the fiscal year; and

iv) Any information required to be reported pursuant to Section 8322 of the California Corporations Code and Section 1365 of the California Civil Code, as each may be amended from time to time.

This annual report shall ordinarily be prepared by a licensee of the California Board of Accountancy, in accordance with generally accepted accounting principles, for any fiscal year in which the gross income of the Corporation exceeds Seventy-Five Thousand Dollars (\$75,000.00). However, if for any reason the report is not prepared by a licensee of the California Board of Accountancy, said report shall be accompanied by a certificate from an authorized officer of the Corporation that the statements were prepared without audit from the books and records of the Corporation;



(4) A statement of the Corporation's policies and practices in enforcing its remedies against Members for nonpayment of Assessments, as set forth in the Article herein entitled "Effect of Nonpayment of Assessments: Remedies of the Corporation," which shall be distributed within the time period required by statute prior to the beginning of the fiscal year (e.g., not less than 30 days nor more than 90 days prior to the beginning of the fiscal year); and

(5) A summary of the Corporation's general liability insurance policy, earthquake and flood insurance policy, if one or more has been issued, and liability coverage policy for the Board, which includes statements, a summary, and information required under California Civil Code Section 1365(e) as same may be amended from time to time. Currently, such items of disclosure include the following: (1) the name of the insurer; (2) the type of insurance; (3) the policy limits of the insurance; and (4) the insurance deductibles.

The Corporation shall, as soon as reasonably practical, notify its Members by first-class mail if any of the policies described in Subparagraph (i) above have lapsed, been canceled, and are not immediately renewed, restored or replaced, or if there is a significant change, such as a reduction in coverage or limits, or an increase in the deductible for any of those policies. If the Corporation receives any notice of nonrenewal of a policy described in the subparagraph above, the Corporation shall immediately notify its Members if replacement coverage will not be in effect by the date the existing coverage will lapse. To the extent the information noted above is described within the respective insurance policies, the Corporation may distribute such information to the Members and be in compliance with the disclosure requirements of the referenced Civil Code Section. Notification regarding cancellation or policy renewals must comply with Civil Code Section 1365(e)(2), as same may be amended from time to time. Currently, the summary distributed pursuant to Subparagraph (i) shall contain, in at least 10-point boldface type, the following statement: "This summary of the Corporation's policies of insurance provides only certain information, as required by Subdivision (e) of Section 1365 of the California Civil Code, and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance. Any Corporation Member may, upon request and provision of reasonable notice, review the Corporation's insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the Corporation maintains the policies of

(4) A statement of the Corporation's policies and practices in enforcing its remedies against Members for nonpayment of Assessments, as set forth in the Article herein entitled "Effect of Nonpayment of Assessments: Remedies of the Corporation," which shall be distributed within the time period required by statute prior to the beginning of the fiscal year (e.g., not less than 30 days nor more than 90 days prior to the beginning of the fiscal year); and

(5) A summary of the Corporation's general liability insurance policy, earthquake and flood insurance policy, if one or more has been issued, and liability coverage policy for the Board, which includes statements, a summary, and information required under California Civil Code Section 1365(e) as same may be amended from time to time. Currently, such items of disclosure include the following: (1) the name of the insurer; (2) the type of insurance; (3) the policy limits of the insurance; and (4) the insurance deductibles.

The Corporation shall, as soon as reasonably practical, notify its Members by first-class mail if any of the policies described in Subparagraph (i) above have lapsed, been canceled, and are not immediately renewed, restored or replaced, or if there is a significant change, such as a reduction in coverage or limits, or an increase in the deductible for any of those policies. If the Corporation receives any notice of nonrenewal of a policy described in the subparagraph above, the Corporation shall immediately notify its Members if replacement coverage will not be in effect by the date the existing coverage will lapse. To the extent the information noted above is described within the respective insurance policies, the Corporation may distribute such information to the Members and be in compliance with the disclosure requirements of the referenced Civil Code Section. Notification regarding cancellation or policy renewals must comply with Civil Code Section 1365(e)(2), as same may be amended from time to time. Currently, the summary distributed pursuant to Subparagraph (i) shall contain, in at least 10-point boldface type, the following statement: "This summary of the Corporation's policies of insurance provides only certain information, as required by Subdivision (e) of Section 1365 of the California Civil Code, and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance. Any Corporation Member may, upon request and provision of reasonable notice, review the Corporation's insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the Corporation maintains the policies of

insurance specified in this summary, the Corporation's policies of insurance may not cover your property, including personal property or real property improvements to or around your dwelling, or personal injuries or other losses that occur within or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Corporation Members should consult with their individual insurance broker or agent for appropriate additional coverage."

(k) The Board shall review on a quarterly basis, the following:

i) A current reconciliation of the Corporation's operating accounts;

ii) A current reconciliation of amounts collected as reserves;

iii) The current year's actual amounts collected as reserves and expenses compared to the current year's budget;

iv) An income and expense statement for the Corporation's operating and reserve accounts; and

v) The most current account statements prepared by the financial institutions where the Corporation maintains its operating and reserve accounts.

Withdrawal of funds from the Corporation's reserve account shall require the signature of either: (i) two (2) members of the Board; or (ii) one (1) member of the Board and an officer of the Corporation who is not also a member of its Board. As used in this Section, "reserve account" means moneys that the Board has identified from its annual budget for use to defray the future repair or replacement of, or additions to, those major components of the Corporation Property which the Corporation is obligated to repair or replace on a periodic basis, rather than on a regular annual basis. The Board shall not use any funds collected and budgeted as "reserve" moneys for any costs and/or expenses that are not related to repair and/or replacement costs for those elements of the Corporation Property that must be repaired and/or replaced on a periodic basis. Notwithstanding the foregoing, temporary transfer of funds may occur in compliance with Civil Code Section 1365.5, as may be amended from time to time. In the event reserve funds are temporarily transferred to pay for dispute resolution

proceedings, the Board shall comply with the disclosure and notification requirements of Civil Code Section 1365.5(d), as may be amended from time to time.

(l) At least once every three (3) years, cause a study of the reserve account requirements of the Project to be conducted if the current replacement value of the major components which the Corporation is obligated to repair, replace, restore or maintain is equal to or greater than one-half (1/2) of the gross Corporation budget for any fiscal year of the Corporation. In connection with such study, the Board shall cause to be conducted, if required by law, a visual inspection of the accessible areas of the major components of the Corporation Property which the Corporation is obligated to repair, replace, restore, or maintain. The Board shall consider and implement the necessary adjustments to the Board's analysis of the reserve account requirements as a result of such review. The reserve study shall consider and include, at a minimum, the requirements set forth in Section 1365.5(e) of the California Civil Code, as the same may be amended, from time to time;

(m) Assume and pay out of the Assessments provided for hereinbelow all costs and expenses incurred by the Corporation in connection with the performance and execution of all of the aforesaid powers and duties, and any other powers and duties the Corporation may assume as provided for in Section 4 hereinbelow;

(n) Formulate, adopt and enforce such Rules and Regulations as it may deem proper for the operation of the Corporation Property and as necessary to establish election procedures in compliance with California Civil Code Section 1363.03, as more particularly described below. Notice of adoption of any such Rules and Regulations and of any change, amendment or repeal thereof, shall be given in writing to each Member and shall be on file in the principal office of the Corporation. In the event of any conflict between such Rules and Regulations and this Declaration, this Declaration shall prevail;

(o) Enforce and abide by all applicable provisions of this Declaration, the Articles, By-Laws, the Limited Warranty, all Rules and Regulations of the Corporation, Architectural Review Committee rules, and all other documents pertaining to the ownership, use, management and control of the Project;

(p) Give notices in writing to FHLMC, FNMA, GNMA and VA/FHA, and other lenders and investors participating in the financing of the sale of Condominiums in the Project, as required herein;

(q) Within ten (10) days of receipt of a written request from an Owner, provide said Owner with a copy of this Declaration and the By-Laws and Articles for the Corporation, together with the pro forma operating budget, an insurance policy summary, any change in the Corporation's current Regular and Special Assessments and fees which have been approved by the Board, but are not yet implemented, a true statement in writing as to the amount of any delinquent Assessments, penalties, attorneys' fees and other charges therein as provided by this Declaration or other management documents of the Board as of the date of such request. The Board may impose a fee for providing the foregoing, but in no event shall the fee exceed the reasonable cost to prepare and reproduce the requested documents. In addition, the Board shall make available during normal working business hours or upon request under reasonable circumstances to any prospective purchaser of a Condominium, any Owner of a Condominium, any first Mortgagee and the holder(s), insurer(s) and guarantor(s) of the first Mortgage on any Condominium, current copies of this Declaration, the Articles, the By-Laws, the Rules and Regulations, the membership register, including mailing addresses and telephone numbers, and all other books, records and financial statements of the Corporation, as required by law;

(r) Appoint the Members to the various Committees formed by the Board (e.g., the Nominating Committee, the Architectural Review Committee, etc.) as more particularly set forth herein or in the By-Laws;

(s) Periodically review and revise the maintenance guidelines, if any, as the Board may deem reasonable and prudent to adjust to the changing needs of the Project and to comply with any and all maintenance guidelines provided by the Declarant or recorded by Declarant against the Project;

(t) Cause a summary of the provisions of Section 1369.590 of the California Civil Code, as same may be amended from time to time, regarding alternative dispute resolution prefiling requirements and which specifically reference Section 1369.510 et seq. of the Civil Code, to be prepared and annually distributed to each Member of the Corporation. The summary shall be provided either at the time the pro forma operating budget is distributed herein or in the manner specified in Section 5016 of the California Corporations Code, as same may be amended from time to time. The summary shall include a description of the Corporation's internal dispute resolution process, as required by Section 1363.850 of the Civil Code;

(u) Elect the officers of the Corporation and fill any vacancies on the Board;

(v) Except as otherwise allowed under Section 1375 of the California Civil Code, as same may be amended from time to time, obtain approval from a majority of Members prior to incurring dispute resolution expenses, including without limitation attorneys' fees, where the Corporation initiates dispute resolution proceedings or is joined as a plaintiff in dispute resolution proceedings. Such approval shall not be necessary if the legal proceedings are initiated to (i) enforce use restrictions contained herein, (ii) enforce architectural control provisions contained herein; or (iii) collect any unpaid assessments levied pursuant to this Declaration;

(w) Cause a notice regarding "Assessments And Foreclosure" to be prepared and annually distributed to each Member of the Corporation in accordance with California Civil Code Section 1365.1, as the same may be amended from time to time. Except as otherwise provided in California Civil Code Section 1365.1, as the same may be amended from time to time, the notice shall be printed in 12-point type and shall be distributed during the sixty (60) day period immediately preceding the beginning of the Corporation's fiscal year;

(x) Without any limitation of the foregoing duties, (i) operate, maintain, and inspect the Corporation Property and its various components in conformance with any Maintenance Guidelines and any Maintenance Manual, and (ii) review any Maintenance Manual for necessary or appropriate revisions as deemed necessary by the Board (Declarant recommends at least an annual review);

(y) Adopt and provide a fair, reasonable and expeditious procedure for resolving disputes between the Corporation and Members that complies with applicable law (e.g., Civil Code Section 1363.810 et seq.), which, if the Board so decides, may be the procedure set forth in Civil Code Section 1363.840; and

(z) As required by applicable law [e.g., California Civil Code Section 1378(c), as the same may be amended from time to time, or any successor statute], cause a notice of any requirements for Corporation approval of physical changes to Condominiums or Common Property to be prepared and annually distributed to Members. The notice shall describe the types of changes that require Corporation approval and shall include a copy of the procedure used to review and approve or disapprove a proposed change.

Section 4. Discretionary Powers. The Board, at its option, may assume, perform and execute the following powers and duties for and on behalf of the Corporation:

(a) Retain the services of such personnel, in addition to the professional property management company, as the Corporation deems necessary and proper to assist in the operation of the Corporation and/or management of the Corporation Property, regardless of whether such other personnel are employed directly by the Corporation or otherwise;

(b) Remove or replace any Improvement that extends into the Corporation Property under authority of an easement when access to a utility line underneath such Improvement is requested by any utility company; provided, however, that the cost shall be assessed against the Owner of the Condominium involved as a Compliance Assessment if said Owner caused the Improvement to be so placed in the Corporation Property without legal right to do so;

(c) Incur any liability or pay any costs or expenses for a single Condominium or Owner thereof; provided, however, that in the event the Corporation does incur any such liability or pay any such costs or expenses, the amount thereof shall be specially assessed against the Owner of such Condominium as a Compliance Assessment; provided further, however, that nothing herein shall permit the Corporation to assess the Owners for any new Improvements to the Corporation Property except as otherwise provided in this Declaration;

(d) Subject to the limitations set forth in this Article, contract for any other material, furniture, labor, services, maintenance, repairs, structural alterations or insurance, or pay any taxes or Assessments which, in the opinion of the Board, shall be necessary or proper for the operation of the Common Property for the benefit of the Owners or for the enforcement of this Declaration; and

(e) Enter into a maintenance or subsidy agreement with Declarant, at Declarant's sole discretion, to temporarily reduce the financial obligations of the Owners for Assessment or street maintenance agreement.

Section 5. Notification by Corporation of Defects. The Board agrees that in the event of any alleged defect in any improved Corporation Property for which the Corporation believes the Declarant may be responsible, the Board will provide Declarant with written notice of such defect in accordance with Civil Code Section 1375, as the same may be amended. Declarant shall have a reasonable opportunity to inspect such alleged defect, and if Declarant agrees with the Board (or otherwise elects to perform the work) to repair, replace or otherwise cure any defect in workmanship and/or material. The Corporation acknowledges and agrees that Declarant (or its authorized agents) shall be entitled at its sole discretion to determine the material and methods to be used in effecting such repair, replacement or cure.

Section 6. Awards Rendered in Construction Defects Disputes. Any recovery by the Corporation or any Owner for any damage, to or defect in, the Corporation Property shall be utilized solely for the purpose of correcting such damage or defect.

Section 7. Special Meeting of the Corporation for Construction Defect Disputes. In the event the Board decides to commence binding arbitration proceedings under the Limited Warranty or decides to commence any other legal proceedings against any of the Declarant Parties (as defined in Section 16, below, of this Declaration) relating to construction defect Disputes, the Secretary shall call a special meeting of the Corporation. In addition to the information required by Section 1375 to be specified in the notice of such meeting, the notice shall also specify the following: (a) the estimated costs to repair the defects; (b) how the necessary repairs will be funded; (c) the name of the attorney whom the Corporation is contemplating retaining and an estimate of the attorney's fees, consultant's fees and any other costs to be incurred to prosecute such proceedings; (d) how such fees and costs will be funded; (e) each Member's duty to disclose to prospective purchasers the alleged defects; and (f) the potential impact the proceedings may have on the marketability and availability of financing for Condominiums in the Project. Such notice shall be sent to all Members of the Corporation. The decision of the Board to commence any other legal proceedings against any of the Declarant Parties relating to a construction defect Dispute must be approved by not less than fifty-one percent (51%) of the voting power of the Corporation residing in Members other than the Declarant.

Section 8. Delegations of Duties. In the event that the Corporation shall delegate any or all of its duties, powers or functions to any person, corporation or firm to act as manager, neither the Corporation nor the members of its Board shall be liable for any omission or improper exercise by the manager of any such duty, power or function so delegated.

Section 9. Right of Entry for Emergency. The Board, any person authorized by the Board or any Owner may enter any Condominium in the event of any emergency involving illness or potential danger to life or property. Such entry shall be made with as little inconvenience to the Owner as is practicable, and in the event that any damage shall be proximately caused by or result from said entry, the Corporation shall repair the same at its expense.

Section 10. Right of Entry for Repairs. The Board, or any person authorized by the Board, shall have the right to enter, upon reasonable notice, any Condominium to effect necessary repairs which the Owner has failed to perform or which are necessary in connection with the repairs to the Corporation Property or an adjoining Condominium. Such entry shall be made with as little inconvenience to the Owner as is practicable, and in the event that



any damage shall be proximately caused by or result from said entry, the Corporation shall repair the same at its expense.

Section 11. Limitations on Board Action. The Board shall be prohibited from taking any of the following actions, except with the vote or written assent of a majority of the Members, other than the Declarant, constituting a quorum consisting of more than fifty percent of the voting power of the Corporation residing in the Members, other than the Declarant:

(a) Entering into a contract with a third person, wherein the third person will furnish goods or services for the Corporation Property or the Corporation for a term longer than one (1) year, with the following exceptions:

(1) A management contract, the terms of which have been approved by the VA/FHA and are consistent with provisions herein;

(2) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate;

(3) Prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration, provided that the policy permits for short-rate cancellation by the insured;

(4) Agreements for cable television services and equipment or satellite dish television services and equipment of not to exceed five (5) years duration, provided that the lessor under the agreement is not an entity in which Declarant has a direct or indirect interest of ten percent (10%) or more; and

(5) Agreements for sale or lease of burglar alarm and fire alarm equipment installation and services of not to exceed five (5) years duration, provided that the supplier or suppliers are not entities in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

(b) Incurring aggregate expenditures for capital improvements to the Corporation Property in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Corporation for that fiscal year;

(c) Selling during any fiscal year property of the Corporation having an aggregate fair market value greater than

five percent (5%) of the budgeted gross expenses of the Corporation for that fiscal year;

(d) Paying compensation to Directors or to officers of the Corporation for services performed in the conduct of the Corporation's business; provided, however, that the Board may cause a Director or officer to be reimbursed for expenses incurred in carrying on the business of the Corporation;

(e) Filling a vacancy on the Board created by the removal of a Director;

(f) Except as otherwise allowed under Section 1375 of the California Civil Code, as same may be amended from time to time, incurring dispute resolution expenses, including without limitation attorneys' fees, where the Corporation initiates dispute resolution proceedings or is joined as a plaintiff in dispute resolution proceedings. Such approval shall not be necessary if the legal proceedings are initiated to (i) enforce the use restrictions contained herein, (ii) enforce the architectural control provisions contained herein; or (iii) collect any unpaid assessments levied pursuant to this Declaration; and

(g) Amending or limiting the Corporation's duties and obligations (and benefits) with respect to the Limited Warranty or other express written warranty, if any, provided by Declarant.

Section 12. Licenses, Easements and Rights-of-Way. The Board, for and on behalf of the Corporation, is authorized and empowered to grant such licenses, easements and rights-of-way for sewer lines, water lines, underground conduits, storm drains, roadways, and other public utility purposes over those portions of the Corporation Property upon which no building or other structure has been erected as may be necessary and appropriate for the orderly maintenance, preservation and enjoyment of the Corporation Property or for the preservation of the health, safety, convenience and welfare of the Owners. Such licenses, easements and rights-of-way may be granted at any time prior to twenty-one (21) years after the death of the individuals who have signed this Declaration and their issue who are in being as of the date hereof, and the right to grant such licenses, easements and rights-of-way is hereby expressly reserved.

Section 13. New Improvements. Except as otherwise provided in this Declaration, the Corporation may construct new Improvements or additions to the Common Property, or demolish existing Improvements, provided that in the case of any Improvement, addition or demolition involving a total expenditure in excess of five percent (5%) of the budgeted gross expenses of the Corporation for that fiscal year, the written consent or vote of a majority of the Owners (other than the Declarant) in the Project as to the

maximum total cost therefor shall first be obtained, and provided that no Condominium shall be altered or damaged by any such demolition or construction without the consent of the Owner thereof. The Board shall levy a Special Assessment against all Owners in the Project for the cost of such work.

Section 14. Corporation Rules and Regulations. The Board shall also have the power to adopt, amend and repeal Rules and Regulations, as it deems reasonable, which may include the establishment of a system of fines and penalties enforceable as Compliance Assessments. The Rules and Regulations shall govern such matters in furtherance of the purposes of the Corporation, including, without limitation, the use of the Common Property, the Exclusive Use Corporation Property (e.g., air conditioning pads, balconies, covered porches, parking spaces, etc. - e.g., what type, if any, of plants or furniture is acceptable), signs, parking restrictions and enforcement, trash collection, minimum standards for maintenance of Condominiums consistent with such standards as may be set forth in this Declaration or adopted by the Architectural Review Committee, election procedures in compliance with California Civil Code Section 1363.03, and any other matter which is within the jurisdiction of the Corporation; provided, however, that the Rules and Regulations may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or By-Laws. A copy of the Rules and Regulations as they may, from time to time, be adopted, amended or repealed, or a notice setting forth the adoption, amendment or repeal of specific portions of the Rules and Regulations, shall be delivered to each Owner and may be placed on file in the principal office of the Corporation. The Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this Declaration, and shall be binding on the Owners and their successors in interest, whether or not actually received thereby. The Rules and Regulations, as adopted, amended or repealed, shall be available at the principal office of the Corporation to each Owner upon request. In the event of any conflict between any such Rules and Regulations and any other provisions of this Declaration, or the Articles or By-Laws, the provisions of the Rules and Regulations shall be deemed to be superseded.

Section 15. Nonliability and Indemnification.

(a) General Limitation. Except as specifically provided in this Declaration, or as required by law, no right, power or responsibility conferred on the Board or the Architectural Review Committee by this Declaration, the Articles or the By-Laws, shall be construed as a duty or obligation charged upon the Board, the Architectural Review Committee, any member of the Board or the Architectural Review Committee, or any other officer, employee or agent of the Corporation. No such person shall be liable to any party (other than the Corporation or a party claiming in the name of the Corporation) for injuries or damage resulting from such person's acts

or omissions within what such person reasonably believed to be the scope of his Corporation duties ("Official Acts"), except to the extent that such injuries or damage result from such person's willful or malicious misconduct. No such person shall be liable to the Corporation (or to any party claiming in the name of the Corporation) 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;

(b) Personal Liability Limitation. To the maximum extent permissible under the law, no person who suffers injury, including, but not limited to, bodily injury (including, without limitation, emotional distress or wrongful death) or property damage or loss as a result of the tortious act or omission of a volunteer Board member or volunteer Corporation officer shall recover damages from such Board member or officer if all the following conditions are satisfied:

(1) At the time the act or omission occurred, the Board member or officer resided in the Project as either a tenant or an Owner of two (2) or fewer Condominiums;

(2) The act or omission was performed within the scope of the Board member's or officer's Corporation duties, which shall include, but shall not be limited to, whether to conduct an investigation of the Corporation Property for latent deficiencies prior to the expiration of the applicable statute of limitations and whether to commence a civil action against the Declarant for defects in design or construction;

(3) The act or omission was performed in good faith;

(4) The act or omission was not willful, wanton or grossly negligent; and

(5) The Corporation maintained and had in effect at the time the act or omission occurred, and at the time a claim was made, one (1) or more policies of insurance which included coverage for general liability for the Corporation and individual liability of officers and Directors of the Corporation for negligent acts or omissions in such capacity, and both types of coverage were in the amount of at least Five Hundred Thousand Dollars (\$500,000.00).

(c) Indemnification. The Corporation shall pay all expenses incurred by, and satisfy any judgment or fine levied against, any person as a result of any action or threatened

action against such person to impose liability on such person for his official acts, provided that:

(1) The Board determines that such person acted in good faith and in the manner such person reasonably believed to be in the best interests of the Corporation; and

(2) In the case of an action or threatened action by or in the right of the Corporation, the Board determines that such person acted with such care, including reasonable inquiry, as an ordinary prudent person in a like position would use under similar circumstances.

Any determination of the Board required under this Section must be approved by a majority vote of a quorum consisting of Directors who are not parties to the action or threatened action giving rise to the indemnification. If the Board fails or refuses to make any such determination, such determination may be made by the vote or written consent of a majority of a quorum of the Members of the Corporation, provided that the person to be indemnified shall not be entitled to vote. The entitlement to indemnification hereunder shall inure to the benefit of the estate, executor, administrator, heirs or devisees of any person entitled to such indemnification.

Section 16. Judicial Reference of Disputes. Unless otherwise provided in the Limited Warranty for "Disputes" (defined below) covered thereunder or otherwise resolved by the non-adversarial pre-litigation procedures set forth in California Civil Code Sections 910 through 938 with respect to construction defect claims (if applicable - as set forth in Exhibit "I" attached hereto, Declarant did not build certain Condominiums and, therefore, contends it is not subject to California Civil Code Section 895, et seq.) or the non-adversarial procedures set forth in subparagraphs (a) and (b) below, any and all claims, controversies, breaches or disputes (each a "Dispute") between or among the Declarant, or any director, officer, partner, attorney, member, employee or agent of Declarant, or any contractor, subcontractor, design professional, engineer or supplier who provided labor, services or materials to the Project (collectively, the "Declarant Parties"), the Corporation, and/or any Owner, relating to or arising out of the Project, this Declaration or any other agreements between the Declarant Parties, the Corporation, and/or an Owner, whether such Dispute is based on contract, tort, or statute, including, without limitation, any Dispute over (1) breach of contract, (2) negligent or intentional misrepresentation or fraud, (3) nondisclosure, (4) breach of any alleged duty of good faith and fair dealing, (5) allegations of latent or patent construction defects, or (6) any other matter arising from or related to the interpretation of any term or provision of this Declaration, or any defense going to the validity of this Declara-

tion, or any provision of this Declaration, shall be resolved amicably and without the necessity of time consuming and costly litigation by judicial reference, without a jury, pursuant to California Code of Civil Procedure Sections 638 and 641 through 645, or any successor statutes thereto, and subject to the procedures set forth in this Section 16. Any Dispute concerning the interpretation or the enforceability of this Section 16, including, without limitation, its revocability or voidability for any cause, any challenges to the enforcement or the validity of this Declaration, or this Section 16, or the scope of issues under this Section 16, and any defense relating to the enforcement of this Section 16, including, without limitation, waiver, estoppel, or laches, or any dispute concerning any award made pursuant to this Section 16, shall be decided by the general referee in the judicial reference proceeding in accordance with this Section 16. The non-adversarial pre-litigation procedures set forth in California Civil Code Sections 910 through 938 shall apply with respect to construction defect claims. The nonadversarial procedure for the resolution of all other Disputes and those construction defect claims which remain unresolved after completion or termination of statutory pre-litigation procedures set forth in Civil Code Sections 910 through 938, shall be as set forth in subparagraphs (a) and (b) below or as otherwise determined by Declarant.

(a) Notice. Any person with a claim regarding a Dispute shall notify the Declarant in writing of the claim, which writing (i.e., by personal or mail service as authorized by Code of Civil Procedure Sections 415.10, 415.20, 415.21, 415.30 or 415.40 to the party to whom the Dispute is directed) shall describe the nature of the claim and any proposed remedy (the "Claim Notice").

(b) Right to Inspect and Right to Corrective Action. Commencing on the date the Claim Notice is delivered and continuing until the Dispute is resolved, the Declarant and its representatives shall have the right to (i) meet with the party alleging the Dispute at a reasonable time and place to discuss the Dispute, (ii) enter the Project to inspect any areas that are subject to the Dispute, and (iii) conduct inspections and testing (including destructive or invasive testing) in a manner deemed appropriate by the Declarant. Within a reasonable period after receipt of the Claim Notice, which period shall not exceed sixty (60) days, the Declarant and the claimant shall meet at a mutually acceptable place within or near the Project to discuss the Dispute. At such meeting or at such other mutually agreeable time, the Declarant and the Declarant's representatives, as noted above, shall have full access to the property that is subject to the Dispute claim and shall have the right to conduct inspections, testing and/or destructive or invasive testing of the same in a manner deemed appropriate by Declarant, which rights shall continue until such time as the Dispute is resolved as set forth herein. The parties to the Dispute shall negotiate in good faith in an attempt to resolve the claim. If the Declarant elects to take any corrective action,

Declarant and Declarant's representatives and agents shall be provided full access to the Project to take and complete corrective action. Nothing set forth in this Section 16 imposes any obligation on Declarant to inspect, repair or replace any items or alleged defects for which Declarant is not otherwise obligated under applicable State and federal law or the Limited Warranty in connection with the sale of the Condominiums.

(c) Judicial Reference. In the event that a Dispute is raised and not resolved pursuant to the nonadversarial procedures set forth in California Civil Code Sections 910 through 938 with respect to construction defect claims, the nonadversarial procedures set forth above, or, with respect to Disputes subject to the Limited Warranty, the procedures set forth in the Limited Warranty, such Dispute shall be submitted to and resolved as follows.

If the Dispute is subject to the Limited Warranty, the Dispute shall be resolved according to the procedures set forth in the Limited Warranty (e.g., by and pursuant to any arbitration provisions set forth in the Limited Warranty). If the Dispute is not subject to the Limited Warranty, or the Limited Warranty does not contain any arbitration provisions, the Dispute shall be submitted to by general judicial reference pursuant to California Code of Civil Procedure Sections 638 and 641 through 645, or any successor statutes thereto, and as modified by this Section 16.

The rules and procedures of the entity providing judicial reference in effect at the time the request for judicial reference is submitted shall be followed; otherwise, the parties agree to the provisions set forth below.

(d) General Judicial Reference Provisions. Declarant, each Owner (by acceptance of a deed to a Condominium), and the Corporation (by acceptance of a deed to the Corporation Property) acknowledge, understand and agree that the judicial reference procedures noted herein, as applicable, involve a process whereby resolution of the Dispute does not involve a jury trial and specifically excludes a jury from any involvement in resolution of the Dispute. The parties to the Dispute shall cooperate in the judicial reference proceeding. Declarant, each Owner (by acceptance of a deed to a Condominium), and the Corporation (by acceptance of a deed to the Corporation Property) grant the general referee authority to decide all issues, whether of fact or law, including without limitation, the validity, scope and enforceability of this dispute resolution provision, and to report a statement of decision to the court. All parties shall use the procedures adopted by any entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the parties, provided that the following rules and procedures shall apply in all cases unless the parties agree otherwise in writing:

(1) The general referee must be a neutral and impartial retired judge with substantial experience in real estate development and residential construction matters. Any dispute regarding the selection of the referee shall be resolved by the entity providing the reference services, or, if no entity is involved, by the court with appropriate jurisdiction.

(2) The general reference proceeding shall proceed without a jury. Declarant, each Owner (by acceptance of a deed to a Condominium), and the Corporation (by acceptance of a deed to the Corporation Property) each hereby acknowledge, understand, and agree that this procedure does not involve a jury trial and that this procedure and the lack of a jury trial shall be binding upon their respective successors and assigns and upon all persons and entities asserting rights or claims or otherwise acting on behalf of them or their successors and assigns.

(3) The parties shall be entitled to conduct all discovery as otherwise provided in the California Code of Civil Procedure, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge, with rights to regulate discovery and to issue and/or enforce subpoenas, protective orders or other limitations on discovery available under California law. In the context of construction defect disputes, all parties shall be entitled to reasonable site inspections, visual inspections, destructive testing, and other discovery mechanisms commonly employed in such disputes.

(4) The reference proceeding shall be conducted in accordance with California law (including the rules of evidence), and in all regards the general referee shall follow California law as applicable at the time of the general reference proceeding. The general referee may issue any remedy or relief which the courts of the State of California could issue if presented the same circumstances, and the general referee shall follow and otherwise employ the standards for issuing such relief as defined by California law. The general referee may require one or more pre-hearing conferences. A stenographic record of the trial shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals. The general referee's statement of decision shall contain findings of fact and conclusions



of law to the extent applicable. The general referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge. The statement of decision of the general referee upon all of the issues considered by the general referee shall be binding upon the parties, and upon filing the statement of decision with the clerk of any court of the State of California having jurisdiction thereof, or with the judge if there is no clerk, judgment may be entered thereon. The judgment and decision of the general referee shall be appealable in the same manner and subject to the same rules as if rendered by the court.

(5) Any dispute involving third parties (i.e., a person or entity other than Declarant, or Owner or the Corporation) shall be included in the general reference procedure prescribed herein to the extent permitted by law. All parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding.

(6) The exclusive venue for all general reference proceedings shall be in the County where the Project is located;

(7) Except where attorneys' fees are awarded as an element of sanctions, the parties shall bear their own attorneys' fees in any proceeding conducted under this paragraph. Declarant shall initially advance all fees and costs necessary to initiate the general reference proceeding (excluding any fee for the referee); however, the general referee may, in his or her discretion, reallocate such fees and costs among the parties as the interests of justice dictate. The general referee may award litigation costs to the prevailing party. This provision does not modify any provision of a contract between Declarant and any other entity other than an Owner requiring indemnification or establishing a different allocation of costs between Declarant and such entity.

(8) If any provision of this paragraph shall be determined to be unenforceable or to have been waived, the remaining provisions shall be deemed to be severable therefrom and enforceable according to their terms.

(e) Inspection Easements. The Declarant reserves easements to enter any Condominium, including the interior of the residence and the Exclusive Use Corporation Property, to

inspect those areas and to conduct destructive testing referred to in California CIVIL CODE § 1375(d). However, the Declarant shall notify the Owner of the Condominium of at least three (3) alternative dates and times when such inspection can take place (the earliest of which shall not be less than ten (10) days after the notification is given), and the Declarant shall give the Owner the opportunity to specify which date and time is acceptable to the Owner. Should the Owner not respond affirmatively with respect to one of the dates and times within five (5) days, then the Declarant may decide which of the dates and times the inspection and testing shall take place and so notify the Owner. Alternatively, the Declarant may seek a judicial order allowing such inspection and testing to take place. Declarant shall be entitled to its reasonably incurred attorneys' fees and be deemed the "prevailing party" should such a court order be sought and obtained. Declarant shall be obligated to fully repair any damage caused by any such destructive testing.

(f) Miscellaneous. Any and all communications by and between the parties, whether written or oral, which are delivered by the parties or their attorneys or other representatives in an effort to settle the matter shall be considered communications undertaken in the course of effecting a settlement or compromise, as such shall not be admissible as an admission on the part of any party or any representative or agent of that party to be utilized for any such purpose in any action or proceeding.

Nothing herein shall be considered to reduce or extend any applicable statute of limitation. If at any time an action would be barred by a statute of limitation if not filed within sixty (60) days, then such action may be filed notwithstanding any other provision of this Section 16.

(g) Manufactured Products Maintenance and Limited Warranty Information. Each Owner, as to his respective Condominium, and the Corporation, as to the Corporation Property, acknowledge that Declarant has provided such Owner and the Corporation with manufactured product maintenance, preventative maintenance and limited warranty information pertaining to such Owner's Condominium and to the Corporation Property (e.g., any maintenance manual and/or warranty/resource guide). Declarant reserves the right, by written notice to each Owner and/or to the Corporation, to supplement and/or amend such manufactured product maintenance, preventative maintenance and limited warranty information from time to time. Each Owner and the Corporation also acknowledge that by law, such Owner and such Corporation is obligated to follow all reasonable maintenance and preventative maintenance schedules and obligations communicated in writing from Declarant as well as commonly accepted maintenance practices. Each Owner and the Corporation covenant to faithfully follow

all such maintenance and preventative maintenance schedules and obligations contained in all such manufactured product maintenance, preventative maintenance and limited warranty information (and each Owner shall require and cause any tenant or lessee of such Owner's Condominium to follow all such schedules and obligations).

(h) Indemnification. Each Owner of a Condominium in the Project and the Corporation covenant to indemnify, defend and hold Declarant harmless from any loss, costs or damages arising from such Owner's or such Corporation's failure or refusal to perform its respective obligations.

DECLARANT, THE CORPORATION AND EACH OWNER SHALL USE THE PROCEDURES ESTABLISHED IN THIS SECTION 16 TO RESOLVE ALL DISPUTES AND SHALL BE DEEMED TO WAIVE THEIR RIGHTS TO RESOLVE DISPUTES IN ANY OTHER MANNER. PURSUANT TO THIS SECTION, DECLARANT, THE CORPORATION (BY ACCEPTANCE OF A DEED TO THE CORPORATION PROPERTY), AND EACH OWNER (BY ACCEPTANCE OF A DEED TO A CONDOMINIUM) ACKNOWLEDGE, UNDERSTAND, AND AGREE THAT THEY SHALL HAVE NO RIGHT TO HAVE ANY DISPUTE TRIED BEFORE A JURY.

THIS SECTION MAY NOT BE AMENDED WITHOUT DECLARANT'S PRIOR WRITTEN CONSENT, WHICH CONSENT MAY BE WITHHELD IN DECLARANT'S SOLE AND ABSOLUTE DISCRETION.

Section 17. Power of Attorney to Correct Errors. Upon acceptance of a deed to a Condominium in the Project, each Owner, on behalf of himself and his or her Mortgagees, hereby grants to the Corporation a special power of attorney to correct any errors in a Condominium Plan by executing on behalf of the affected Owners and Mortgagees an amendment to the Condominium Plan and an instrument to effect any conveyances or partial reconveyances necessary to correct such errors. Unless broader provisions are provided in this Declaration, the power hereby given to the Corporation is limited as follows:

(a) The power may be exercised only to correct errors in a Condominium Plan as evidenced by a written statement which describes the error(s) and which is signed by the engineer who prepared the Condominium Plan or by Declarant.

(b) The power may not be exercised on behalf of an Owner or his or her Mortgagee if the Owner's Condominium or Exclusive Use Corporation Property, if applicable, would be reduced in size by reason of the correction, unless written approval is obtained from the affected Owner and Mortgagee.

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

## ARTICLE VII

### ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessment. The Declarant, for each Condominium owned within the Project, hereby covenants, and each Owner of any Condominium, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Corporation: (a) Regular Assessments; (b) Special Assessments; (c) Compliance Assessments; (d) Special Benefit Assessments; and (e) such other assessments as the Corporation may periodically establish. Except as otherwise provided by law, the Regular, Special, and Special Benefit Assessments, together with a reasonable late charge as may, from time to time, be established by the Board in accordance with California law, interest, costs and reasonable attorneys' fees for the collection thereof, shall be a charge against and a continuing lien upon the Condominium against which each such Assessment is levied, and shall also be the personal obligation of the Owner of such property at the time when the Assessment came due. Each Compliance Assessment levied against a Condominium, together with interest, costs, reasonable late charges and reasonable attorneys' fees for the collection thereof, shall be the personal obligation of the Owner of the property at the time of the Assessment. The personal obligation for delinquent Assessments shall not pass to the successors in title unless expressly assumed by them.

Section 2. Purpose of Regular Assessments: Levy and Collection. The Regular Assessments levied by the Corporation shall be used exclusively to promote the health, safety and welfare of the residents in the Project and, except as otherwise provided in this Declaration, to maintain, repair, replace and improve the Corporation Property, and any other Improvements or areas which the Corporation is obligated to maintain, as provided herein. The Corporation, by and through its Board, shall levy and collect Assessments from the Owner of each Condominium in the Project in an amount sufficient to cover all of the Common Expenses incurred by the Corporation in connection with the performance and execution of the powers and duties set forth in this Declaration, the By-Laws and Articles. In connection therewith, the Corporation shall not impose or collect Assessments, penalties or fees that exceed the amount reasonably necessary for the purpose or purposes for which they were levied. Nothing in this Declaration shall be construed in such a way as to prohibit the use of Corporation Assessments or funds to abate any annoyance or nuisance emanating from outside the boundaries of the Project. The percentage rate for the Assessments levied by the Corporation shall be adjusted at such time as the annexation of an additional Phase becomes effective. Regular Assessments may be collected on a monthly installment basis.

Section 3. Regular Assessments - Basis. Except for that portion of the Regular Assessments attributable to Variable

Expenses (i.e., the Utility Assessment Component - see Section 6 hereinbelow), Regular Assessments payable to the Corporation shall be assessed equally against all Owners of Condominiums. Each Owner's proportionate share of the Common Expenses for any fiscal year of the Corporation shall be a fraction, the numerator of which shall be the number of Condominiums owned by such Owner, and the denominator of which shall be the total number of Condominiums in the Project which are subject to Assessment. Until the first day of the fiscal year of the Corporation immediately following the first close of an escrow for the sale of a Condominium in the Project to an Owner, the maximum Regular Assessment shall be as set forth in the Phase 1 budget approved by the DRE. Notwithstanding the commencement for payment of Regular Assessments, or any other provisions of this Declaration, Declarant and any other Owner of a Condominium which does not include a structural Improvement for human occupancy shall be exempt from the payment of that portion of any Assessment (e.g., Regular Assessment) which is for the purpose of defraying operating expenses and reserves directly attributable to the existence and/or use of such structural Improvements. This exemption shall include, but shall not necessarily be limited to, that portion of any Assessment attributable to roof replacement, exterior maintenance, exterior walkway and carport lighting, refuse disposal, cable television and domestic water, if any, supplied to Condominiums. This exemption shall be in effect only until the earliest to occur of: (a) the recordation of a notice of completion for the structural Improvements; (b) the occupation or use of the Condominium; or (c) the completion of all elements of the condominium building which the Corporation is obligated to maintain, if any. Declarant and any Owner shall also be exempted from the payment of that portion of any Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of any Corporation Property facilities that are not complete at the time Assessments commence. This latter exemption shall only be in effect as to a particular Corporation Property facility until the earlier of: (a) the recordation of a notice of completion for such Corporation Property facility; or (b) the placement into use of the particular Corporation Property facility. Subject to the limitations of California Civil Code Section 1366, as same may be amended, from time to time, from and after the first day of the fiscal year immediately following the conveyance of the first Condominium to an Owner, the maximum Regular Assessment may be increased subject to the following limitations:

(a) Increases in Regular Assessments for any fiscal year which are less than or equal to twenty percent (20%) above the maximum Regular Assessment for the immediately preceding fiscal year may be approved by the Board, provided that the Board shall: (1) comply with the provisions set forth in Section 1365(a) of the California Civil Code, as same may be amended from time to time, with respect to the distribution of the pro forma operating budget of the Corporation for the forthcoming fiscal year; or (2) obtain the approval of

Members, constituting a quorum, casting a majority of affirmative votes at a meeting or an election of the Corporation conducted in accordance with California Corporations Code Sections 7510, et seq., and Sections 7613, et seq. For purposes of this entire Section 3, a quorum means more than fifty percent (50%) of the Members of the Corporation;

(b) Increases in Regular Assessments for any fiscal year which are greater than twenty percent (20%) above Regular Assessments for the immediately preceding fiscal year may be approved by the Board only after the Board obtains the approval of Members, constituting a quorum, casting a majority of affirmative votes at a meeting or election of the Corporation, conducted in accordance with Sections 7510, et seq., and Section 7613, et seq. of the Corporations Code; and

(c) The Assessment increase limitation set forth in Subsection (b) above does not apply to increases in Assessments related to emergency situations, which shall be deemed to include the following:

(1) Extraordinary expenses required by an order by a court of competent jurisdiction;

(2) Extraordinary expenses for the maintenance or repair of Corporation Property that is necessary to remedy any dangerous condition in the Project that represents a threat of damage or injury to any person or property; and

(3) Extraordinary expenses necessary to repair or maintain the Corporation Property that could not have been reasonably anticipated by the Board at the time the most recent Corporation budget was prepared. Notwithstanding the foregoing, in the event that the Board increases the Regular Assessment above twenty percent (20%) pursuant to this Subparagraph (3), the Board shall distribute written notice concerning said increase to all Owners and a copy of a resolution adopted by the Board setting forth: (i) the necessity of the extraordinary expenses; and (ii) the justification why said expenses were not reasonably foreseeable at the time the most recent budget was prepared. For the purpose of calculating whether an increase to Regular Assessments exceeds twenty percent (20%), the term "Regular Assessments" shall be deemed to include the amount assessed against each Condominium by the Corporation as a Regular Assessment, plus any amount paid by the Declarant as a subsidy or pursuant to any subsidy or maintenance agreements, to the extent such subsidy payments offset an amount which would otherwise be paid by Owners as Regular Assessments.

The Board may fix the Regular Assessment at an amount not in excess of the maximum Regular Assessment. So long as Declarant is offering Condominiums for sale pursuant to a Final Subdivision Public Report, the Regular Assessment may not be decreased by ten percent (10%) or more without the express prior written consent of the Declarant and the DRE. Notwithstanding the foregoing, following the annexation of a subsequent Phase of the Project, pursuant to the provisions set forth in this Declaration, the maximum Regular Assessment may be automatically increased (or decreased) for all Condominiums in the Project on the first day of the month following the first close of an escrow for the sale of a Condominium in said Phase without any approval of the Members of the Corporation to the amount recommended by the DRE in connection with their respective review and processing of the Corporation budget for such Phase. The Corporation may, upon ratification by a majority of the Board, enter into an agreement with Declarant, its successors or assigns, to reduce or abate Assessments, upon such terms and conditions as may be agreed to by the parties.

Section 4. Special Assessments for Capital Improvements.

(a) In addition to the Regular Assessments authorized above, the Board may not, subject to the limitations of California Civil Code Section 1366, without the vote or written approval of Members constituting a quorum (which shall mean more than fifty percent [50%] of Owners of the Corporation) casting a majority of affirmative votes at a meeting or election of the Corporation, conducted in accordance with Sections 7510, et seq., and 7613 of the Corporations Code, levy Special Assessments to defray the costs of any action or undertaking on behalf of the Corporation which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Corporation for that fiscal year. The five percent (5%) limitation shall not apply to increases in Special Assessments related to an emergency situation which shall be deemed to include the following:

(1) Extraordinary expenses required by an order by a court of competent jurisdiction;

(2) Extraordinary expenses for the maintenance or repair of Corporation Property that is necessary to remedy any dangerous condition in the Project that represents a threat of damage or injury to any person or property; and

(3) Extraordinary expenses necessary to repair or maintain the Corporation Property that could not have been reasonably anticipated by the Board at the time the most recent Corporation budget was prepared. Notwithstanding the foregoing, in the event the Board levies any Special Assessment that exceeds the five percent (5%)

limitation pursuant to this Subparagraph (3), the Board shall distribute written notice concerning said Special Assessment to all Owners and a copy of a resolution adopted by the Board setting forth: (i) the necessity of said Special Assessment; and (ii) the justification why said Special Assessment was not reasonably foreseeable at the time the most recent budget was prepared. Except as provided in Subsection (b) below, every Special Assessment shall be levied upon the same basis as that prescribed for the levying of Regular Assessments.

(b) A Special Assessment levied against Owners to raise funds for the reconstruction or major repair of the Condominium Units, if applicable, in the Project shall be levied on the basis of the ratio of the square footage of the floor area of the Condominium Unit to be assessed, to the square footage of the floor area of all Condominium Units to be assessed.

Section 5. Compliance Assessments. A Compliance Assessment may not be characterized nor treated as an assessment which may become a lien against the Owner's Condominium enforceable by a sale in accordance with the provisions of Sections 2924 et seq. of the Civil Code; provided, however, at such time as the sale of Condominiums is not governed by the DRE, the foregoing shall not apply to any Compliance Assessment imposed against an Owner consisting of a reasonable late payment penalty for delinquent Assessments and/or charges to reimburse the Corporation for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent Assessments or imposed for costs incurred by the Corporation in the repair of damage to Common Property and facilities for which the Member or the Member's guests or tenants were responsible.

Section 6. Utility Assessment Component. A Utility Assessment Component shall be assessed to each Owner for water and sewer fees based upon the usage readings obtained from the submeter for the Owner's Condominium. Domestic water will be supplied to the Condominiums through a master water meter installed within the Project, and water and sewer services will be billed to the Corporation based on readings from the master meter. The Corporation will assess a Utility Assessment Component to each Owner for water and sewer fees based upon the usage readings obtained from the submeter for the Owner's Condominium. Because each Owner's usage will vary, the Utility Assessment Component will not be the same for every Owner; rather, each Owner will pay an equitably proportionate share of the Common Expenses of the Corporation incurred in connection with the provision of water to the Condominium Units based on the readings obtained from the submeter for the Owner's Condominium.

In levying the Utility Assessment Component against each Owner, the Corporation shall utilize water consumption information



from the sub-meters and the billing information which is provided by the supplier of water and sewer services. Should the supplier of such services charge penalties for excessive water consumption or should the supplier otherwise charge different rates for different levels of consumption, the Corporation may in any reasonable manner utilize such information in its determination of the Utility Assessment Component.

The Corporation shall have the right to enter into an agreement with a private meter reading service to (a) read the sub-meters, (b) prepare and send the Utility Assessment Component and (c) collect the Utility Assessment Component billed to each Owner on behalf of the Corporation. Alternatively, the Corporation may itself do any such billing activities. No Owner shall interfere with the reading of such sub-meters nor in any manner change or disconnect such sub-meters. The Corporation is hereby granted an easement over each Condominium Unit and Exclusive Use Corporation Property for the purpose of enabling the Corporation or its agents and contractors to read, repair, realign or replace such sub-meters, wherever located.

Section 7. Notice of Increase in Assessments. The Board shall provide to the Owners, by first class mail to the address on file with the Corporation, notice of any increase in Regular, Special and/or Special Benefit Assessments not less than thirty (30) nor more than sixty (60) days prior to such increase becoming due.

Section 8. Special Benefit Assessments. Special Benefit Assessments shall mean and refer to a charge levied by the Corporation against an Owner and his respective Condominium to cover the expenses incurred by the Corporation in the operation, maintenance, repair, and/or funding of reserves as to a portion of the Project designated herein or in a Notice of Annexation or by the Declarant or by the Board as a "Special Benefit Area" or which is identified or referred to as an area or facility benefitting only the Owners within such an Area. These expenses are only chargeable to Owners in a Special Benefit Area, and may include, without limitation, the following:

(a) Maintenance, management, operation, repair and replacement of particular Improvements within the Special Benefit Area;

(b) Utilities or services for the benefit of Owners within the Special Benefit Area;

(c) Reasonable reserves, as deemed appropriate by the Board, for repair and replacement of any Improvements maintained by the Corporation within a Special Benefit Area; and

(d) Unpaid Special Benefit Assessments.

The Corporation shall distribute to Owners within any Special Benefit Area a pro forma operating statement and budget for the upcoming fiscal year which shall estimate the expenses attributable to the Special Benefit Area, the allocation of such expenses among the affected Owners, and shall set forth the amount and payment schedule of the Special Benefit Assessments. Increases in Special Benefit Area Assessments for any fiscal year which are less than or equal to twenty percent (20%) above the maximum Special Benefit Area Assessment for the immediately preceding fiscal year may be approved by the Board, provided that the Board shall obtain the approval of Members affected by such Assessment, constituting a quorum, casting a majority of affirmative votes. For purposes of this Section, a quorum means more than fifty percent (50%) of the Members of the Corporation affected by the Special Benefit Area Assessment. The Assessment increase limitation set forth hereinabove does not apply to increases in Special Benefit Area Assessments related to emergency situations that could not have been reasonably anticipated by the Board at the time the most recent Corporation budget was prepared which determined the amount of the Special Benefit Area Assessments.

Section 9. Date of Commencement of Regular Assessments:  
Due Dates. Subject to the exception which may apply to model Condominiums noted below, the Regular Assessments provided for herein shall commence in each Phase on the first day of the month following the first close of escrow for the sale of a Condominium in such Phase, or on the first day of the month following the first occupancy of a Condominium in such Phase pursuant to a rental or lease agreement with the Declarant, or its authorized agent, whichever occurs first. The first Regular Assessments shall be adjusted according to the number of months remaining in the fiscal year, as set forth in the By-Laws. The Board shall fix the amount of the Regular Assessment against each Condominium at least thirty (30) days in advance of each Regular Assessment period. Written notice of the Regular Assessment shall be sent to every Owner subject to the provisions hereinabove. Notwithstanding any other provisions of this Declaration and as set forth hereinabove, until the earlier to occur of: (a) the recordation of a Notice of Completion of an Improvement to the Corporation Property; or (b) the placement into use of the Corporation Property, each Owner (including Declarant) may be declared by the Board to be exempt from paying that portion of the Regular Assessment which is directly attributable to expenses and reserves to be incurred by the Corporation in the maintenance, operation and repair of such Corporation Property.

Section 10. Date of Commencement of Regular Assessments for Models. Conveyance of a Condominium which is being used by Declarant for model home, sales office, design center, construction office or similar purposes (any of which uses are referred to in this Section as "Model Home") shall not commence the regular assessments against such Condominiums or other Condominiums within the Phase until the earlier to occur of:

(a) discontinuance of use of such Condominium as a Model Home; or

(b) conveyance of any non-Model Home Condominium in the Phase.

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

Section 11. Collection of Assessments. Except as otherwise provided above (e.g., Utility Assessment Component) or in any subsequent Notice of Annexation, Regular and Special Assessments shall be levied at a uniform rate for all Condominiums and may be collected on a monthly basis. If any installment of a Regular Assessment is less than the amount assessed and the payment does not specify the Corporation funds or fund into which it should be deposited, the receipt thereof by the Corporation from that Member shall be credited in order of priority, first to the operating fund, until that portion of the Regular Assessment has been satisfied, and second to the reserve fund. Compliance and Special Benefit Assessments shall be due thirty (30) days after such Assessment has been levied unless otherwise determined by the Board in a manner consistent with Civil Code Section 1366, as may be amended from time to time.

Section 12. Certification of Payment. The Corporation shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer or agent of the Corporation setting forth whether the Assessments on a specified Condominium have been paid. If a certificate states that Assessments have been paid, such certificate shall be conclusive evidence of such payment.

Section 13. Delivery by Owner. Each Owner of a Condominium shall, as soon as practicable prior to the transfer of title to the Condominium or the execution of a real property sales contract, as defined in California Civil Code, Section 2985, or as may be amended, from time to time, give to the prospective purchaser a copy of this Declaration and copies of the By-Laws and Articles of the Corporation, and a true statement, in writing, from

the Board as to the amount of the Corporation's current Regular and Special Assessments and fees, as well as any delinquent Assessments and information relating to penalties, attorneys' fees and other charges authorized by this Declaration on the Condominium as of the date the statement is issued, and any change in the Corporation's current Assessments and fees which have been approved by the Board but have not become due and payable as of the date disclosure is provided pursuant to this Section.

Section 14. Delivery of Statement. Upon written request, the Board shall, within ten (10) days of the mailing or delivery of such request, respectively, provide the Owner of a Condominium with a copy of this Declaration, and copies of the By-Laws and Articles of the Corporation, together with the pro forma budget, an insurance policy summary, a true statement in writing as to the amount of any delinquent Assessments, penalties, attorneys' fees and other charges authorized by this Declaration on the Condominium as of the date of the request, the most recent financial statement, the Corporation's current Regular and Special Assessments, and any change in the Corporation's current Assessments and fees which have been approved by the Board but have not become due and payable as of the date disclosure is provided pursuant to this Section. The Board may impose a fee for providing such documents and statements, but in no event shall the fee exceed the reasonable cost to prepare and reproduce the requested documents.

Section 15. Delivery by Declarant. In accordance with applicable legal requirements, within ninety (90) days following the first close of escrow for the sale of a Condominium in the Project, or as soon as reasonably obtainable, the Declarant shall provide the Corporation with copies of the (1) recorded tract map for the Project; (2) Corporation Property grant and/or easement deeds; (3) this Declaration; (4) filed Articles of Incorporation; (5) the Corporation's By-Laws; (6) Rules and Regulations and/or Architectural Guidelines adopted by the Board (if any); (7) notice of completion certificates for Corporation Property, if any; (8) completion bond(s) naming the Corporation as a beneficiary, if any; (9) warranties for Corporation Property equipment or fixtures, if any; (10) insurance policies obtained for the Corporation; and (11) membership register, to the extent it is available and if required by law.

Section 16. Reserves. The Regular Assessments shall include reasonable amounts, as determined by the Board, collected as reserves for the future periodic maintenance, repair and replacement of all or a portion of the Corporation Property, or any such other purpose determined by the Board. All amounts collected as reserves shall be deposited by the Board in a separate bank account for the purposes for which they were collected, and are to be segregated from and not commingled with any other funds of the Corporation. The expenditure of such funds shall be limited to the repair and replacement of those elements of the Corporation Property which must be repaired or replaced according to a reserve

study as permitted by Section 1365.5 of the California Civil Code, as same may be amended from time to time.

Section 17. Offsets and Waiver Prohibited. No Owner may waive or otherwise avoid liability for the Assessments provided for herein for any reason whatsoever, including, but not limited to, non-use of the Corporation Property or abandonment of his Condominium, nor shall any Owner be entitled to any offset against any Assessment provided for herein for any reason whatsoever, including, but not limited to, any expenditure made by such Owner for or on behalf of the Corporation.

Section 18. Exempt Property. The Corporation is not subject to Assessments. In addition, the following property subject to this Declaration shall be exempt from the Assessments herein:

(a) All property dedicated to and accepted by a local public authority;

(b) All property owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of California, however, no land or Improvements devoted to dwelling use shall be exempt from said Assessment.

#### ARTICLE VIII

##### EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE CORPORATION

Section 1. Effect of Nonpayment of Assessments: Remedies of the Corporation. Any Regular, Special, or Compliance Assessment not paid within fifteen (15) days after the due date shall be deemed delinquent and the Owner shall be required to pay: (a) reasonable costs of collection, including reasonable attorneys' fees; (b) a reasonable late charge not exceeding ten percent (10%) of the delinquent Assessment or Ten Dollars (\$10.00), whichever is greater, or as may, from time to time, be established by the Board in accordance with California law; and (c) interest on all sums imposed under this Section at an annual percentage rate not to exceed twelve percent (12%) commencing thirty (30) days after the Assessment was due. The Board, for and on behalf of the Corporation, may commence legal action against the Owner personally obligated to pay the same, or, in the case of a Regular, Special Assessment, may foreclose the lien against his Condominium. Such lien may also be foreclosed by a power of sale or other nonjudicial procedure provided for by the laws of the State of California. In furtherance thereof, each Owner hereby vests in the Corporation, its successors or assigns, the right and power to bring all actions at law or to pursue lien foreclosure against any Owner for purposes of collecting such delinquent Assessments. To the extent permitted by law, each Owner waives, with respect to the extent of any liens

created pursuant to this Article, the benefit of any homestead or exemption laws of California in effect at the time any Assessment, or installment thereof becomes delinquent or any lien is imposed. The Corporation need not accept any tender of a partial payment of an installment of an Assessment and all costs and attorney's fees attributable thereto, and any acceptance of any such tender shall not be deemed to be a waiver of the Corporation's right to demand and receive full payments thereafter. Payments for Assessments shall first be applied to the principal owed for the Assessments and only after such principal amount is paid in full, shall such payments be applied to interest or collection expenses for such Assessments. If requested by an Owner, the Corporation shall provide the Owner with a receipt of payment of Assessments, indicating the date of the Owner's payment of Assessments and the person who received such payment on behalf of the Corporation. The Corporation shall establish a mailing address for the overnight payment of Assessments.

Section 2. Notice of Delinquent Assessments. No action shall be brought to foreclose a lien for delinquent Assessments, or to proceed under the power of sale herein, unless the Corporation complies with all applicable provisions of law [e.g., California Civil Code Section 1367.1(a), as the same may be amended from time to time, and provisions of California Civil Code Section 2924, 2924(b), and 2924(c), as may be amended from time to time].

Section 3. Foreclosure Sale. Any foreclosure sale provided for above is to be conducted by the Board, its attorney or other persons authorized by the Board, in accordance with the provisions of Sections 2924, et seq. of the California Civil Code applicable to the exercise of powers of sale in Mortgages and deeds of trust, as same may be amended, from time to time, or in any other manner permitted by law. The Corporation, through duly authorized agents, shall have the power to bid on the Condominium at a foreclosure sale and to acquire, hold, lease, mortgage and convey the same.

Section 4. Curing of Default. Upon the timely curing of any default for which a Notice of Delinquent Assessments or lien was filed by the Corporation, the officers thereof are hereby authorized to file or record, as the case may be, an appropriate release of such Notice upon receipt of payment from the defaulting Owner of a reasonable fee to be determined by the Corporation to cover the costs of preparing and filing or recording such release.

Section 5. Cumulative Remedies. The Corporation's remedies for nonpayment of Assessments, including, but not limited to, an action to recover a money judgment, Assessment lien and right of foreclosure and sale, are cumulative and in addition to and not in substitution of any other rights and remedies which the Corporation and its assigns may have hereunder or at law.

Section 6. Mortgagee Protection. Notwithstanding all other provisions hereof, no lien created hereunder nor any breach of the terms and provisions of this Declaration, nor the enforcement of any term or provision hereof, shall defeat or render invalid the rights of any Mortgagee under any recorded first Mortgage or deed of trust upon a Condominium made in good faith and for value; provided, that after such Mortgagee or other person or entity obtains title to such Condominium by judicial or nonjudicial foreclosure, such Condominium shall remain subject to this Declaration and the payment of Assessments which fall due subsequent to the date of taking title.

## ARTICLE IX

### USE RESTRICTIONS

Except as otherwise expressly provided in this Declaration or in a Notice of Annexation recorded in accordance with the provisions herein, the Condominium Units and Common Property shall be occupied and used only as set forth hereinbelow.

Section 1. Private Dwelling. Except as otherwise provided in this Declaration, each Condominium shall be used for residential purposes (i.e., single family dwelling purposes only), except such temporary uses as shall be permitted by Declarant while the Project is being developed and Condominiums are being sold by Declarant; provided, however, that Declarant reserves unto itself, and its successors and assigns, together with the right to grant and transfer all or a portion of the same, for so long as Declarant owns any interest in Lot 1 of Tract No. 2005-02 and/or the Annexation Property, and is entitled to annex Annexation Property to the Project, the right to carry on normal sales activity on the Project, including the operation of models, sales office, design center and parking area, provided Declarant shall not unreasonably interfere with any other Owner's use of the Common Property.

Section 2. Common Property Use. Use of the Common Property shall be subject to the provisions of this Declaration, the Rules and Regulations and to any additional limitations imposed by any of the other Corporation management documents, and to any additional limitations imposed by the Corporation or Board.

Section 3. Conduct Affecting Insurance. Nothing shall be done or kept in any Condominium Unit or in the Common Property which will increase the rate of insurance on the Common Property without the approval of the Corporation. No Owner shall permit anything to be done or kept in his Condominium Unit or in the Common Property which will result in the cancellation of insurance on the Common Property or which would be in violation of any law. If, by reason of the occupancy or use of said premises by the Owner, the rate of insurance to the Common Property shall be

increased, the Owner shall become personally liable for the additional insurance premiums.

Section 4. Liability for Damage to the Common Property.

Each Owner shall be liable to the Corporation, pursuant to the laws of the State of California, for any and all costs and expenses which may be incurred by the Corporation to repair any damage to the Common Property which may be sustained by reason of the negligent acts or omissions or the willful misconduct of said Owner or any member of his family, his guests, tenants, lessees, or their respective guests or invitees, whether minor or adult. Subject to Notice and Hearing and approval by a majority of the Board, any such costs and expenses shall be levied by the Board as either a Special or Compliance Assessment against such Owner. The Corporation may, after notice and hearing as provided in the By-Laws, levy a Special or Compliance Assessment against said Owner equal to the increase, if any, in insurance premiums directly attributable to the damage caused by the Owner or person for whom the owner may be responsible.

Section 5. Signs. Subject to Civil Code Sections 712, 713, 1353.5 and 1353.6, and California Government Code Section 434.5, as same may be amended from time to time, no sign, advertising device or other display of any kind shall be displayed in the Project or on any public street in or abutting the Project except for the following signs:

(a) entry monuments, community identification signs, and traffic or parking control signs maintained by the Corporation;

(b) for each Condominium Unit, one (1) nameplate or similar Owner name or address identification sign which complies with the Architectural Review Committee rules;

(c) for each Condominium Unit, one (1) sign advising of the existence of security services protecting a Condominium which complies with the Architectural Review Committee rules;

(d) for each Condominium Unit, one (1) sign advertising the Condominium Unit for sale or lease that complies with the following requirements:

(1) the sign is not larger than such signs commonly utilized for similar purposes by a real estate company licensed to conduct business in the State of California;

(2) the sign is attached to the ground by a conventional, single vertical stake which does not exceed normal size standards for signs commonly utilized for similar purposes by a real estate company licensed to



conduct business in the State of California (i.e., not affixed to the Condominium building or Exclusive Use Corporation Property), in locations allowed by the Architectural Review Committee;

(3) the top of the sign is not taller than such signs commonly utilized for similar purposes by a real estate company licensed to conduct business in the State of California; and

(4) other signs or displays authorized by the Architectural Review Committee and the City.

Notwithstanding the foregoing, as long as Declarant owns at least one Condominium in the Project, all for sale or lease signs for a Condominium not owned by the Declarant shall only be displayed from inside the windows of the Condominiums.

Section 6. Maintenance of Animals. No animals of any kind shall be raised, bred or kept in any Condominium Unit or in the Common Property, except that common domesticated dogs, cats, birds or other household pets (other than small household pets such as fish), may be kept in each Condominium Unit in reasonable numbers as determined by the Board; provided, however, that no animal shall be kept, bred or maintained for any commercial purpose and shall not exceed any weight limitations, if any, established by the Board. As used in this Declaration, "reasonable numbers" shall ordinarily mean two (2) total pets (excluding small household pets such as birds and fish) per Condominium; however, the Board may determine that a reasonable number in any instance may be more or less than two (2). Each Owner shall be responsible for cleaning up any excrement or other unclean or unsanitary condition caused by said animal in the Project. While walking or exercising an animal in the Project, the owner thereof shall, at all times, have readily available means to cleanup any excrement or other unclean or unsanitary conditions caused by said animal. All permissible pets belonging to Owners, tenants, lessees or guests must be kept within an enclosed area, or on a leash being held by a person capable of controlling the animal. The Corporation, upon the approval of two-thirds (2/3) of the Board, shall have the right to prohibit maintenance of any animal within the Project which constitutes a private nuisance to any other person. Every person bringing an animal upon or keeping an animal in the Project shall be liable pursuant to the laws of the State of California to each and all persons for any injury or damage to persons or property caused by such animal.

Section 7. Quiet Enjoyment. No Owner shall permit or suffer anything to be done in the Project or kept upon such Owner's Condominium which will obstruct or interfere with the rights of quiet enjoyment of the other occupants, or annoy them by unreasonable noises (e.g., inappropriate use of horns) or otherwise, nor will any Owner commit or permit any nuisance on the premises or commit or suffer any immoral or illegal act to be committed

thereon. Notwithstanding the foregoing, for as long as Declarant owns any interest in Lot 1 of Tract No. 2005-02 or any Corporation Property, or is entitled to annex Annexation Property to the Project, the Declarant's efforts in selling the Condominiums may interfere with the Owners' quiet enjoyment of the Condominiums. Each Owner shall comply with all of the requirements of the Board of Health and of all other governmental authorities with respect to said premises, and shall remove all rubbish, trash and garbage from his Condominium Unit. All clotheslines, refuse containers, woodpiles, storage boxes, tools and equipment shall be prohibited from any Condominium unless obscured from view by a fence or appropriate screen approved by the Architectural Review Committee provided for hereinbelow.

Section 8. Structural Changes. There shall be no structural alteration, modification or construction to the exterior of a Condominium Unit, fence or other structure whatsoever in the Project without the prior written approval of the Board or its designated Architectural Review Committee and the City, as required herein, except such works of construction by Declarant during the development of the Project.

Section 9. Improvements. There shall be no construction, alteration or removal of any Improvement in the Project (other than those repairs or rebuilding permitted under the Article entitled "Damage or Destruction to the Corporation Property") without the approval of the Architectural Review Committee and the City, as set forth hereinbelow. No Improvement shall be constructed upon any portion of any Corporation Property, other than such Improvements as shall be constructed: (a) by the Declarant (or a person or entity to whom Declarant assigns its rights as developer) or (b) by the Corporation as provided herein, as may be permitted by the Architectural Review Committee in accordance with the Article herein entitled "Architectural Review - Approval." Each Owner assumes all risks which may result from Improvements he makes to his Condominium Unit, and each Owner indemnifies and holds harmless the Corporation, Declarant and each other Owner from any claim, demands, liabilities, judgments, attorneys' fees and other obligations which arise out of or are incurred in connection with the installation, existence or removal of such Improvements.

Section 10. Window Coverings. Temporary window coverings ("Temporary Window Coverings") in a design and color that does not conflict with the surrounding Improvements (but excluding aluminum foil, newspaper, plywood or any other contrasting material) are permitted for a maximum period of sixty (60) days after the Condominium is conveyed by Declarant to an Owner. Except as specifically provided in the proceeding sentence, no Temporary Window Coverings shall be used to cover any door or window of any Condominium. All window coverings (including Temporary Window Coverings) shall be of a neutral color harmonious with and not in conflict with the color scheme of the exterior wall surface of the Condominium buildings.

Section 11. Commercial Activity. No manufacturing, mercantile, storage, vending or industrial operations of any kind shall be conducted in or upon any Condominium Unit or the Common Property, except such temporary uses as shall be permitted by Declarant while the Project is being constructed and Condominiums are being sold by the Declarant. Notwithstanding the foregoing, this Section shall not preclude an Owner from maintaining a business or home office and conducting business activities therefrom so long as: (a) such activities are conducted in conformance with all applicable government ordinances (e.g., all required permits and licenses are obtained); (b) such activity does not increase the liability or casualty insurance obligation or premium of the Corporation; and (c) such activities are consistent with the character of the Project and conform with the provisions of this Declaration. In no event, however, shall any Owner or the Corporation use a Condominium Unit as an office for the rental, resale or leasing of Condominiums without the prior written consent of Declarant so long as Declarant owns an interest in Lot 1 of Tract No. 2005-02 or the Annexation Property.

Section 12. Parking and Vehicular Restrictions.

(a) Authorized Vehicles. The following vehicles are "Authorized Vehicles": standard passenger vehicles including automobiles, passenger vans designed to accommodate ten (10) or fewer people, motorcycles (provided they are operated at levels not exceeding 45 decibels), and pick-up trucks having a manufacturer's rating or payload capacity of one (1) ton or less; provided, however, the dimensions of each of such foregoing vehicles may not exceed the following:

- (1) seven feet (7.0') in width from furthers point to point, including mirrors and tires;
- (2) eighteen feet (18') in length, including bumper attachments and hitches; and
- (3) six feet, four inches (6'4") in height, including roof racks or other projections.

The Corporation has the power to identify additional vehicles as Authorized Vehicles in the Rules and Regulations and to adapt this restriction to other types of vehicles.

(b) Restricted Vehicles. The following vehicles are "Restricted Vehicles:" recreational vehicles (including land conveyances, vessels, and aircraft), motor homes, travel trailers, camper vans, boats and the like.

(c) Prohibited Vehicles. The following vehicles are "Prohibited Vehicles": (a) commercial-type vehicles

(e.g., stakebed trucks, tank trucks, dump trucks, step vans, concrete trucks and limousines), excluding those which constitute Authorized Vehicles; (b) buses or vans designed to accommodate more than ten (10) people, (c) vehicles having more than two (2) axles, (d) trailers, (e) inoperable vehicles or parts of vehicles, (f) aircraft, (g) any vehicle or vehicular equipment deemed a nuisance by the Board, and (h) any other vehicle not classified as an Authorized Vehicle or Restricted Vehicle. 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 classified as an Authorized Vehicle in writing by the Board.

(d) Temporary Parking. "Temporary Parking" shall mean the parking of: (a) such vehicles belonging to Owners and/or their invitees or guests for purposes of loading and unloading only, or (2) delivery trucks, service vehicles and other commercial vehicles for purposes relating to the furnishing of services to the Corporation, an Owner or tenant, and/or for loading and unloading only; provided, further, that no such temporarily parked vehicle may remain within the Project overnight.

(e) Parking in Project. All drives and aisles within the Project are subject to the Protective Covenants of this Declaration, as well as all applicable laws, ordinances and regulations of all governmental agencies having jurisdiction over the Project. Except for purposes of Temporary Parking in areas other than fire lanes, if any, or otherwise allowed by the Rules and Regulations, Owners and their tenants shall park their Authorized Vehicles only in their garages or their Exclusive Use Corporation Property parking spaces (as applicable). Restricted Vehicles and Prohibited Vehicles may also be parked in an Owner's garage, provided that the garage door is kept shut (except when the vehicles are entering or exiting the garage) and the Owner's garage has sufficient space remaining for the parking of the Owner's Authorized Vehicles. There shall be no parking of any vehicles on unpaved surfaces, such as lawns or dirt surfaces. All unassigned open parking spaces in the Project are for the use of guests, visitors and Temporary Parking on a first-come, first-served basis (as noted herein, eleven parking spaces may be "guest only" spaces). The Board may, from time to time, establishing such Rules and Regulations for the operating and parking of vehicles in the Project as it may deem necessary or desirable, including the use of any Corporation Property parking by owners, guests and other invitees. Any permission from the Board for the use of Corporation Property for Temporary Parking, if any, will create only a license to use such area, which license is revocable by the Board at any time.

(f) Reporting of Parking Violations. Each Owner is authorized to report parking violations to the Corporation Board of Directors. Any enforcement action taken to correct violations of the parking rules and regulations shall be in accordance with the provisions set forth herein.

(g) Parking Availability in Garages. Each Owner shall keep his garage readily available for the parking of the Owner's vehicles therein, and shall not store any Restricted Vehicles, Prohibited Vehicles, goods or materials therein, nor use any portion thereof for a workshop or other use, if such storage or use would prevent, prohibit, and/or impede said Owner from parking the number of Authorized Vehicles (i.e., four wheel vehicles) therein for which said garage was originally designed and constructed by Declarant to accommodate. Each Owner shall ensure that all parking spaces in his garage are at all times available for parking and shall use such space for parking his or her vehicles therein when said vehicles are in the Project. Garage doors shall remain closed at all times, except as reasonably required for entry to and exit from the garage. Each Owner shall ensure that his garage door opener is in proper working order at all times; and

(h) Vehicle Repair and Maintenance. No Owner shall conduct any repairs to any motor vehicle of any kind whatsoever in or upon any portion of the Project, except for emergency repairs thereto and then only to the extent necessary to enable the vehicle to be moved to a proper repair facility. In addition, no Owner's garage shall be used for any purpose other than parking of an Owner's vehicle and storage (only so long as such storage does not interfere with the parking of Owner's vehicles therein). **NO WASHING OR POLISHING OF ANY VEHICLE IN THE PROJECT IS PERMITTED, UNLESS EXPRESSLY AUTHORIZED BY THE BOARD IN WRITING.**

(i) Use of Power Tools in Garages. Unless expressly authorized by the Board in writing or in the event of an emergency, no power equipment (other than hand-held power tools) or other similar apparatus may be used in the garages or Project.

Section 13. Regulation of Parking; Towing; Parking Management Plan. Subject to the rights of the Corporation, through its officers, committees and agents, the Board is hereby empowered to establish "parking" and "no parking" areas within the Corporation Property (e.g., on private drives and aisles, etc.), including any fire lanes, in accordance with Section 22658.2 of the California Vehicle Code, as the same may be amended from time to time, or any similar statute hereafter enacted, as well as to enforce these parking limitations by all means lawful for such enforcement, including, but not limited to, the levying of fines and the citing and towing of vehicles. The Board shall have the authority to tow away and store any vehicle or similar equipment

parked in violation of the above limitations whether the same shall belong to any Owner or a member of his family or to any tenant, lessee, guest or invitee of any Owner. Charges for such towing and storing shall be assessed against the Owner of the Condominium who is responsible for or associated with the violation of such restrictions, and such assessment may be enforced as a Compliance Assessment.

Section 14. Compliance With Management Documents. All Owners shall comply with all of the Protective Covenants as set forth herein, with the provisions of the Articles and the By-Laws, with all Rules and Regulations of the Corporation.

Section 15. Solar Power System. Each Owner shall have the right to place and maintain equipment and facilities related to the installation and maintenance of individual solar power systems within his Condominium Unit and Exclusive Use Corporation Property. The installation and maintenance of any solar power system by an individual Owner shall be subject to all applicable zoning regulations, the Uniform Building Code and City associated ordinances, and reasonable review by the Architectural Review Committee for compliance with the architectural standards adopted by the Corporation, based on reasonable standards consistent with Section 714 of the California Civil Code, as same may be amended from time to time. Except as otherwise allowed by law, as originally installed by Declarant (e.g., air conditioning equipment, etc.), or approved in writing by the Board, no roof-mounted mechanical equipment shall be permitted in the Project.

Section 16. Antenna Restriction/Improvements. No Person may install any antenna or over-the-air receiving device except for an "Authorized Antenna" if allowed hereunder. 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 to reach the height needed to receive an acceptable quality signal, subject to local governmental agency permitting requirements for safety purposes.

(a) Restrictions on Installation. The Architectural 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 others 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 vegeta-

tion or other Improvements. However, no restriction imposed by the 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.

(b) Prohibitions on Installation. The Architectural Review Committee may prohibit the installation of an Authorized Antenna in a particular location if, in the Architectural 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 Committee, or impacts the Condominium Building (i.e., no attachment to the exterior or roof of the Condominium Building). The Architectural Review Committee may also prohibit an Owner from installing an Authorized Antenna on any real property which such Owner does not own or is not entitled to exclusively use or control under this Declaration (e.g., an Owner shall have no right to install anything on the exterior of the Condominium buildings including but not limited to eaves, fences, rafters, etc.). The Architectural 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.

(c) Review after Installation. The Architectural Review Committee may review the location and installation of an Authorized Antenna after it is installed. After its review, the Architectural 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 and applicable law.

(d) Restatement of Applicable Law. This Section is intended to be a restatement of the authority granted to the Architectural Review Committee 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.

No basketball backboard or other fixed or portable sports apparatus may be constructed or maintained in the Project without the Architectural Review Committee's prior approval. No fence or wall may be erected, altered or maintained on any Condominium except with the Architectural Review Committee's prior approval. No wiring of any kind or air conditioning fixture, water softener or other devices may be installed on the exterior of the condominium

building or in a Condominium or be allowed to protrude through the walls or roof of the condominium building, except one (1) or more chimneys and vents originally installed, if at all, by Declarant, in a Condominium (with the exception of those items installed during the original construction of a Condominium by Declarant) unless the Architectural Review Committee's prior written approval is obtained.

Section 17. Water Softeners. No Owner shall install any on-site regenerative water softener within any portion of the Project, unless approved in writing by the Board and applicable governmental agency.

Section 18. Leasing. No Owner shall be permitted to rent or lease any portion of his Condominium for transient or hotel purposes. All rental and lease agreements shall be in writing, and shall provide that the terms of such agreement shall be subject in all respects to the provisions of this Declaration, By-Laws, Articles, Rules and Regulations and that any failure by the tenant or lessee to comply with the terms of such documents shall constitute a default under such agreement. The Owner shall provide the Board with a copy of the Lease or rental agreement. Notwithstanding the foregoing, Declarant may require each Owner to comply with an initial Owner occupancy or resale requirements, if any, imposed by Declarant.

Section 19. Drilling. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted within the Project, nor shall oil wells, tanks, tunnels or mineral excavations be permitted within the Project. No derrick or other structure designed for use in boring for oil, water or natural gas shall be erected, maintained or permitted within the Project.

Section 20. Trash. Each Owner shall place all rubbish, trash, garbage, recyclables or other waste material in garbage cans, garbage bags or other closed containers. As applicable, all such garbage cans and other containers shall be stored in the Owner's garage and shall be obscured from view from the Corporation Property, and each Owner shall use his best efforts to assure that no odor shall arise therefrom so as to be unreasonably offensive to any adjacent Condominium or other portion of the Project, or to otherwise be unsanitary, unsightly, offensive or detrimental to any other residents in the Project. Trash (including recyclables) may not be stored left or stored on or in balconies or covered porches, or other Exclusive Use Corporation Property areas (if any). In addition, no toxic or hazardous materials (other than household cleansers) may be disposed of within trash containers within the Project. The Board may adopt additional Rules and Regulations regarding disposal of trash and recyclables as the Board may deem reasonable and necessary. If common trash and recycling bins for the disposal of Owners' trash and recycling are located on the Corporation Property, all Owners shall utilize such common trash



and recycling bins for the disposal of their trash and recyclables in accordance with the Rules and Regulations and all applicable laws. The lids to any common dumpster(s) shall be kept closed at all times, except when trash or recyclables are being deposited or removed from the dumpster(s). Trash, recyclables, boxes, bags, and other debris shall not be placed or stored outside of any dumpsters or in any other area of the Corporation Property.

Section 21. Exemption of Declarant. Nothing in this Article or elsewhere in this Declaration shall limit, restrict, abridge or control, in any manner whatsoever, the rights of Declarant to complete the planning, development, grading, construction, advertising, marketing, leasing and sales of the Condominiums, and all other property within the Project (including any property which may be annexed thereto pursuant to the provisions of this Declaration), including, without limitation, the following specific rights, which may be exercised by Declarant, and their successors and assigns, or by their agents and employees, in conjunction with such development and marketing, until the earlier of (1) when Declarant no longer owns an interest in Lot 1 of Tract No. 2005-02 or the Annexation Property, or (2) five (5) years from the recordation of this Declaration:

(a) The right to maintain and operate one (1) or more advertising, sales or leasing office(s), construction trailer, portable restrooms, located upon any Property owned by Declarant, or Corporation Property;

(b) The right to post and display from any Corporation Property any sign, flag, banner, billboard or other advertising which Declarant may, in its sole discretion, deem appropriate, irrespective of size, color, shape or materials of such items, so long as such use does not unreasonably interfere with the Owner's normal use and enjoyment of the Corporation Property;

(c) The right to install, place, replace, construct, reconstruct, modify or remove any Improvement from any Corporation Property, as Declarant may, in its sole discretion, deem appropriate; provided that in the event Declarant removes any Corporation owned Improvement from any Corporation Property without the express prior written consent of the Board, Declarant shall replace such Improvement with an Improvement of substantially similar value, appearance and utility within a reasonable period following completion of any work necessitating the removal of the Improvement;

(d) The right to conduct any commercial activity upon any Corporation Property which reasonably relates to the development, marketing, leasing or sales of the Condominiums in the Project;

(e) The right to park vehicles upon any Corporation Property; and

(f) The right to use the common garage and all drives and aisles within the Project, which right shall also extend to prospective purchasers or lessees of the Condominiums or of other property within the Project.

All or any portion of the rights of Declarant herein and elsewhere in this Declaration may be assigned by Declarant to any successor-in-interest in the Project, including the Annexation Property, by an express written assignment recorded in the Office of the County Recorder.

Section 22. No Easements For View Purposes; Disclaimer. Neither the City, the Declarant nor the Architectural Review Committee, nor the members, representatives, employees or consultants of any of the foregoing, have made any representations whatsoever concerning the view, if any, that a particular Condominium or other Improvement thereon will enjoy. There are no rights, express or implied easements whatsoever appurtenant to any Condominium for view purposes or for the passage of light and air across any other Condominium or any property not within the Project, regardless of whether such Condominium is owned by Declarant. Each Owner accepting a deed to a Condominium hereby expressly acknowledges and agrees that the Condominiums, walls and fences constructed by Declarant, and further construction, both within the Project and in the immediate vicinity of the Project, may impair the view from such Owner's Condominium, and each Owner hereby expressly consents to any such impairment. Each Owner further acknowledges and understands that property surrounding the Project may be developed or redeveloped in accordance with applicable City standards. Concerns pertaining to the future development of surrounding property should be addressed with the City.

Section 23. Screen Doors. No Owner shall install any screen door in any portion of the Condominium Unit unless such Owner has written approval from the Architectural Review Committee.

Section 24. Pollutant Control. The Corporation and each Owner shall comply with any NPDES requirements and the BMP guidelines (as defined below), as such requirements and guidelines apply to the Project.

A. NPDES Requirements. The Project 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. Pursuant to a NPDES General Permit adopted by the State Water Resources Control Board and the County NPDES Storm Water Permit Program, Drainage Area Management Plan ("DAMP"), the City has adopted a Water Quality Management Plan for the Project ("WQMP") which identifies certain Best Management

Practices ("BMP") to reduce the discharge of pollutants to storm water facilities (e.g., appropriate stormwater pollution control related to the Project's structural, treatment control, and non-structural facilities in order to prevent all pollutants from contacting storm water and keeping all products of erosion from moving off site into receiving waters, as required by the State Water Resources Control Board [SWRCB] and the National Pollutant Discharge Elimination System [NPDES]), before, during and after construction on the Project is completed. The Corporation and the Owners shall comply with all applicable BMPs and perform all maintenance imposed by DAMP and the WQMP, as amended, and the Corporation shall obtain any certifications and permits or accept an assignment from Declarant of any such certifications and permits as are required by the DAMP and the WQMP. The costs of the Corporation's portion of such maintenance, if any, shall be treated as Common Expenses.

B. Specific BMPs. If required by the City, or Project specific BMPs, the Corporation shall ensure that all Corporation Property, consisting of streets, sidewalks, flat work, and the like, is swept at least twice, two (2) weeks apart, during the month of October of each year and at least once during every other month of each year.

C. Guidelines. The Corporation shall ensure that all Corporation Property landscape irrigation is implemented in accordance with the BMPs, including without limitation (a) the provision for water sensors and programmable irrigation times allowing for short cycles, (b) the use of planting material similar to that installed by Declarant, as applicable, and with similar water requirements in order to reduce excess irrigation runoff and to promote surface filtration, and (c) maintain all permanent slopes with required landscaping with native or other drought tolerant planting materials.

Nothing other than natural rain water or potable water may be discharged into the storm drains and storm drainage system located on private or public property. Toxic chemicals or hydrocarbon compounds such as gasoline, motor oil, antifreeze, solvents, paints, paint thinners, wood preservative and other such fluids shall not be discharged into any street, public or private, or into storm drains or storm water conveyance systems. Use and disposal of pesticides, fungicides, herbicides, insecticides, fertilizers and other such chemical treatments shall meet Federal, State, County and City requirements as prescribed on their respective containers. All Owners within the Project and the Corporation are required to comply with such restrictions.

Section 25. Corporation Property. No Owner shall take any action which will detract from the maintenance of the Corporation Property in a neat, clean, safe, sanitary, attractive and orderly condition at all times. No Owner shall use or permit the area outside of the front door to his Condominium Unit or his or

her Exclusive Use Corporation Property balcony or covered porch area or Corporation Property to be used in any manner which will obstruct or interfere with the rights of quiet enjoyment of other occupants. Without limiting the generality of the foregoing, except as may be allowed by the Rules and Regulations, no Owner shall install, place, keep or store any storage units, boxes, refuse, recyclable materials, storage, refuse, or recycling containers, woodpiles, personal effects, clothing, shoes, clotheslines, clothes drying racks, or other equipment, bicycles, or any children's toys or equipment (including, without limitation, tricycles, wagons, strollers, skateboards, scooters, slides, and playhouses) in the Corporation Property, or in the area outside of the front door of his Condominium Unit or within his or her Exclusive Use Corporation Property balcony or covered porch area; maintain any plants or planter boxes on top of or attached to the fence or railing enclosing his or her balcony or covered porch area; or water any plants located within his balcony or covered porch area in such a manner so that excess water drains into the balcony or covered porch area of another Condominium Unit or any other Exclusive Use Corporation Property area. The Board may adopt additional Rules and Regulations regarding the Corporation Property (including all Exclusive Use Corporation Property areas) as the Board may deem reasonable and necessary.

Section 26. Rights of Disabled. Subject to the provisions of this Declaration, Civil Code Section 1360, State and Federal Laws regarding accommodations for the handicapped, and approval by the Architectural Review Committee, each Owner may modify his Condominium Unit and the route leading to the front door of his Condominium Unit, at his sole expense, in order to facilitate access to his Condominium Unit by persons who are blind, visually impaired, deaf or physically disabled, or to alter conditions which could be hazardous to such Persons.

Section 27. Water Beds. Each Owner hereby acknowledges that no water beds are allowed in the Project. Any Owner who breaches this Section shall indemnify and hold the Declarant, Corporation, and Members harmless from any claims, damages, losses or other liability arising from such breach.

Section 28. Automatic Fire Sprinkler and Alarm System. As required by the City, the Project is equipped with a fully automatic fire sprinkler system. No Owner or other resident of the Project shall paint, alter, modify, disable, remove or take any other action which might impair the automatic fire sprinkler system in the Project, including, without limitation, any sprinkler heads within his Condominium Unit or Exclusive Use Corporation Property (e.g., balconies, covered porch areas). By acceptance of a deed to a Condominium Unit, each Owner acknowledges that a fire in his Condominium will trigger the release of water from the automatic fire sprinkler system and that water damage to the Condominium Unit and personal property therein may occur. Owners are prohibited from hanging any items from, or otherwise damaging, any exposed pipes or sprinkler heads in their Condominium Units. Except as

authorized in the Rules and Regulations (e.g., use of fire extinguishers in the event of a fire), no Owner may alter, modify, disable, or remove any fire standpipes, fire extinguishers, or other fire prevention equipment in the Project. As required by the City, the automatic fire sprinkler system shall be monitored by a central monitoring company approved by the City, and each building in the Project will have an exterior mounted Horn/Strobe located at the address location that activates upon water flow. Owners are also prohibited from altering, modifying, disabling, or removing such devices.

Section 29. No Use of Hazardous Materials. No Owner or other occupant of the Project shall use or allow any portion of the Project to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials. For purposes of this Declaration, the term "Hazardous Materials" shall mean any substances that are toxic, corrosive, inflammable, and/or ignitable, petroleum and petroleum byproducts, lead, asbestos, any hazardous wastes, and any other substances that have been defined as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," or other terms intended to convey such meaning, including those so defined in any of the following federal statutes, beginning at 15 U.S.C. section 2601 et seq., 22 U.S.C. section 1251 et seq., 42 U.S.C. section 6901 et seq. (RCRA), 42 U.S.C. section 7401 et seq., 42 U.S.C. section 9601 et seq. (CERCLA), 49 U.S.C. section 1801 et seq. (HMTA); or California statutes beginning at California Health and Safety Code Section 25100 et seq., Section 25249.5 et seq., and 25300, et seq., and California Water Code Section 13000, et seq., the regulations and publications adopted and promulgated pursuant to such statutes and any similar statutes and regulations adopted hereafter. Hazardous Materials shall not include substances that are stored on the Property as part of the normal construction and operation of residential housing.

Section 30. Address Numbers. As required by the City, address numbers shall be placed near the roofline of each structure visible from the street. Numbers shall be block style, 15" in height, black in color (or other color approved by the City), in contrast with their background. The exact location and color must be approved by the City's Fire Department.

Section 31. Illuminated Directory Map. As required by the City, an illuminated directory map shall be provided at the entrance of the Project, and Knox Boxes shall be installed at locations approved by the City's Fire Department.

Section 32. Noise. The Project consists of attached Condominiums in a residential development in a mixed residential and commercial/industrial environment. As a result, each Owner will experience bright lights, noise, odors, fumes, and other adverse impacts associated with, but not limited to, the use of the Condominium Units and Corporation Property and as a result of

living in close proximity to residential and commercial/industrial neighbors. Such adverse impacts may include, without limitation, bright lights, significant noise, odors, air pollution, traffic congestion, and other adverse impacts associated with the commercial/industrial use of property outside of the Project, noise generated by plumbing fixtures and appliances that use water (e.g., toilets, sinks, bathtubs, showers, dishwashers, washing machines), televisions, radios, stereo systems, computers, human voices, walking on hard surfaces, the movement of furniture and people, children crying and playing, animal noises (e.g., dogs barking), the use and maintenance of landscaping and recreational facilities, air conditioners, exhaust systems and vents, electrical transformers, air conditioning condensers, maintenance and repair activities, and other activities, and odors and fumes generated by the smoking of cigarettes, cigars, pipes, barbecues, fireplaces, cooking, cleaning, and other activities. Each Owner understands and acknowledges that the Project is located in an mixed residential and commercial/industrial environment. Living in an attached Condominium within a densely populated mixed residential and commercial/industrial community entails living in close proximity to businesses and other persons, with limitations on solitude. Notwithstanding whether or not floors, walls, and ceilings have been constructed and designed to meet applicable building codes, the Condominium buildings and individual Condominiums therein are not sound and/or odor proof and noise and/or odors from adjacent Condominiums and the Corporation Property will be heard and smelled. Each Owner should expect to hear and feel sounds, vibrations and noises emanating from within, outside, above and below his/her Condominium Unit, including, without limitation, sounds and vibrations from footfall and other movements of people; use of plumbing, fans, closing and opening of doors and cabinets; televisions, phones, computers, stereos and other electronic equipment and activities conducted in the Condominiums and Corporation Property. Residents may hear the sound of garage doors opening at all hours of the day and night, including, without limitation, the mornings and early evenings when residents leave and return. Residents of the Project may not engage in behavior or activities in their Condominiums which impair other residents' quiet enjoyment of their Condominiums. The Project is currently located in an area in which considerable noise from traffic, businesses, air traffic, construction activities, truck deliveries, trash pick-up, commercial and industrial uses, sports activities (e.g., at the sports facility located on the other side of Cottonwood Avenue), and other activities will also be generated.

Each Owner hereby acknowledges and agrees that installation of hard floor surfaces may be governed by the Rules and Regulations to minimize the level of noise heard in other Condominiums in the Project. 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 Project may be made.

(1) COMMON WALL SYSTEMS

(aa) Condominium Unit common party walls shall not be modified in any manner without the prior written approval of the Architectural Review Committee.

(bb) Condominium Unit common party walls shall not be modified in any way which includes installation of any mechanical or electrical system or device within the wall or attached to the wall. The only exception is decorative hangings providing that such hangings contain no sound generating elements and providing that the mounting method does not compromise the acoustical performance of the as-built common party wall assembly.

(cc) Sound system components (including but not limited to music systems, televisions (including, without limitation, wall mounted plasma or flat screen televisions), DVD/CD players, radios, speakers, home theaters, etc.) shall not be attached to or suspended from any Condominium Unit common party wall or (unless otherwise approved by the Board) adjacent to the Corporation Property.

(2) PLUMBING SYSTEM

(aa) The plumbing systems shall not be modified in any manner without the prior written approval of the Architectural Review Committee. Examples of such modifications include, but are not limited to, the installation of spa tubs. If required by the Board, each Owner must use a licensed and approved contractor who has met any insurance obligations required by the Board.

(3) ALLOWED NOISE LEVELS

(aa) No Condominium Unit owner or occupant, or Condominium Unit mechanical, plumbing or electrical system, shall produce sound levels within any other Condominium Unit that exceed the interior noise limits of

the local governing jurisdiction in any other Condominium Unit. If there is no local noise limit that applies, the applicable limit shall be a maximum level of 50 dBA from 7:00 A.M. to 10:00 P.M. and 45 dBA from 10:00 P.M. to 7:00 A.M. as measured inside any other Condominium Unit with all windows and doors of the affected Condominium Unit in a fully closed position.

(4) OTHER REQUIREMENTS

(aa) To minimize the noise transmission from a Condominium Unit, each Owner (other than Seller) shall comply with the requirements noted above, and the following:

(i) No modifications shall be made to any Condominium Unit which would result in a reduction in the minimum impact insulation class of the Condominium Unit.

(ii) Pianos shall have at least 1/2 inch neoprene pads under the supports to minimize vibration transmission into the structure.

Section 33. No Warranty of Enforceability. While Declarant has no reason to believe that the restrictive covenants contained in this Article or elsewhere in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Condominium in the Project in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof, and, by acquiring the Condominium, agrees to hold Declarant harmless from any injury or damage therefrom.

ARTICLE X

REPAIR AND MAINTENANCE

Section 1. Repair and Maintenance by Corporation. Without limiting the generality of the provisions herein, including the Article entitled "Powers and Duties of the Corporation," and except as otherwise provided in this Declaration, the Corporation shall have the duty to maintain the Corporation Property in a neat, clean, safe, sanitary, attractive and orderly condition at all times. Without limiting the generality, such maintenance shall include, but not be limited to, painting, maintaining, repairing, restoring, replacing, removing graffiti, and landscaping (as the case may be) the following:



(a) The exterior surfaces of all buildings in the Project, including exterior walls and roofs, doors (all repairs to exterior doors and garage doors to individual Condominiums, including the structural maintenance thereof, shall be at the sole expense of the respective Owner unless otherwise agreed to by the Board), the walls, fences, and/or railings enclosing the balcony and covered porch areas, the waterproof membrane and structural integrity of the balcony (each Owner shall be responsible for the routine maintenance of the interior of his Exclusive Use Corporation Property balcony and covered porch areas (as applicable), including sweeping and cleaning, and changing lightbulbs, if any), any air conditioner pads or forced air heating unit pads, only if such pads are located outside the Condominium Unit and originally included in the Corporation budget approved by the DRE or subsequently approved by the Board (if such pads are located on with Exclusive Use Corporation Property, the maintenance shall be that of the Owner thereof), awnings, exterior lights on the Condominium buildings (which are not controlled by a switch within the Condominium), and gutters and downspouts;

(b) The Project entry gates and associated access system, private drives, and aisles (together with any private common street lights and/or other common exterior lights and other Improvements thereon), within the Project only at such time as those drives and aisles have been conveyed in fee to the Corporation (prior to the conveyance of said drives and aisles to the Corporation in fee, e.g., conveyance of only an easement, Declarant shall be solely responsible for the maintenance of the drive and aisle easements). In addition, until such time as the applicable drive(s) and aisle(s) are conveyed to the Corporation in fee, the Declarant shall maintain paved ingress and egress as necessary to access the Condominiums subject to this Declaration in good condition and repair. If the drives and aisles are conveyed to the Corporation later than thirty [30] days after the Declarant causes the final asphalt lift to be installed on said drives and aisles, Declarant shall contribute toward the accrued long term drive/aisle maintenance costs an amount attributable to the greater of thirty [30] days or the time period between the last day of use of the street by Declarant for construction purposes, and the date of the final asphalt lift installation;

(c) Maintaining the decorative paving, open parking areas, striping and marking in the parking areas, and common walkways and sidewalks;

(d) Those portions of the sound walls, retaining walls and other Project fences and walls in the Project described and/or depicted on Exhibit "G" attached hereto and incorporated by this reference and on a recorded Notice of Annexation. Project fences and walls shall mean and refer to

those certain walls and fences which were originally constructed by Declarant on the Corporation Property or other portion of the Project, which are designated by Declarant or Board to constitute Project fences and walls and which will be maintained (e.g., in a clean and attractive condition) by the Corporation as provided herein;

(e) Private on-site domestic and fire water lines facilities and devices, including any cross-connection drainage devices and the master meter and submeters (but excluding any laterals, wherever same are located, that exclusively serve a Condominium Unit);

(f) The private on-site storm drainage system for the Project (e.g., generally, see Exhibit "F" attached hereto), including all BMPs, such as oil/water separators, rip-rap, fossil filters, detention basins or other devices originally required by the City, in accordance with the Water Quality Management Plan approved for the Project;

(g) All common landscaping (excepting therefrom any landscaping or other Improvements located in Exclusive Use Corporation Property) in a neat, clean and healthful condition. As required by the City, all landscaping shall be adequately watered and well-maintained at all times;

(h) All common amenities, recreational facilities (e.g., pool, spa, fountain, recreational building, etc.), mailbox structures servicing multiple Condominiums, common trash bins and enclosures, and all Project signs, address directories, and monumentation;

(i) A program for the inspection and the maintenance of, all fire sprinklers, fire standpipes, fire alarm systems, fire extinguishers, and other fire prevention equipment and/or facilities, if any, originally installed by Declarant in the condominium buildings in a condition comparable to the condition originally approved by the City;

(j) All amenities and all furnishings, equipment and other personal property owned by the Corporation;

(k) All Corporation Property lighting facilities;

(l) An inspection and preventive program for the prevention and eradication of infestation by wood destroying pests and organisms in the Corporation Property. In connection with the inspection and prevention program for the prevention and eradication of infestation by wood destroying pests and organisms, the Corporation, upon reasonable notice (which shall be given no less than fifteen [15] days nor more than thirty [30] days before the date of temporary relocation) to

each Owner and the occupants of his/her Condominium Unit, may require such Owner and occupants to temporarily relocate from such Condominium Unit in order to accommodate efforts by the Corporation to eradicate such infestation. The notice shall state the reason for the temporary relocation, the date and time of 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 Unit by such entry by the Board or by any person authorized by the Board shall be repaired by the Board as a Common Expense of the Corporation. All costs involved in maintaining the inspection and preventive program as well as repairing and replacing the Corporation Property and Improvements thereon when the need for such maintenance, repair or replacement is the result of wood destroying pests or organisms shall be a Common Expense subject to the restrictions applicable to Special Assessments;

(m) Maintaining everything that the Corporation is obligated to maintain in a clean, sanitary and attractive condition reasonably consistent with the level of maintenance reflected in the most current budget of the Corporation, and in conformance with any Maintenance Guidelines, -- Unless specifically provided in any Maintenance Guidelines, or as commonly accepted maintenance practices may govern, the Board shall determine, in its sole discretion, the level and frequency of maintenance of the Corporation Property and Improvements thereon (as set forth below, each Owner shall maintain everything that Owner is obligated to maintain in a clean, sanitary and attractive condition and in conformance with any Maintenance Guidelines and Maintenance Recommendations, as well as commonly accepted maintenance practices and the product manufacturer's maintenance recommendations); and

(n) All other areas, facilities, furnishings and Improvements of whatever nature as may, from time to time, be requested by the vote or written consent of three-fourths (3/4) of the voting power of the Members.

Except as otherwise provided in this Declaration, all costs and expenses for such maintenance above shall be a Common Expense, and shall be paid out of the general operating fund of the Corporation. The Board shall have the right to require that only a contractor or other person approved by the Boards enter the roof or other portion of the Corporation Property and to condition such entry on the contractor's or other person's compliance with reasonable requirements for the protection of the Corporation Property (e.g., requirements that the contractor be appropriately licensed, maintain insurance coverage on which the Corporation is named as an additional insured, and/or execute an indemnity agreement in favor of the Corporation). A general maintenance matrix is attached hereto as Exhibit "D" and incorporated by reference.

Section 2. Maintenance Manual. The Declarant may deliver to the Board a "Maintenance Manual" which sets forth the Declarant's and its consultants' recommended frequency of inspections and maintenance of various components of the Corporation Property (i.e., Corporation Property Maintenance Manual). The Board shall, during its meetings, 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 inspection and maintenance of the Corporation Property. The Board shall keep a record of such determinations in the Board's minutes. The Board shall, from time to time, make appropriate revisions to the Maintenance Manual. The Board shall review the Maintenance Manual for appropriate revisions at least on an annual basis after the Board has prepared the annual pro forma budget and reserve study required by the By-Laws.

In addition to the requirements of any Maintenance Manual, the Board may have the Corporation Property inspected at least once every three (3) years to (a) determine whether the Corporation Property is being maintained adequately in accordance with applicable standards of maintenance, (b) identify the condition of the Corporation Property and any Improvements thereon, including the existence of any hazards or defects, and the need for performing additional maintenance, refurbishment, replacement or repair, and (c) recommend preventative actions which may be taken to reduce potential maintenance costs to be incurred in the future. The Board may employ such experts and consultants as are necessary to perform such inspection. The Board may have a report of the results of the inspection prepared. The report should include at least the following:

(a) A description of the condition of the Corporation Property, including a list of items inspected and the status of maintenance, repair and need for replacement of all such items;

(b) A description of all maintenance, repair and replacement planned for the ensuing fiscal year and included in the budget;

(c) If any maintenance, repair or replacement is to be deferred, the reason for such deferral;

(d) A summary of all reports of inspections performed by any expert or consultant employed by the Board to perform inspections;

(e) A report of the status of compliance with the maintenance, replacement and repair needs set forth in the inspection report for preceding years; and

(f) Such other matters as the Board deems appropriate.

Section 3. Project Inspections. The Board shall require strict compliance with all provisions of this Declaration and shall periodically cause a compliance inspection of the Project to be conducted by the Architectural Review Committee to report any violations thereof. The Board shall also cause inspections of the Corporation Property and all Improvements thereon to be conducted in conformance with the applicable Maintenance Guidelines, and in the absence of inspection frequency recommendations in any applicable Maintenance Guidelines at least once every three (3) years, in conjunction with the inspection required for the reserve study to be conducted as required herein, in the By-Laws or by State law, to (a) determine whether the Corporation Property is being maintained adequately in accordance with applicable standards of maintenance, (b) identify the condition of the Corporation Property and any Improvements thereon, including the existence of any hazards or defects, and the need for performing additional maintenance, refurbishment, replacement, or repair, and (c) recommend preventive actions which may be taken to reduce potential maintenance costs to be incurred in the future. The Board shall during its meetings, regularly determine whether the recommended inspections and maintenance activities set forth in any applicable Maintenance Guidelines have been followed and, if not followed, what corrective steps need to be taken to assure proper inspections and maintenance of the Corporation Property and all Improvements thereon. The Board shall keep a record of such determinations in the Board's minutes. The Board shall keep Declarant fully informed of the Board's activities under this Section. The Board shall employ, consistent with reasonable cost management, such experts, contractors and consultants as are necessary to perform the inspections and make the reports required by this Section.

The Board shall prepare a report of the results of each of the inspections required by this Section, which shall comply with Section 2 above, including: For a period of ten (10) years after the date of the last close of escrow for a Condominium in the Project, the Board shall also furnish to Declarant (a) the report of each inspection performed for the Board, whenever such inspection is performed and for whatever portion of the Corporation Property that is inspected, within thirty (30) days after the completion of such inspection, and (b) the most recent inspection report prepared for any portion of the Corporation Property, within ten (10) days after the Corporation's receipt of a written request therefor from Declarant.

Section 4. Maintenance of Phases Subject to Construction Easement. Notwithstanding anything stated to the contrary in this Declaration, the Corporation shall have no obligation to maintain or repair any portion of a Phase until commencement of the Corporation's Assessments against the Condominiums within such Phase. Should any Improvements overlap between Phases, the Corporation shall only be responsible to maintain that portion of such Improvements which lie in the Phase(s) in which the Corporation's maintenance obligations have commenced.

Section 5. Repair and Maintenance by Owner. Except as otherwise provided elsewhere in this Declaration regarding the Corporation's maintenance obligations affecting an Owner's Condominium, every Owner shall have the duty to maintain, repair and replace, at his sole cost and expense, all Improvements within such Owner's Condominium or which represent an integral part thereof [e.g., pipes and utility lines and outlets which provide service to only one Condominium, including the internal and external telephone wiring and private water and sewer laterals (commencing at the sewer cleanout) designed to exclusively serve a Condominium Unit], in a neat, clean, safe, sanitary, attractive and orderly condition at all times. Each Owner shall keep his respective Exclusive Use Corporation Property in a neat and clean condition in accordance with the Corporation Rules and Regulations. Without limiting the generality of the foregoing, and by way of example only, and except as may otherwise be provided in this Declaration regarding the Corporation's maintenance obligations, every Owner shall:

(a) Paint, maintain, repair, replace, restore, decorate, tile, finish, plaster, and/or landscape or cause to so maintained, repaired, replaced, restored, decorated, tiled, finished, plaster, and/or landscaped (as the case may be) the following:

(1) The interior surfaces of the walls, ceilings, and floors of his Condominium Unit. However, no bearing walls, ceilings, slab, floors or other structural or utility bearing portions of the buildings housing the Condominium Units shall be pierced or otherwise altered or repaired, without the prior written approval of the plans for the alteration or repair by the Architectural Review Committee, which may approve or disapprove such in its sole and absolute discretion. Each Owner shall have the right to substitute new finished surfaces in place of those existing on the ceiling, floors, walls and doors of his or her Condominium Unit as purchased from Declarant; however, hard floor surfaces may require approval by the Architectural Review Committee as set forth in the Rules and Regulations.

(2) Each Owner of a Condominium shall be responsible for the maintenance and repair of:

i) The windows and the interior surfaces and structural integrity of doors enclosing the Condominium Unit, including the metal frames, tracks and exterior screens of glass doors and windows; provided, however:

(A) Although the initial budget for the Project does not provide for window washing by the Corporation, the Corporation may contract

for the washing of windows, in which event the Owner will reimburse the Corporation for its costs so incurred;

(3) Except as may otherwise be provided above, all window glass, screens, if any, and all interior doors and the structural integrity of the exterior doors and garage doors (including locks, latches, weatherstripping, and thresholds);

(4) All interior lighting fixtures, all exterior light bulbs controlled by a switch inside the Condominium Unit and all interior plumbing fixtures, including bathtubs, shower stalls, toilets, and sinks, heating, cooling, Cable television, water heating systems, heating systems, and electric equipment/system, and other utilities (e.g., sewer and water lines) which are located within or which exclusively serve said Owner's Condominium Unit. In the event it is necessary to access the Corporation Property to maintain, repair, and/or replace any utility laterals or lines servicing a Condominium (e.g., water line), such Owner shall comply with all requirements and restrictions imposed by the Board in order to complete such work;

(5) All internal and external telephone wiring designed to serve his Condominium Unit;

(6) All kitchen appliances, forced air heating units, the air conditioning unit, the hot water heater, and the garage door opener which are located within or service his Condominium Unit;

(7) Routine maintenance (e.g., sweeping and cleaning and replacing light bulbs) of any Exclusive Use Corporation Property appurtenant to the Condominium Unit;

(8) The Exclusive Use Corporation Property, excluding the waterproof membrane of the balcony and those structural portions of the Exclusive Use Corporation Property, if any, maintained by the Corporation, and any landscaping located therein; and

(9) Each Owner shall maintain everything that the Owner is obligated to maintain in a clean, sanitary and attractive condition and in conformance with any Maintenance Guidelines and Maintenance Recommendations, as well as product manufacturer recommendations and commonly accepted maintenance practices.

(b) In the event any Owner shall fail to perform his/her maintenance obligations as set forth herein, the Corporation shall have the right, but not the duty, to cause

such maintenance to be performed. If the Board elects to cause such maintenance work to be performed, the cost thereof (including a reasonable administrative fee) shall be assessed against said Owner as a Compliance Assessment. Each Owner shall reimburse the Corporation for those costs incurred which result from the Condominium occupants' excessive or neglectful use of the Exclusive Use Corporation Property or other portions of the Project.

Section 6. Damage and Destruction Affecting a Condominium.

(a) Duty to Rebuild. In the event any Condominium is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner to repair or reconstruct the Condominium (e.g., including, without limitation, all interior walls, lighting fixtures, plumbing fixtures, cabinets, furniture and improvements therein, together with restoration and repair of all interior paint, wall coverings and floor coverings), at the individual expense of the Owner of the Condominium Unit, unless covered by insurance maintained by the Corporation for the benefit of such Owner as determined by the Board in a manner which will restore it to its condition and appearance immediately prior in time to such damage or destruction, or as otherwise approved by the Architectural Review Committee. Notwithstanding the foregoing, the structural elements thereof shall be restored as determined by the Board. The affected Owner shall be obligated to proceed with all due diligence hereunder, and shall promptly commence reconstruction within a reasonable time after the damage occurs, and shall complete such reconstruction as soon as reasonably possible thereafter.

(b) Approval of Restoration Plans; Design and Variance. In connection with the restoration and repair of any Condominium, the Owner thereof may apply for approval to the Architectural Review Committee to reconstruct and rebuild in a manner which will provide for an exterior appearance and design different from that which existed prior to the date of the casualty. Application for such approval shall be made in writing, together with full and complete plans and specifications, working drawings and elevations showing the proposed reconstructions and the end result thereof. The Architectural Review Committee shall grant such approval only if the design proposed by the Owner would result in a finished Condominium in harmony of exterior design with the other Condominiums in the Project. Failure of the Architectural Review Committee to act within sixty (60) days after receipt of such a request in writing, coupled with full and complete plans and specifications, drawings and elevations shall constitute approval thereof. The Owner shall also obtain approval from the City of the proposed Condominium.



Section 7. Levy of Compliance Assessments. In the event the Corporation shall incur any costs or expenses due to the failure of any Owner to perform his maintenance obligations as set forth herein, or in order to repair any damage to the Corporation Property due to any negligent acts or omissions or willful misconduct on the part of an Owner, or any member of his family, his guests, invitees, tenants or lessees, or their guests or invitees, the Corporation shall have the right, but not the duty, to cause such maintenance or repairs to be performed. If the Board elects to cause such maintenance or repair work to be performed, after Notice and Hearing as provided in the By-Laws, the cost thereof shall be assessed against said Owner as a Compliance Assessment.

Section 8. Maintenance of Public Utilities. Nothing contained herein shall require or obligate the Corporation to maintain, replace or restore the underground facilities or public utilities which are located within easements in the Common Property owned by such public utilities. However, the Corporation shall take such steps as are necessary or convenient to ensure that such facilities are properly maintained, replaced or restored by such public utilities.

## ARTICLE XI

### ENVIRONMENTAL AND OTHER DISCLOSURES AND REQUIREMENTS

#### Section 1. Environmental Requirements.

(a) Duties and Obligations of the Owners. To reduce and/or eliminate negative effects on the environment, and to comply with all Best Management Practices and NPDES requirements, all Owners shall:

(1) Dispose of waste materials properly, eliminate littering, and participate in the City's recycling program;

(2) Use fertilizers, herbicides, pesticides and other harmful chemicals properly;

(3) Take all necessary steps to insure that NO oil, antifreeze, paints and similar chemicals enter the storm drain systems;

(4) Take all necessary steps to prevent excessive erosion and sedimentation; and

(5) Use proper landscaping methods to eliminate non-storm water runoff to avoid adverse impacts on the environment.

(b) Duties and Obligations of the Corporation.  
Notwithstanding anything to the contrary set forth herein, the Corporation shall:

(1) Contract with a contractor to perform the following activities, subject to the following limitations, periodically to minimize the pollution of storm drain water:

i) Either mechanically or manually remove all large size urban debris from catch basins and storm drains periodically;

ii) If applicable, maintain all stenciling on storm drains saying "NO DUMPING, DRAINS TO OCEAN, CREEK, CHANNEL," as appropriate;

iii) Minimize irrigation runoff by using controllers to provide several short watering cycles, promote surface infiltration where possible, minimize the use of pesticides and fertilizers, and utilize appropriate sustainable landscaping practices and programs such as Bay-Friendly Landscaping;

iv) Immediately correct any irrigation design or maintenance deficiencies which cause excessive runoff; and

v) Follow all fertilizer applications with light irrigation to permit fertilizer to soak into the landscaped area.

(2) Be responsible for the maintenance and repair (except to the extent such maintenance or repair obligation has been accepted by a public agency) of the following:

i) All storm drain facilities located within the Project, except those draining public streets, if any; and

ii) All other property or facilities, the maintenance of which is required of the Corporation hereunder, including, without limitation, landscaping, concrete walkways and perimeter walls on Project boundaries.

The Corporation and all Owners, as applicable, shall comply with all NPDES requirements and enforce all applicable structural and non-structural Best Management Practices as outlined and defined in the specific City-approved Water Quality Management Plan

for the Project in order to prevent the discharge of pollutants and contaminants into the public water storm drain system.

## ARTICLE XII

### ARCHITECTURAL REVIEW - APPROVAL

Section 1. Exemptions From Architectural Review. Except as otherwise provided herein or approved by the Board, all Improvements shall be subject to architectural approval by the Corporation in accordance with the provisions of this Declaration. Notwithstanding the foregoing, Declarant shall be exempt from compliance with any of the provisions of this Article as they may relate to the original construction and development of the Project by Declarant in accordance with the plans approved by the City; provided, however, if Declarant shall desire to construct any Improvements to the exterior of a Condominium Unit after such Condominium Unit has been completed and approved by the City, Declarant shall obtain approval for such Improvements from the City, and provided further, if Declarant shall retain a Condominium for personal use, any Improvements to such Condominium shall be subject to architectural approval pursuant to this Article.

Section 2. Architectural Review. Except for the purposes of proper maintenance and repair, and except as otherwise permitted hereunder, no person shall build, construct, erect or install any Improvement, or modify the exterior appearance of his Condominium Unit or Exclusive Use Corporation Property, until all conditions which may be imposed by the City have been satisfied and until any and all plans and specifications required pursuant to this Article shall have been submitted to and approved in writing by the Architectural Review Committee. For the purposes of this Section, the term "exterior" shall mean any outside wall, outside surface, roof, outside door, balcony, covered porch, or other outside structure which is visible to others in the Project and/or to the public.

Section 3. Architectural Review Committee. The Architectural Review Committee is hereby authorized with the rights and powers set forth in this Article. Said Committee may consist of three (3) members, and each initial member shall serve until the first election of the Board. In the event of the failure or inability of any member of the Architectural Review Committee to act, the remaining members shall designate a successor who shall serve for the remainder of the term of the member he replaces. The Declarant shall appoint all of the original members of the Architectural Review Committee, and replacements thereto. Further, Declarant reserves the power to appoint a majority of the members of the Architectural Review Committee until ninety percent (90%) of the Condominiums in the proposed development of the Project (i.e., Phase 1 and the Annexation Property) have been sold and escrows closed or until the fifth (5th) anniversary of the issuance of the

Final Subdivision Public Report for the first Phase of the Project. After one (1) year from the date of the issuance of the Final Subdivision Public Report for the first Phase of the Project, the Board shall have the power to appoint one (1) member to the Architectural Review Committee until ninety percent (90%) of the Condominium Units in the Project have been sold, or until the fifth anniversary date of the first close of escrow for the sale of a Condominium Unit pursuant to the Final Subdivision Public Report for the first Phase of the Project, whichever first occurs. Thereafter, the Board shall have the power to appoint all of the members of the Architectural Review Committee. All members appointed to the Architectural Review Committee by the Board shall be from the membership of the Corporation. Members appointed to the Architectural Review Committee by the Declarant, however, need not be members of the Corporation. No member of the Architectural Review Committee shall be liable to any person for his decisions or failure to act in making decisions as a member of the Architectural Review Committee. Declarant may, in its discretion and at any time, assign to the Corporation by written assignment its powers of removal and appointment with respect to the Architectural Review Committee, subject to such terms and conditions regarding the exercise thereof as Declarant may impose.

Section 4. Meetings of the Architectural Review Committee. The Architectural Review Committee shall meet, from time to time, as necessary to perform its duties hereunder. The Architectural Review Committee may, by a majority vote of the members thereof and the Board, delegate any or all of the Committee's rights and responsibilities hereunder to one (1) or more duly licensed architects, who shall have full authority to act on behalf of the Architectural Review Committee on all matters so delegated.

Section 5. Architectural Approval - Review of Plans and Specifications. The Architectural Review Committee shall have the right and duty to promulgate reasonable standards against which to examine any request made pursuant to this Article, in order to ensure that the proposed plans are in conformance with and are harmonious to the exterior design and existing materials of the Condominium Units in the Project. The Architectural Review Committee shall consider and act upon any and all plans and specifications submitted for its approval under this Declaration, and perform such other duties as, from time to time, shall be assigned to it by the Board, including the inspection of construction and progress to ensure its conformance with the plans approved by the Architectural Review Committee. No construction, alteration, grading, addition, excavation, demolition, modification, decoration, redecoration or reconstruction of an Improvement shall be commenced or maintained by any Owner until the plans and specifications therefor showing the nature, kind, shape, height, width, color, materials and location of the same shall have been submitted to the Architectural Review Committee and approved in writing by the Architectural Review Committee. The initial address for submission of such plans and specifications shall be provided to

the Owners by the Board. The Architectural Review Committee shall approve the plans and specifications submitted for its approval only if it deems that: (a) the construction, alterations or additions contemplated thereby and the locations indicated will not be detrimental to the appearance of the surrounding area of the Project as a whole; (b) the appearance of any structure affected thereby will be in harmony with surrounding structures; (c) the construction thereof will not detract from the beauty, wholesomeness and attractiveness of the Corporation Property, or the enjoyment thereof by the Owners; (d) the upkeep and maintenance thereof will not become a burden on the Corporation; and (e) the proposed Improvements are in substantial compliance with the adopted Architectural Guidelines, if any. In addition to the foregoing, in its review of plans and specifications, the Architectural Review Committee may take into consideration, among other things, the scale of site dimensions; conformity and harmony of external design with neighboring Improvements; effect of location and use of Improvements (including landscaping) on neighboring Condominium Units; relation of topography, grade and finish grade elevation to neighboring Condominium Units; proper facing of all elevations; aesthetic beauty; and conformity of the plans and specifications to the purpose and general plan and intent of the Protective Covenants of this Declaration. The Architectural Review Committee may withhold approval of the plans and specifications for any proposed Improvement because of noncompliance with any of the specific Protective Covenants set forth in this Declaration; because of the dissatisfaction of the Architectural Review Committee with the proposed nature, kind, plan, design, shape, height, dimensions, proportions, architectural style, color, finish or materials to be used therein, the pitch or type of any proposed roof, or the size, type or location of any proposed trees or the landscaping to be planted; or because of the dissatisfaction of the Architectural Review Committee with any aspect of the proposed Improvement which could cause the proposed Improvement to be inappropriate, inharmonious or out-of-keeping with the general plan of improvement for the Project, or with the Improvements on or topography of the surrounding property.

The Architectural Review Committee may condition its approval of proposals or plans and specifications for any Improvement: (a) on such changes therein as it deems appropriate, (b) upon the agreement by the person submitting the same to grant appropriate easements to the Corporation for the maintenance of the Improvement, or (c) upon the agreement of the person submitting the same to reimburse the Corporation for the cost of such maintenance, or all of the above, and may require submission of additional plans and specifications or other information prior to approving or disapproving the submission.

The Architectural Review Committee may also issue rules or guidelines setting forth procedures for submission of plans for approval, requiring a payment of a fee to the Corporation to accompany each submission of plans and specifications, or ad-

ditional factors which it will take into consideration in reviewing submissions.

The Architectural Review Committee may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, drainage plans, elevation drawings, landscape plans and description or samples of exterior material and colors.

Each Owner acknowledges and understands that he or she has absolutely no right or ability to modify the Condominium Buildings in any manner, unless otherwise provided by the Board.

Section 6. Decisions of the Architectural Review Committee. Until receipt by the Architectural Review Committee of any required plans and specifications, and such other information as may be required in Section 5 above, the Architectural Review Committee may postpone review of any plans submitted for approval. Decisions of the Architectural Review Committee and the reasons therefor should be transmitted by the Architectural Review Committee to the applicant, at the address set forth in the application for approval, within forty-five (45) days after receipt by the Architectural Review Committee of all plans, specifications and materials required. Any application submitted pursuant to the provisions of Section 5 above shall be deemed approved, unless written disapproval or a request for additional information or materials by the Architectural Review Committee shall have been transmitted to the applicant within forty-five (45) days after the receipt by the Architectural Review Committee of all required materials.

Section 7. Submittal to Public Agencies - Right of Architectural Review Committee to Review. Upon obtaining the written approval of the Architectural Review Committee for the proposed Improvement, if such Improvement requires a building permit, the Owner shall thereafter submit the plans and specifications to all appropriate governmental agencies in accordance with their respective requirements. In the event that all approvals by the governmental agencies necessary for the issuance of a building permit are not obtained within six (6) months after the date of approval by the Architectural Review Committee, the Architectural Review Committee shall have the right, but not the obligation, to review all previously approved plans and specifications. In addition, in the event that the governmental agencies require modifications to the plans and specifications previously approved by the Architectural Review Committee, the Owner shall submit to the Architectural Review Committee all modifications to the plans and specifications previously approved by the Architectural Review Committee, which shall have the right to review and to impose further conditions on any such modifications.

Section 8. Conflicts Between Governmental Agencies and Architectural Review Committee. In the event of any conflict in

the conditions of approval of any proposed Improvement imposed by the governmental agencies and the Architectural Review Committee, the more restrictive of such conditions shall be controlling. Further, nothing herein shall limit the Architectural Review Committee from imposing conditions of approval of any proposed Improvements which are more restrictive than conditions that may be imposed by the appropriate governmental agencies.

Section 9. No Waiver of Future Approvals. The approval of the Architectural Review Committee to any submissions for any work done, or proposed to be done, or in connection with any other matter requiring the approval or consent of the Architectural Review Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent of any similar proposals, plans and specifications, drawings or other matters subsequently or additionally submitted for approval.

Section 10. Compensation of Members. The members of the Architectural Review Committee shall receive no compensation for services rendered, other than reimbursement by the Corporation, pursuant to Board approval, for expenses incurred in the performance of such members' duties hereunder. This Section shall not be interpreted or construed to prohibit the Corporation from compensating any duly licensed Architect who has been delegated rights and duties as provided in this Article.

Section 11. Variances. Where circumstances such as topography, location of buildings, location of landscaping or other matters require, the Architectural Review Committee, by the vote or written assent of a majority of the members thereof and the Board, may allow reasonable variances as to any of the Protective Covenants contained in this Declaration or provisions under the rules and regulations promulgated by the Architectural Review Committee, on such terms and conditions as it shall require. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose, except as to the particular Condominium and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the Owner's use of his Condominium, including, but not limited to, zoning ordinances, lot setback lines or requirements imposed by the City or other governmental authority.

Section 12. Inspection of Work. Upon consent of the Owner, which consent shall not be unreasonably withheld, any member or authorized representative of the Architectural Review Committee may, at any reasonable hour and upon reasonable notice, enter and inspect any Condominium which has been the subject matter of an approval of a submission for an Improvement to his Condominium. Such entry shall be made with as little inconvenience to the Owner as reasonably possible, and any damage caused thereby shall be repaired by the Corporation. If the Architectural Review Committee finds that such work was not done in substantial compliance with

the approved plans and specifications, it shall notify the Owner in writing of such noncompliance, specifying the particulars of noncompliance and shall require the Owner to remedy the same within thirty (30) days from the date of notification of such noncompliance. If a noncompliance exists, the Board, after Notice and Hearing, may levy a Compliance Assessment against such Owner for the costs of removing or remedying such noncompliance.

Section 13. Non-Liability of Architectural Review Committee Members. Neither Declarant, the Corporation, the Board or the Architectural Review Committee, or the members or designated representatives thereof, shall be liable for damages to any Owner submitting plans or specifications to them for approval, or to any Owner in the Project affected by this Declaration by reason of mistake in judgment, negligence or nonfeasance, unless due to willful misconduct or bad faith of the Architectural Review Committee. The Architectural Review Committee's approval or disapproval of a submission shall be based solely on the considerations set forth in this Article, and in such rules and regulations as may be promulgated by the Architectural Review Committee, and the Architectural Review Committee shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plans or design from the standpoint of structural safety and conformance with building or other codes.

Section 14. Appeal. In the event plans and specifications submitted to the Architectural Review Committee are disapproved, the party making such submission may appeal in writing to the Board. The written request must be received by the Board not more than thirty (30) days following the final decision of the Architectural Review Committee. The Board may request the written recommendations of the Architectural Review Committee for review. Within sixty (60) days following receipt of the request for appeal, the Board shall consider the appeal at an open meeting and render its written decision. The failure by the Board to render a decision within said sixty (60) day period shall be deemed a decision in favor of the party making such submission.

Section 15. Approval of City. Each Owner is solely responsible for ensuring that all plans and specifications submitted by such Owner to the Architectural Review Committee comply with, and do not violate, any applicable provision of law, including, without limitation, the Fair Employment and Housing Act (California Government Code Section 12900 et seq.), the City's Municipal Code, all applicable building and construction codes, and all other applicable laws, regulations, and ordinances governing land use and public safety. Approval of any proposed or existing Improvement by the Architectural Review Committee or the Board, or the completion of any Improvement, shall not be construed to warrant or represent in any way that the Improvement was approved by or complies with the minimum standards of the City or any other provision of law. Similarly, approval of any proposed or existing Improvement by the City shall not be construed to constitute



approval of such Improvement by the Architectural Review Committee or the Board.

#### ARTICLE XIII

##### DAMAGE OR DESTRUCTION TO THE CORPORATION PROPERTY

Section 1. Election to Restore Corporation Property.  
Except as otherwise provided in Section 2 hereinbelow, damage to or destruction of all or any portion of the Corporation Property shall be handled in the following manner:

(a) In the event of damage to or destruction of the Corporation Property and the insurance proceeds are sufficient to effect total restoration, the Corporation shall, as promptly as is practical, cause the Corporation Property to be repaired and reconstructed in a good and workmanlike manner to its condition prior to such damage or destruction.

(b) If the insurance proceeds available are at least ninety percent (90%) of the estimated cost of total repair and reconstruction to the Corporation Property, the Corporation shall, as promptly as practical, cause such Corporation Property to be repaired and reconstructed in a good workmanlike manner to its condition prior to the damage or destruction, and the difference between the insurance proceeds and the actual cost shall be levied by the Corporation as a Special Assessment against each Condominium on an equal basis.

(c) If the insurance proceeds available are less than ninety percent (90%) of the estimated cost of total repair and reconstruction to the Corporation Property, the Owners shall, by the written consent or vote of a majority of the Owners, determine whether (1) to restore the Corporation Property as promptly as practical to its condition prior to the damage or destruction, and to raise the necessary funds over and above the insurance proceeds available by levying assessments against each Condominium on an equal basis; or (2) to restore the Corporation Property in a way which utilizes all available proceeds and an additional amount not in excess of ten percent (10%) of the estimated cost of total reconstruction and repair to the Corporation Property, and which is assessable as provided above to all Condominiums, but which is less expensive than restoring the Corporation Property to its condition prior to the damage or destruction.

Section 2. Election Not to Restore Corporation Property.

(a) Notwithstanding the provisions set forth in Section 1 hereinabove, in the event sixty-seven percent (67%) of the Owners, other than the Declarant, and sixty-seven percent (67%) of the first Mortgagees (based upon one [1] vote for each first Mortgage owned) have given their prior written approval, the Owners may elect to not rebuild or restore the Corporation Property and to disburse the available insurance proceeds to the general fund to the Corporation.

(b) In the event the Owners shall have so voted not to rebuild the Corporation Property, the Corporation Property shall be cleared and landscaped and the cost thereof shall be paid for out of the available insurance proceeds prior to their distribution to the general fund of the Corporation.

(c) In the event the Owners shall have so voted not to rebuild the Corporation Property, unless the City shall agree to the contrary, it shall be the obligation of the Corporation and each of the Owners to rebuild the private drives and aisles, if any, utilities and open spaces, which comprise the Corporation Property, if any, at least to the extent said drives, aisles, utilities and open spaces were accepted initially by the City in lieu of payment of fees due pursuant to law.

Section 3. Excess Insurance Proceeds. All insurance proceeds shall be payable to the Corporation for the benefit of the Owners and their respective Mortgagees. In the event any excess insurance proceeds remain after restoring the destroyed Corporation Property pursuant to this Article, the Board of Directors shall retain such sums in the general fund of the Corporation. Any distribution of funds in connection with the termination of the Project shall be allocated equally among all of the Condominiums in the Project. Any such distribution shall be subject to the prior rights of Mortgagees.

ARTICLE XIV

CONDEMNATION

Section 1. Distribution of Awards. Subject to the limitations set forth in the Article herein entitled "Mortgagee Protection," a condemnation award affecting all or any portion of the Corporation Property of the Project which is not apportioned among the Owners by court judgment shall be distributed to the Corporation and deposited in the general fund of the Corporation.

Section 2. Board of Directors as Attorney-in-Fact. All Owners, to the extent applicable, if at all, hereby appoint the

Board of the Corporation as their special attorney-in-fact to handle the negotiations, settlements and agreements pertaining to any condemnation affecting only the Corporation Property. The special power of attorney shall not apply to the Secretary of the Department of Veterans Affairs, an Officer of the United States of America. No Owner may participate as a party, or otherwise, in any proceedings related to such condemnation.

## ARTICLE XV

### COVENANT AGAINST PARTITION

Section 1. General Covenant Against Partition. Except as otherwise provided in this Section, the Common Area shall remain undivided and there shall be no judicial partitions thereof. Nothing herein shall be deemed to prevent partition of a co-tenancy in a Condominium.

Section 2. Judicial Partition of the Project. The Owner of a Condominium in the Project may maintain a partition action as to the entire Project as if the Owners of all the Condominiums in the Project were tenants-in-common in the entire Project in the same proportion as their interests in the Common Area. The court shall order partition under this Article only by sale of the entire Project and only upon the showing of one (1) of the following:

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

(b) Three-fourths (3/4) or more of the Project is destroyed or substantially damaged, and at least sixty-seven percent (67%) of the Owners (other than Declarant) and sixty-seven percent (67%) of the first Mortgagees (based upon one [1] vote for each first Mortgage owned) oppose repair or restoration of the Project; or

(c) The Project has been in existence more than fifty (50) years, is obsolete and uneconomical, and at least sixty-seven percent (67%) of the Owners (other than Declarant) and sixty-seven percent (67%) of the first Mortgagees (based upon one [1] vote for each first Mortgage owned) oppose repair or restoration of the Project.

Section 3. Board of Directors' Power of Sale in Event of Judicial Partition. Declarant, for itself and on behalf of each and every present and subsequent Owner of one (1) or more Condominiums within the Project, hereby appoints the Board as its and their attorney-in-fact to sell the entire Project for the benefit of all of the Owners thereof when partition of the Project may be

had pursuant to this Declaration, which power shall: (a) be binding upon all of the Owners, whether they assume the obligations of these restrictions or not; (b) be exercisable by a vote of at least seventy-five percent (75%) of the voting power of the Board; and (c) be exercisable only after recordation of a certificate by the Board, which shall provide that said power is properly exercisable hereunder, and which certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith; provided, however, said power of attorney shall not apply to the Secretary of the Department of Veterans Affairs, an Officer of the United States of America.

## ARTICLE XVI

### INSURANCE

Section 1. Required Insurance Coverage. The Corporation, acting by and through the Board, shall obtain for the Corporation, and shall maintain and pay the premiums for the following insurance coverage:

(a) Casualty and Fire Insurance. A master policy or policies of casualty and fire insurance, with an extended coverage endorsement in an amount equal to as near as possible one hundred percent (100%) of the current replacement cost (without deduction for depreciation or co-insurance) of the Corporation Property, together with all Improvements located therein (except Improvements made by an Owner to the Exclusive Use Corporation Property) and including those portions of the Condominium Units consisting of fixtures, built-in or set-in appliances, cabinets and initial basic floor coverings as initially installed thereof in accordance with the original plans and specifications for the Project submitted by Declarant and approved by the City (excluding upgrades to any of the foregoing). Alternatively, if approved by the Board, a master policy or policies of casualty and fire insurance, with an extended coverage endorsement in an amount equal to as near as possible one hundred percent (100%) of the current replacement cost (without deduction for depreciation or co-insurance of the Corporation Property), together with all Improvements located therein (except Improvements made by an Owner to the Exclusive Use Corporation Property), but specifically excluding interior Condominium Unit coverage (including, without limitation, interior walls and floor coverings). In the event the Board elects to obtain such master policy(ies) (i.e., without the betterment coverage to cover improvements to the Condominium made by an Owner), then each Owner shall procure and maintain, at the Owner's sole cost and expense, an insurance policy of casualty and fire insurance covering the interior of his Condominium Unit, including replacement of interior improvements and betterment coverage to insure improvements that the borrower may have

made to the interior of the Condominium Unit (e.g., a HO-6 policy). Neither appliances nor improvements in portions of the Condominium Unit used for any commercial use, if any, shall be covered by the master policy. Said policies shall be primary and maintained for the benefit of the Corporation, the Owners and the Mortgagees, as their interests shall appear, and shall waive the right of subrogation against Owners, if obtainable. If reasonably obtainable, the deductible shall be the lesser of Ten Thousand Dollars (\$10,000) or one percent (1%) of the policy face amount. Such policy must be written by an insurance carrier that meets the requirements of FNMA, FHLMC, and/or VA/FHA as applicable. The coverage does not need to include land, foundations, excavations, or other items normally excluded from such coverage. Such policy or policies must contain, if required and if obtainable:

(1) An Agreed Amount and Inflation Guard Endorsement;

(2) Construction Code Endorsements (such as Demolition Cost Endorsement);

(3) Contingent Liability From Operation of Building Laws Endorsement;

(4) Increased Construction Endorsement if there is a construction code provision which would become operative and require changes to undamaged portions of the Corporation Property; and

(5) Any other special Condominium Endorsements that may be available or required.

(b) Public Liability Insurance. A policy or policies of comprehensive public liability insurance (with cross-liability endorsement, if obtainable) insuring the Corporation, the Board, the Owners, the City and the Declarant, and the agents and employees of each of the foregoing, against any liability to the public or to any Owner, his family, tenants, lessees and their respective guests and invitees, arising from or incident to the ownership, occupation, use, maintenance and/or repair of the Corporation Property, and from lawsuits related to employment contracts in which the Corporation is a party. The limits of liability under this Section shall be set by the Board and shall be reviewed at least annually by the Board, and increased or decreased at the discretion of the Board; provided, however, that said limits shall not be less than Two Million Dollars (\$2,000,000.00) for bodily injury, including deaths of persons and property damage arising out of a single occurrence (unless approved by a vote of sixty-seven percent [67%] of the Members); provided further, if FHLMC, FNMA, and/or VA/FHA participate in the financing of Condominiums in the Project (e.g., providing guarantees for loans),

said limits shall not be less than the minimum limits required under the then current FHLMC, FNMA, and/or VA/FHA regulations.

(c) Worker's Compensation Insurance. Worker's compensation insurance to the extent necessary to comply with any applicable laws.

(d) Fidelity Bonds. Officers' and Directors' errors and omissions insurance, and fidelity bonds naming all persons signing checks or otherwise possessing fiscal responsibilities on behalf of the Corporation, including, but not limited to, officers, directors, the Board, trustees and employees of the Corporation, and officers, employees and agents of any management company employed by the Corporation who handle or are responsible for the administration of Corporation funds, if obtainable. Such coverage shall be in an amount deemed reasonably appropriate by the Corporation, but shall not be less than the estimated maximum funds in custody of the Corporation (or its management company), or twenty-five percent (25%) of the estimated annual operating expenses of the Project, plus reserves, whichever is greater. In addition, if the Corporation enters into an agreement for professional management of the Project, the Corporation shall require such company to submit evidence of its fidelity bond coverage to the same extent as the Corporation's coverage. The Corporation shall be named as an additional obligee in the management agent's bond.

(e) Flood Insurance. If the Project is located within a "Special Flood Hazard Area" designated on a Federal Emergency Management Agency flood map, adequate flood insurance under the National Flood Insurance Program on buildings in the Project, which insurance coverage must protect the interests of all Owners in their Condominium Units, as well as the Corporation Property and satisfy the requirements set forth in Section 10, below, of this Article.

Section 2. Optional Insurance Coverage. The Corporation, acting at its option and by and through the Board, may purchase such other insurance as it may deem necessary or appropriate, including, but not limited to, officers and directors errors and omissions insurance, earthquake insurance, and flood insurance (e.g., if flood insurance is not required because the Project is not located within a Special Flood Hazard Area).

Section 3. Notice of Cancellation of Insurance. All policies of insurance (including fidelity bonds) maintained by the Corporation, pursuant to this Article, shall contain a provision that coverage under said policies may not be canceled, terminated, allowed to expire by their own terms or be substantially modified by any party without at least thirty (30) days prior written notice to the Board and to each Owner, and such first Mortgagees (or servicers) who are named in the mortgage clause and/or have filed

a written request with the Corporation for such notice. A list of the Owners and such first Mortgagees shall be made available by the Corporation to the insurance carrier upon request.

Section 4. Review of Coverage. The Board shall annually determine whether the amounts and types of insurance coverage that it has obtained pursuant to this Article shall provide adequate coverage for the Project, based upon the then current construction costs, insurance practices in the area in which the Project is located, and all other factors which may indicate that either additional insurance coverage or increased coverage under existing policies is necessary or desirable to protect the interests of the Corporation, the Owners and their respective Mortgagees. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain same.

Section 5. Waiver by Owners. As to all policies of insurance maintained by the Corporation which will not be voided or impaired thereby, each Owner hereby waives and releases all claims against the Corporation, the Board and the Declarant, and the agents and employees of each of the foregoing, and all other Owners with respect to any loss covered by such insurance, whether or not caused by the negligence of, or breach of, any agreement by said persons, but only to the extent of the insurance proceeds received in compensation for such loss.

Section 6. Premiums, Proceeds and Settlement. Insurance premiums for all blanket insurance coverage and any other insurance coverage which the Board has determined is necessary to protect the interests of the Corporation, the Owners and their respective Mortgagees, shall be a Common Expense to be included in the Regular Assessments levied by the Corporation. All insurance proceeds paid to the Corporation shall be disbursed as follows: (a) in the event of any damage or destruction to the Corporation Property, such proceeds shall be disbursed in accordance with the provisions of the Article herein entitled "Damage or Destruction to the Corporation Property"; and (b) in the event of any other loss, the proceeds shall be disbursed as the Board shall deem appropriate, subject to the limitations set forth in the Article herein entitled "Mortgagee Protection." The Corporation is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers. A majority of the Board must sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on the Corporation and its Members.

Section 7. Rights and Duties of Owners to Insure. Each Owner shall obtain fire and casualty insurance on his Condominium Unit and all Improvements therein and on his personal property in amounts he deems appropriate and which may be required by this Declaration. Nothing herein shall preclude any Owner from carrying any public liability insurance, business interruption and any other insurance coverage, as he may deem desirable to cover his indi-

vidual liability for damage to person or property occurring on or within his individual Condominium Unit or elsewhere upon the Project. If obtainable, such liability insurance coverage carried by an Owner shall contain a waiver of subrogation of claims against the Declarant, the Corporation and the Board, and their agents and employees, and all other Owners. Such other policies shall not adversely affect or diminish any liability under insurance obtained by the Corporation. If any loss intended to be covered by insurance carried by the Corporation shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by him to the Corporation to the extent of such reduction for application by the Board to the same purposes as the reduced proceeds are to be applied.

Section 8. Trustee for Policies. The Corporation is hereby appointed and shall be deemed trustee for the interests of all insureds under the policies of insurance maintained by the Corporation. All insurance proceeds under such policies shall be paid to the Board, as trustees, and the Board shall have full power to receive such funds on behalf of the Corporation, the Owners and their respective Mortgagees, and to deal therewith as provided for in this Declaration.

Section 9. Mortgage Clause. All insurance policies should have the "standard mortgage clause," or equivalent endorsement, providing that coverage of a Mortgagee under the insurance policy will not be adversely affected or diminished by an act or neglect of the Mortgagor, which is commonly accepted by private institutional mortgage investors in the area in which the Project is located, unless such coverage is prohibited by applicable law. Mortgages owned by FNMA must name as a Mortgagee either FNMA or the servicer for the Mortgages held by FNMA encumbering the Condominiums. When a servicer is named as the Mortgagee, its name should be followed by the phrase "its successors and assigns." If the Mortgage is owned in whole by FHLMC, the name of the servicer of the Mortgage followed by the phrase "its successors and assigns, beneficiary" should be named as Mortgagee instead of FHLMC. The mortgage clause should be endorsed to fully protect FHLMC's interests or the interest of FHLMC and the servicer where applicable. If FHLMC must be named as Mortgagee, the endorsement should show the servicer's address in lieu of FHLMC's address. A mortgage clause in favor of Mortgagees holding Mortgages on Condominiums is not required on a policy insuring the Corporation Property.

Section 10. Compliance With Requirements of FHLMC, FNMA and VA/FHA. Notwithstanding the provisions of this Article, the Corporation shall obtain and maintain in effect such policies of insurance meeting all requirements of FHLMC, FNMA, and/or VA/FHA established by those entities for condominium projects for so long as any of such agencies continue to be a Mortgagee, Owner, insurer or guarantor of a Mortgage in the Project, except to the extent



such coverage is not available at a reasonable cost or has been waived, in writing, by such agencies, including, without limitation, the following requirements:

a. Each insurance company providing the insurance coverage described in this Article shall be a generally acceptable (i.e., an insurance carrier who can satisfy the qualifications for insurance carriers set forth in the FNMA Conventional Home Mortgage Selling Contract Supplement and the FHLMC Sellers Guide).

b. All insurance policies covering the Corporation Property, or any portion thereof, shall be held in the name of the Corporation for the benefit of the Owners in the Project.

c. All insurance policies shall provide that a certificate of insurance shall be issued to each Owner and Mortgagee upon request.

d. Notwithstanding any other provision of this Declaration, there may be named as an insured, on behalf of the Corporation, the Corporation's authorized representative, including any trustee with whom such Corporation may enter into any insurance trust agreement or any successor to such trustee, who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance and to perform such other functions as are necessary to accomplish this purpose.

e. The casualty and fire insurance policies required to be maintained by the Corporation shall also cover, in addition to all other property described above, all building services equipment and supplies and other personal property belonging to the Corporation.

f. All fidelity bonds maintained by the Corporation shall contain waivers by the issuer of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. Notwithstanding any other provision of the Declaration, in no event may the aggregate amount of the fidelity bonds be less than a sum equal to three (3) months aggregate monthly installments of the Regular Assessments levied on all Condominiums plus reserve funds.

g. If the Project is located in an area which has been officially identified by the Secretary of the United States Department of Housing and Urban Development as having special flood hazards and for which flood insurance has been made available under the National Flood Insurance Program ("NFIP"), the Corporation shall obtain and pay the premiums upon, as a Common Expense, a "master" or "blanket" policy of flood insurance on the buildings and any other property covered by the required form of policy, in an amount deemed appropriate by the Corporation, but not less than the following: The lesser of: (a) the maximum coverage available under the NFIP for all buildings and other insurable property within the Project to the extent that such buildings and other insurable property are within an area having special flood hazards and are maintained by the Corporation; or (b) 100% of the current replacement cost of all such buildings and insurable property. Such policy shall be in a form which meets the criteria set forth in the guidelines on the subject issued by the Federal Insurance Administrator.

h. In the event the Project contains a steam boiler, the casualty and fire insurance policy(ies) to be maintained by the Corporation shall provide coverage for loss or damages resulting from steam boiler equipment accidents in an amount not less than \$50,000 per accident per location (or such greater amount as deemed prudent based on the nature of the Project).

Section 11. Required Waiver. All policies of hazard and physical damage insurance may provide, only if available at a reasonable cost to the Corporation as determined by the Board, in its sole discretion, for waiver of the following rights, to the extent that the respective insurers would have the rights without such waivers:

- (a) Any defense based on co-insurance;
- (b) Any right of set-off, counterclaim, apportionment, proration or contribution by reason of other insurance not carried by the Corporation;
- (c) Any invalidity, other adverse effect or defense on account of any breach of warranty or condition caused by the Corporation, any Owner or any tenant of any Owner, or arising from any act, neglect or omission of any named insured, or the respective agents, contractors and employees of any insured;

(d) Any right of the insurer to repair, rebuild or replace, and, in the event the Condominium 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 or the fair market value thereof;

(e) Notice of the assignment of any Owner of its interest in the insurance by virtue of a conveyance of any Condominium; and

(f) Any right to require any assignment of any Mortgage to the insurer.

Section 12. Annual Notification of Insurance. The Corporation shall, upon issuance or renewal of insurance, but no less than annually, notify its Members as to the amount and type of insurance carried by the Corporation, and it shall accompany this notification with statements to the effect that the Corporation is or is not insured to the levels specified by this Article, and that if not so insured, Owners may be individually liable for the entire amount of a judgment, and if the Corporation is insured to the levels specified in Section 1 above, then Owners may be individually liable only for their proportional share of Assessments levied to pay the amount of any judgment which exceeds the limits of the Corporation's insurance. The Corporation shall further prepare and distribute to all its Members a summary of the Corporation's insurance coverage pursuant to Section 1365 of the California Civil Code.

## ARTICLE XVII

### MORTGAGEE PROTECTION

Section 1. Mortgagee Protection Provisions. Notwithstanding any other provisions in this Declaration to the contrary, in order to induce FHLMC, FNMA, and VA/FHA and other lenders and investors, to participate in the financing of the sale of Condominiums in the Project, the following provisions contained within this Article are added hereto, and to the extent these added provisions conflict with any other provisions in this Declaration, these added provisions shall control. The Declaration, the Articles and the By-Laws for the Corporation are hereinafter collectively referred to in this Article as the "constituent documents." As used herein, an "Eligible Mortgage Holder" shall mean and refer to the holder, insurer or guarantor of a first Mortgage on a Condominium who has filed with the Corporation a written request for notice of certain information as provided herein. An Eligible Mortgage Holder must send a written request for such information to the Corporation, stating its name and address and the number or address of the Condominium Unit on which it has (or insures or guarantees) the Mortgage.

(a) The right of an Owner to sell, transfer or otherwise convey his Condominium shall not be subject to any right of first refusal or any similar restriction in favor of the Corporation;

(b) The lien of the Assessments provided for herein shall be subordinate to the lien of any first Mortgage now or hereafter recorded upon any Condominium subject to the provisions herein. The sale or transfer of any Condominium shall not affect the Assessment lien; however, except as provided in the Article entitled "Veterans Affairs Provisions," the sale or transfer of any Condominium pursuant to judicial or nonjudicial foreclosure of a first Mortgage or pursuant to any remedies provided for in the Mortgage shall extinguish the lien of such Assessments as to unpaid payments for regularly budgeted dues or charges which became due more than six (6) months prior thereto. No sale or transfer shall relieve such Condominium from liability for Assessments due within six (6) months of such judicial or nonjudicial foreclosure sale or transfer. Any first Mortgagee who obtains title to a Condominium pursuant to the remedies provided in the Mortgage, or foreclosure of the Mortgage, or any purchaser at a foreclosure sale of a first Mortgage will not be liable for more than six (6) months of unpaid Assessments or charges which became due prior to the acquisition of title to such Condominium by the Mortgagee (except for claims for a share of such Assessments or charges resulting from a reallocation of such Assessments or charges to all Condominiums, including the mortgaged Condominium);

(c) Except as may otherwise be provided herein or by statute in case of condemnation or substantial loss to the Corporation Property, unless sixty-seven percent (67%) of the Owners other than Declarant, or sixty-seven percent (67%) of the first Mortgagees (based upon one [1] vote for each Unit encumbered by said Mortgagee's first Mortgage) have given their prior written approval, neither the Corporation nor the Owners shall be entitled to:

(1) By act or omission, seek to abandon or terminate the Condominium Project;

(2) Record or file any amendment which would change the pro rata interest or obligations of any Condominium for purposes of: (i) levying Assessments or charges, or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Condominium Unit in the Common Area;

(3) Partition or subdivide any Condominium, except as provided in the Article herein entitled "Covenant Against Partition"; provided, however, that no

Condominium may be partitioned or subdivided without the prior written approval of the first Mortgagee for such Condominium;

(4) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any or all of the Corporation Property. The granting of easements for public utilities or for other public purposes consistent with the intended uses of the Corporation Property under this Declaration and the granting of exclusive easements to Owners over portions of the Corporation Property to conform the boundaries of the Corporation Property to the as built location of authorized Improvements, shall not be deemed a transfer within the meaning of this clause;

(5) Use hazard insurance proceeds for losses to the Corporation Property for other than repair, replacement or reconstruction, subject to the provisions of this Declaration;

(6) Effect any decision of the Corporation to terminate professional management and assume self-management of the Project, if professional management was previously required by a holder, insurer or guarantor of any first Mortgage;

(7) By act or omission, change, waive or abandon any provisions of this Declaration, or enforcement thereof, pertaining to architectural design of the Condominiums or the maintenance and operation of the Corporation Property within the Project, including, without limitation, sidewalks, fences, and landscaping within the Project; and

(8) Fail to maintain fire insurance and extended coverage on the insurable Corporation Property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value thereof.

(d) All taxes, Assessments and charges which may become liens prior to the first Mortgage under local law shall relate only to individual Condominiums, and not to the Project as a whole;

(e) No provision of the constituent documents shall be interpreted to give the Owner of a Condominium, or any other party, priority over any rights of the first Mortgagee of the Condominium pursuant to its Mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Condominium Units and/or the Corporation Property;

(f) The Assessments provided for in the constituent documents shall include an adequate reserve fund for maintenance, repairs and replacement of those elements of the Corporation Property that must be replaced on a periodic basis, and shall be payable in regular installments, rather than by Special Assessments;

(g) Each Eligible Mortgage Holder shall be entitled to timely written notice of any:

(1) Condemnation, eminent domain proceeding, or casualty loss that affects either a material portion of the Project or the Condominium Unit securing its Mortgage;

(2) Substantial damage or destruction to the Project, or any portion thereof, when such loss exceeds Ten Thousand Dollars (\$10,000.00);

(3) Default in the performance by an individual Owner of any obligation under the constituent documents (including, but not limited to the nonpayment of Assessments) which is not cured within sixty (60) days after the Corporation learns of such default by the Owner of the Condominium on which it holds the Mortgage;

(4) Lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Corporation;

(5) Abandonment or termination of the Project;  
and

(6) Proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders.

(h) Any agreement for professional management of the Project or any agreement whereby the Declarant will provide services to the Corporation may not exceed one (1) year, renewable by agreement of the parties for successive one (1) year periods, unless approved by either a vote or written assent of a majority of the Corporation's voting power, in which case the maximum term of the management contract is three (3) years. Any such agreement must provide for termination by either party with or without cause and without payment of a termination fee on at least thirty (30) days' written notice, but not more than ninety (90) days' written notice. In the event Declarant executes a contract with a professional management company prior to the Owners' election of at least a majority of the Board, the contract must allow termination by the Board, without payment of a termination fee, at any time subsequent to the Owners being elected to a majority of positions on the Board;

(i) In the event of substantial damage to or destruction of any Condominium Unit or any part of the Corporation Property, each Eligible Mortgage Holder for such Condominium will be entitled to timely written notice of any such damage or destruction;

(j) Each Eligible Mortgage Holder will, upon request, be entitled to:

(1) Examine current copies of the books, records and financial statements of the Corporation during normal business hours;

(2) Obtain from the Corporation an annual audited financial statement of the Project for the previous fiscal year (without expense to the holder, insurer, or guarantor requesting said statement). As set forth in the Article herein entitled "Powers and Duties of the Corporation," an annual report shall be available within one hundred twenty (120) days after the close of the fiscal year. If for any reason, the report is not audited, it shall be accompanied by a certificate from an authorized officer of the Corporation that the report was prepared without audit from the books and records of the Corporation, and the Eligible Mortgage Holder may have an audited financial statement prepared at its own expense; and

(3) Receive written notice of all meetings of the Corporation and be permitted to designate a representative to attend all such meetings.

(k) Each Owner shall notify the Corporation, in writing, within ten (10) days after the close of escrow for the purchase of his Condominium of the name and address of his first Mortgagee, and thereafter, each Owner shall promptly notify the Corporation of any changes of name or address for his first Mortgagee;

(l) Each Owner hereby authorizes a first Mortgagee on a Condominium to furnish information to the Board concerning the status of any such first Mortgage;

(m) In the event any portion of the Common Property encroaches upon any Condominium Unit or any Condominium Unit encroaches upon the Common Property as a result of the construction initially performed by Declarant, reconstruction, repair, shifting, settlement or movement of any portion of the Project, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists; and

(n) First Mortgagees of Condominium Units may, jointly or singularly, pay taxes or other charges which are in default and which may have become a lien on the Common Property, and may pay overdue premiums on hazard insurance policies or secured new hazard insurance coverage on the lapse of a policy for the Common Property, and first Mortgagees paying such payments shall be owed immediate reimbursement therefor from the Corporation. Upon demand by any first Mortgagee, the Board shall execute, on behalf of the Corporation, an agreement establishing the right of all first Mortgagees to such reimbursement.

Section 2. Violation of Mortgagee Protection Provisions. No breach of any of the foregoing Protective Covenants shall cause any forfeiture of title or reversion, or bestow any right of re-entry whatsoever, but in the event that any one (1) or more of these Protective Covenants shall be violated, the Declarant, its successors and assigns, or the Corporation, or any Owner of a Condominium in the Project, may commence a legal action in any court of competent jurisdiction to enjoin or abate said violation and/or to recover damages; provided, however, that any such violation shall not defeat or render invalid the lien of any Mortgage made in good faith and for value as to said Condominium. Said Protective Covenants shall be binding upon and effective against any Owner of said Condominium, or a portion thereof, whose title thereto is acquired by foreclosure, a trustee sale or otherwise.

Section 3. Effect of Amendments. Except as otherwise provided herein, no amendment of this Declaration or the Articles or the By-Laws of the Corporation shall affect the rights of any Mortgagee whose lien was created prior to recordation of such amendment.

Section 4. Amendments to Conform With Mortgagee Requirements. It is the intent of Declarant that this Declaration and the Articles and By-Laws of the Corporation, and the Project in general, meet all requirements necessary to purchase, guarantee, insure and subsidize any Mortgage of a Condominium in the Project by the FHLMC, FNMA, and the VA/FHA. In furtherance of said intent, Declarant may amend this Declaration without the consent of the Members at any time after the close of escrow for the first sale of a Condominium in the Project by recording a written instrument setting forth the amendment, provided that the amendment is necessary to cause this Declaration to comply with the requirements of the DRE, FHLMC, FNMA, GNMA, and/or VA/FHA; provided, however, that any such amendment shall be effective only if Declarant mails (by certified or registered mail with a "return receipt" requested) a copy of the amendment to all of the foregoing entities which are, or have agreed to be, a holder, insurer or guarantor of a first Mortgage, and does not, within sixty (60) days thereafter, receive a notice of disapproval from any such entity. Said amendments shall



not be recorded by Declarant until after the expiration of such sixty (60) day period.

## ARTICLE XVIII

### ENFORCEMENT OF BONDED OBLIGATIONS

Section 1. Enforcement of Bonded Obligations. In the event that any Improvements to the Corporation Property have not been completed prior to the first close of escrow for a Condominium following the issuance of a Final Subdivision Public Report by the DRE, and the Corporation is the obligee under a bond or other arrangement (hereinafter referred to as the "Bond") to secure a performance of the commitment of Declarant to complete such Improvements, the following provisions shall apply:

(a) The Board shall consider and vote on the question of action by the Corporation to enforce the obligations under the Bond with respect to any Improvements for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for such Improvements in the Planned Construction Statement appended to the Bond. If the Corporation has given an extension in writing for the completion of any Corporation Property Improvement, the Board shall consider and vote on the aforesaid question if a Notice of Completion has not been filed within thirty (30) days after the expiration of such extension.

(b) In the event that the Board determines not to initiate action to enforce the obligations under the Bond, or in the event the Board fails to consider and vote on such question as provided above, the Board shall call a special meeting of the Members for the purpose of voting to override such decision or such failure to act by the Board. Such meeting shall be called according to the provisions of the By-Laws dealing with meetings of the Members, but in any event, such meeting shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such meeting signed by Members representing five percent (5%) of the total voting power of the Corporation.

(c) The only Members entitled to vote at such meeting of Members shall be the Owners, other than Declarant. A vote at such meeting of a majority of the voting power of such Members, other than the Declarant, to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Corporation, and the Board shall thereafter implement such decision by initiating and pursuing appropriate action in the name of the Corporation.

## ARTICLE XIX

### ANNEXATION OF ADDITIONAL PROPERTY

Additional property may be annexed to and become subject to this Declaration as set forth in this Article.

Section 1. Phased Development of the Project. As set forth in Article II herein entitled "Introduction to Las Brisas at Cottonwood," Declarant intends to develop the Project in a series of Phases which may be annexed to the Project. However, Declarant is under no obligation to continue development of the Project.

Section 2. Annexation Pursuant to General Plan. All or any part of the real property described as Annexation Property herein, may be annexed to the Project, and added to the scheme of this Declaration, and subjected to the jurisdiction of the Corporation without the assent of the Corporation or its Members, provided and on condition that:

(a) Any annexation pursuant to this Section shall be allowed when the proposed annexation is in substantial conformance with the overall general plan of development for the Project submitted to and approved by the DRE with the Phase 1 Final Subdivision Public Report application, or as subsequently approved by the DRE; and

(b) A Notice of Annexation, as described in Section 4 of this Article, shall be recorded covering the Annexation Property.

Section 3. Annexation Pursuant to Approval. Except as otherwise allowed pursuant to Section 2 above, upon obtaining the approval in writing of: (a) the Declarant so long as Declarant owns any portion of the Property and/or Annexation Property; and (b) the Corporation pursuant to the vote or written assent of two-thirds (2/3) of the total votes residing in the Corporation Members, other than the Declarant, the owner of any property who desires to annex said property to the scheme of this Declaration and to subject it to the jurisdiction of the Corporation may file of record a Notice of Annexation, as described in Section 4 of this Article.

Section 4. Notice of Annexation. The annexation of additional property authorized under this Article shall be made by recording a Notice of Annexation, or similar instrument, covering said additional property, and the Notice of Annexation shall expressly provide that the scheme of this Declaration shall extend to such additional property. The Notice of Annexation may contain such complementary additions to and modifications of the Protective Covenants set forth in this Declaration which are necessary to reflect the different character, if any, of the annexed property and which are not inconsistent with the general scheme of this Declaration. Except as set forth in this Section, no Notice of

Annexation shall add, delete, revoke, modify or otherwise alter the Protective Covenants set forth in this Declaration.

Section 5. Effective Date of Annexation. Any Notice of Annexation recorded on a Phase of the Project shall become effective with respect to the obligations for payment of Assessments immediately upon:

(a) The first close of an escrow for the sale of a Condominium in a Phase, as evidenced by the recordation of the first instrument of conveyance for said Condominium; or

(b) The conveyance of any Corporation Property in said Phase to the Corporation, whichever first occurs.

Section 6. Right of De-Annexation. Declarant hereby reserves the right to de-annex any property which may be annexed to the Project pursuant to this Declaration, and to delete said property from the scheme of this Declaration and from the jurisdiction of the Corporation, provided and on condition that (1) the de-annexation shall be made prior to the first close of an escrow for the sale of a Condominium in the property to be de-annexed, (2) the de-annexation is recorded in the same manner as the applicable Notice of Annexation, (3) the Declarant has not exercised any vote with respect to any Condominium in such property, (4) no assessments have commenced on any portion of the property subject to the de-annexation, (5) the City has approved of such de-annexation; and (6) if requested in writing by VA/FHA, a draft of the revocation of Notice of Annexation has been submitted to and approved by the VA/FHA, if applicable.

Section 7. Amendments to Notices of Annexation. Notwithstanding any other provisions in this Declaration to the contrary, a Notice of Annexation may be amended by the requisite affirmative vote of Members (and first Mortgagees, if applicable), as set forth in the Article herein entitled "General Provisions," in only the annexed property described in said Notice of Annexation, rather than all Members (and first Mortgagees, if applicable) in the Project, on the following conditions:

(a) Such amendment applies only to the annexed property described in said Notice of Annexation; and

(b) Such amendment shall in no way contradict, revoke or otherwise alter any of the Protective Covenants set forth in this Declaration.

## ARTICLE XX

### VETERANS AFFAIRS PROVISIONS

Section 1. Condominium Ownership. As noted above, each Owner in Phase 1 shall receive title to his or her respective Condominium Unit, various easements (exclusive and nonexclusive, as set forth in this Declaration), an undivided one-ninth (1/9th) interest in the Common Area and a membership in the Corporation.

Section 2. Condominium Documentation. This Declaration and any amendment or restatement hereto shall be recorded in the County. The By-Laws need not be recorded. The Corporation shall make available to all Condominium Owners, lenders, and the holders, insurers and guarantors of the first Mortgage on any Condominium, current copies of the Declaration, By-Laws, Articles, Rules and Regulations, and other books and records and financial statements of the Corporation. The Corporation shall also make available to prospective purchasers of the Condominiums current copies of the Declaration, By-Laws, Articles, Rules and Regulations, and the most recent annual audited financial statement of the Corporation, if such has been prepared. For purposes of this Section, the term "available" shall mean available for inspection, upon request, during normal business hours or under other reasonable circumstances.

Section 3. Amendments. While the Declarant is entitled to appoint a majority of the members of the Board (as provided in the Article of this Declaration entitled "The Corporation"), any amendments to this Declaration (excluding amendments which annex Annexation Property to the Project in accordance with the general plan of development approved by the DRE), the By-Laws, or other enabling documentation must be approved by the Secretary of Veterans Affairs or any employee of the Department of Veterans Affairs authorized to act in the Secretary's stead ("Secretary") if required in connection with a loan made by the Department of Veterans Affairs for a Condominium in the Project. Material amendments and extraordinary actions (as defined in VA's regulations) must be approved in the manner specified in Section 1 of the Article of this Declaration entitled Mortgagee Protection (e.g., by 67% of the Members other than Declarant).

Section 4. Description of the Condominium Units, Common Area, and Corporation Property. The Condominium Units, Common Area, and Corporation Property (including the overall plan of development) are described throughout this Declaration, including, without limitation, in the Articles of this Declaration entitled "Introduction to Las Brisas at Cottonwood," "Description of the Condominiums," etc. Maintenance requirements for the Condominium Units and Common Property are set forth in the Article of this Declaration entitled "Repair and Maintenance." Any proposed annexation of Annexation Property shall be in substantial confor-

mance with the overall general plan of development for the Project submitted to and approved by the DRE with the Property Final Subdivision Public Report application, or as subsequently approved by the DRE.

Section 5. Corporation's Right of Termination of Certain Contracts. In the event the Corporation executes any of the following contracts prior to the Owners' election of at least a majority of the Board, the contract must allow termination by the Board, without payment of a termination fee or any other penalty, upon not more than ninety (90) days' notice to the other party to the contract:

(a) Any management contract, employment contract or lease of recreational or parking areas or facilities; or

(b) Any contract or lease of recreational or parking areas or facilities.

Section 6. Corporation's Right of Entry and Other Rights. If applicable and consistent with the Corporation's maintenance obligations of the Condominiums as set forth herein, the Corporation shall have the immediate right (without notice to the Owner) to enter upon or within any Owner's Condominium Unit and/or the Corporation Property to effect emergency repairs, and shall have the right, after reasonable notice to the Owner and at a reasonable hour of the day, to enter upon or within any Owner's Condominium Unit and/or the Corporation Property to effect other repairs, improvements, replacement or maintenance as necessary for which the Corporation has responsibility under this Declaration or the law. As set forth in the Article of this Declaration entitled "Powers and Duties of the Corporation," the Corporation shall have such other rights and powers as are reasonably necessary to the ongoing development and operation of the Project, including without limitation, the right to grant utility easements under, through or over the Corporation Property.

Section 7. Assessments. Provisions addressing each Owner's responsibility for, and the Corporation's authority to levy and enforce the collection of, Assessments are set forth in the Article of this Declaration entitled "Assessments." Notwithstanding any other provisions in this Declaration, a lien for Assessments shall not be affected by any sale or transfer of a Condominium Unit, except that a sale or transfer of any Condominium pursuant to judicial or nonjudicial foreclosure of a first Mortgage guaranteed by VA shall extinguish a subordinate lien for Assessments which became payable prior to such sale or transfer. Any such sale or transfer pursuant to a judicial or nonjudicial foreclosure shall not relieve the purchaser or transferee of the Condominium from liability for, not the Condominium so sold or transferred from the lien of, any Assessments thereafter becoming due.

Section 8. Reserves and Working Capital. The Article of this Declaration entitled "Powers and Duties of the Corporation" contains provisions for an adequate reserve fund for the periodic maintenance, repair and replacement of the Corporation Property, which fund is to intended to be maintained and established from Regular Assessments. Each initial purchaser of a Condominium from the Declarant in the Project shall contribute to the working capital of the Corporation an amount no greater than two months of the Regular Assessment for the built out budget reviewed by the DRE.

Section 9. Voting Rights. Provisions addressing each Owner's voting rights, including the allocation of a portion of the votes in the Corporation to each Owner, are set forth in the Article of this Declaration entitled "The Corporation."

Section 10. Easements. Nothing in this Declaration restricts an Owner's right of ingress or egress to his or her Condominium Unit. As provided in the Article of this Declaration entitled "Reservation of Easements and Other Property Rights in the Corporation Property," easements for encroachment have been reserved in favor of each Owner. As provided in the Article of this Declaration entitled Mortgagee Protection, in the event any portion of the Common Property encroaches upon any Condominium Unit or any Condominium Unit encroaches upon the Common Property as a result of the construction initially performed by Declarant, reconstruction, repair, shifting, settlement or movement of any portion of the Project, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists.

Section 11. Restrictions on Alienation. As set forth in the Article of this Declaration entitled "Mortgagee Protection," the right of an Owner to sell, transfer or otherwise convey his Condominium shall not be subject to any right of first refusal or any similar restriction in favor of the Corporation.

Section 12. Rights of Action. As noted below, the Corporation and each Owner shall have the right to enforce, by proceedings at law or in equity, all of the Protective Covenants now or hereafter imposed by this Declaration and the By-Laws, respectively (and the Rules and Regulations duly adopted by the Corporation), including, without limitation, the right to prosecute a proceeding at law or in equity against the person or persons who have violated, or are attempting to violate, any of said Protective Covenants, to enjoin or prevent them from doing so, to record a notice of non-compliance, to cause said violation to be remedied and/or to recover damages for said violation; provided, however, that with respect to Assessment liens, the Corporation shall have the exclusive right to the enforcement thereof.

Section 13. Miscellaneous Requirements.

(a) Declarant Transfer of Control of Corporation. The Declarant's Class B membership shall cease and be converted to Class A membership, and the Declarant's right to solely appoint a majority of the members of the Board shall terminate, within the time periods specified in Sections 2 and 3 of the Article of this Declaration entitled "The Corporation."

(b) Taxes. As set forth in the Article of this Declaration entitled "Mortgagee Protection," all taxes, Assessments and charges which may become liens prior to the first Mortgage under local law shall relate only to individual Condominiums, and not to the Project as a whole.

(c) Corporation By-Laws. The Corporation's By-Laws shall contain sufficient provisions for the successful governance of the Corporation, including, among things, adequate provisions for the election and removal of directors and officers of the Corporation.

(d) Insurance. The Corporation and each Owner shall be required to maintain insurance as set forth herein, including the Article of this Declaration entitled "Insurance."

(e) Annexation of Additional Property. Additional property may be annexed into the Project as set forth in the Article of this Declaration entitled "Annexation of Additional Property." The quality of construction of all improvements in any property annexed to the Project must be substantially consistent with the quality of construction of the improvements in Phase 1. The annexation of additional property to the Project must not affect the statutory validity of the Project as a condominium project or the validity of title to the Condominiums. Any proposed annexation of Annexation Property shall be in substantial conformance with the overall general plan of development for the Project originally submitted to and approved by the DRE with the Property Final Subdivision Public Report application, or as subsequently approved by the DRE. As set forth below, the Declarant's right to annex the Annexation Property to the Project pursuant to the overall general plan of development for the Project submitted to and approved by the DRE shall terminate on the latter of: (i) the date which is seven (7) years after the date of the recordation of this Declaration; or (ii) a subsequent date after such seven (7) year period as may be approved or allowed by the DRE (e.g., issuance of a Final Subdivision Public Report). Except as otherwise stated herein, if VA has insured loans for at least 25% of the Condominiums in the Project, then the Project may not be merged with a successor condominium regime without prior written approval of the Secretary.

(f) Minimum and Maximum Percentages of Undivided Interests in the Common Area. As noted above, each Owner in

Phase 1 will receive an undivided one-ninth (1/9th) fractional fee interest in the Common Area, and each Owner of a Condominium in a subsequent Phase annexed to the Project will receive an undivided fractional fee interest in the Common Area of such Phase equal to the ratio of his Condominium to the total number of Condominiums in such Phase. If all of the Annexation Property is annexed into the Project as set forth in Declarant's general plan of development, the Project will contain a total of twenty-eight (28) Condominiums. The basis for reallocation of each Owner's common expense liabilities and voting rights in the event of annexation of the Annexation Property is set forth in the Article entitled "The Corporation" and the Article entitled "Assessments" of this Declaration.

(g) Professional Management. As noted above, any agreement for professional management of the Project or any agreement whereby the Declarant will provide services to the Corporation may not exceed one (1) year, renewable by agreement of the parties for successive one (1) year periods, unless approved by either a vote or written assent of a majority of the Corporation's voting power or by VA or FHA, in which case the maximum term of the management contract is three (3) years. Any such agreement must provide for termination by either party with or without cause and without payment of a termination fee on thirty (30) days' or ninety (90) days' or less, respectively, written notice.

(h) Corporation's By-Laws. The Corporation's By-Laws must conform with the following requirements:

(1) Notices of Meetings. The By-Laws must provide that meetings of the Members of the Corporation regarding material amendments or extraordinary actions (as defined in VA's regulations) will be held on at least twenty-five (25) days advance notice to all Members and that meetings for all other purposes will be held on at least seven (7) days notice. The notice must state the purpose of the meeting and contain a summary of any material amendments or extraordinary actions proposed. If proxies are permitted, the notice must contain a copy of the proxy that may be cast in lieu of attendance at the meeting. However, during the time Condominiums in the Project are being sold under the authority of a subdivision public report, the quorum requirement for any such meeting must be at least twenty-five percent (25%).

(2) Election, Removal, and Replacement of Board of Directors of Corporation. The By-Laws may not alter the provisions for election (or appointment by Declarant) of Board members of the Corporation set forth in this Declaration. In addition, the By-Laws shall be substantially consistent with the following provisions:



i) Removal of Board Members of the Corporation. At any regular or special meeting duly called, any one (1) or more of the Directors of the Corporation may be removed, with or without cause, as provided herein, and a successor may then and there be elected to fill the vacancy so created. Unless the entire Board is removed from office by the vote of Corporation Members, an individual Director shall not be removed prior to the expiration of his term of office if the number of votes cast against his removal would be sufficient to elect the Director if voted cumulatively at an election at which the same total number of votes were cast and the entire number of Directors authorized at the time of the most recent election of the Director were then being elected. A Director who has been elected to office solely by the votes of Members of the Corporation, other than the Declarant, may be removed from office prior to the expiration of his term of office only by the vote of at least a simple majority of the voting power residing in Members, other than the Declarant.

ii) Vacancies on Board of Directors of Corporation. Vacancies on the Board caused by any reason, other than the removal of a Director by a vote of the Corporation, shall be filled by vote of a majority of the remaining Directors, even though they may constitute less than a quorum, and each Director so elected shall serve for the remainder of the term of the Director he/she replaces; provided, however, that for as long as the Declarant has the right to appoint a majority of the Board members under the By-Laws, the Declarant may appoint a new Board member to fill any vacancy resulting from the resignation of a Board member previously appointed by the Declarant without the approval of the remaining Directors. In the event that a majority of the remaining Directors are unable to agree upon a successor within fifteen (15) days following the occurrence of a vacancy, a special election to fill the vacancy shall then be held in accordance with the terms provided in the Article herein entitled "Nomination and Election of Directors," in accordance with the secret ballot procedures set forth in the By-Laws and California Civil Code Section 1363.03.

## ARTICLE XXI

### GENERAL PROVISIONS

#### Section 1. Enforcement.

(a) The Corporation, the City (in its sole discretion) or the Owner of any Condominium in the Project, including the Declarant, shall have the right (but not the obligation) to enforce, by proceedings at law or in equity, all of the Protective Covenants now or hereafter imposed by this Declaration and the By-Laws, respectively (and the Rules and Regulations duly adopted by the Corporation), including, without limitation, the right to prosecute a proceeding at law or in equity against the person or persons who have violated, or are attempting to violate, any of said Protective Covenants, to enjoin or prevent them from doing so, to record a notice of non-compliance, to cause said violation to be remedied and/or to recover damages for said violation; provided, however, that with respect to Assessment liens, the Corporation shall have the exclusive right to the enforcement thereof.

(b) The result of every act or omission whereby any of the Protective Covenants contained in this Declaration or the provisions of the By-Laws are violated, in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance shall be applicable against every such result and may be exercised by any Owner, by the Corporation, or by its successors in interest.

(c) The remedies herein provided for breach of the Protective Covenants contained in this Declaration or the provisions of the By-Laws shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

(d) The failure of the Corporation or any Owner to enforce any of the Protective Covenants contained in this Declaration, the provisions of the By-Laws or any Rules or Regulations shall not constitute a waiver of the right to enforce the same thereafter.

(e) Prior to filing a civil action by either the Corporation or by an Owner (but not the City) solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages other than Corporation Assessments, related to the enforcement of the Corporation governing documents, the parties may be required to comply with Civil Code Section 1369.510 et seq., if applicable. Failure to comply with the prefiling requirements of Section 1369.510 et seq. of the Civil Code may result in the loss of the right to sue regarding enforcement of the Corporation governing documents. Upon

motion by any party for attorneys' fees and costs as the prevailing party, the court, in determining the amount of the award, may consider a party's refusal to participate in alternative dispute resolution prior to the filing of the action.

(f) A breach of the Protective Covenants contained in this Declaration or of the provisions of the By-Laws shall not affect or impair the lien or charge of any bona fide Mortgage or deed of trust made in good faith and for value on any Condominium; provided, however, that any subsequent Owner of such property shall be bound by said Protective Covenants and the provisions of the By-Laws, whether or not such Owner's title was acquired by foreclosure, a trustee's sale or otherwise.

(g) The Board, for and on behalf of the Corporation, may assess monetary penalties against an Owner as a Compliance Assessment and/or temporarily suspend said Owner's voting rights and right to use the Corporation Property (other than as access to his Condominium) and/or the recreational facilities, if any, for the period during which any Assessment against said Owner's Condominium remains unpaid; provided, however, the requirements for Notice and Hearing set forth in the By-Laws shall be followed with respect to the accused Owner before a decision to impose discipline is reached.

(h) The Board, for and on behalf of the Corporation, may temporarily suspend an Owner's voting rights and right to use the recreational facilities, if any, for a period not to exceed thirty (30) days for any infraction of the Corporation's Rules and Regulations; provided, however, the requirements for Notice and Hearing set forth in the By-Laws shall be followed with respect to the accused Owner before a decision to impose discipline is reached.

(i) In addition to the above general rights of enforcement, the City shall have the right, through its agents and employees, to enter upon any part of the Project for the purpose of enforcing the California Vehicle Code and its local ordinances, and is hereby granted an easement over the Project for that purpose and to maintain the exterior portions of the Corporation Property at the expense of the Corporation in accordance with the City's Municipal Code, as applicable. Nothing in this Section is intended to, nor shall it obligate, the City to take enforcement action; any such enforcement action shall be at the City's sole discretion and election.

Section 2. Severability. Invalidation of any one of these Protective Covenants by judgment or court order shall in no way affect any other provisions hereof, which shall remain in full force and effect.

Section 3. Term. The Protective Covenants set forth in this Declaration shall run with and bind the Project, and shall inure to the benefit of the Corporation and be enforceable by the Board or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time said Protective Covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed by a majority of the then Owners agreeing to terminate said Protective Covenants, in whole or in part, has been recorded within one (1) year prior to the termination of the initial fifty (50) year term, or within one (1) year prior to the termination of any successive ten (10) year period.

Section 4. Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and maintenance of the Project. The Article and Section headings have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

Section 5. Singular Includes Plural. Whenever the context of this Declaration may so require, the singular shall include the plural, and the masculine shall include the feminine and neuter.

Section 6. Amendments.

(a) Amendments by Declarant. Prior to the close of escrow for the sale of a Condominium to a member of the public, in accordance with a Final Subdivision Public Report issued by the DRE, this Declaration may be amended, restated or terminated by an instrument executed by Declarant. Notwithstanding any other provisions of this Declaration, for so long as Declarant owns any portion of Lot 1 of Tract No. 2005-02 or the Annexation Property, Declarant may unilaterally amend this Declaration to (i) conform this Declaration to the rules, regulations or requirements of VA/FHA, FHA, DRE, FNMA, GNMA, FHLMC, the County, City, State, or Federal government or any other governmental agency or entity applicable to the Project, (ii) amend or supplement any of the Exhibits to this Declaration, (iii) comply with any City, County, State or Federal laws or regulations, (iv) correct any typographical errors or inadvertent errors in the Declaration and/or Exhibits attached thereto, (v) record any maintenance standards and/or obligations of the Corporation and Owners; and (vi) supplement this Declaration with provisions which pertain to rights and obligations of Declarant, the Corporation or the Owners arising under Division 2, Part 2, Title 7 (commencing with Section 895) of the California Civil Code, the Limited Warranty, and/or any express written warranty, if any, provided by Declarant to an Owner or the Corporation. **THIS SECTION MAY NOT BE AMENDED WITHOUT DECLARANT'S PRIOR WRITTEN**

CONSENT, WHICH CONSENT MAY BE WITHHELD IN DECLARANT'S SOLE AND ABSOLUTE DISCRETION.

(b) Amendments by Corporation. Subject to Section 6(a) above, and all applicable provisions of law (e.g., the provisions of California Civil Code Section 1363.03 regarding secret ballots), this Declaration may be amended only by an affirmative vote of Owners representing not less than sixty-seven percent (67%) of the Class A voting power and the Class B voting power of the Corporation. At such time when the Class B membership shall cease and be converted to Class A membership, any and all amendments to this Declaration shall be enacted by requiring the vote or written assent of Owners representing both: (a) sixty-seven percent (67%) of the total voting power of the Corporation, and (b) sixty-seven percent (67%) of the votes of Members, other than the Declarant; provided, however, that the percentage of the voting power necessary to amend a specific provision shall not be less than the percentage of affirmative votes prescribed for action to be taken under said provision, and no amendment of a provision of this Declaration which requires the approval or consent of Declarant may be made without the written approval of Declarant (e.g., provisions pertaining to the resolution of Disputes, Maintenance Guidelines, Maintenance Manual, Maintenance Recommendations, etc.). Any Owner or the Corporation may petition the Superior Court of San Diego County for an order reducing the necessary percentage required under this Section to amend this Declaration; provided, however, that under no circumstances shall any provision requiring the consent of the Declarant be amended without such consent. The procedure for effecting this petition is set forth in Section 1356 of the California Civil Code, as the same may be amended, from time to time.

(c) Approval of Mortgagees. In addition to the rights of first Mortgagees, as set forth in the Article herein entitled "Mortgagee Protection," in the event that FNMA or VA/FHA participates in the financing of Condominiums in the Project, the written consent of not less than fifty-one percent (51%) of the "Eligible Mortgage Holders" (as defined in the Article herein entitled "Mortgagee Protection") shall be required for any amendment of a "material" nature. An amendment which affects or purports to affect any of the following is considered material:

- (1) The legal status of the Project as a common interest development;
- (2) Voting rights;
- (3) Increases in Assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens or the priority of

assessment liens, including the levy and collection thereof, enforcement provisions for nonpayment and subordination of liens for nonpayment;

(4) Reductions in reserves for maintenance, repair and replacement of the Corporation Property;

(5) Responsibility for Corporation Property maintenance and repair;

(6) Reallocation of interests in the Corporation Property or rights to use the Corporation Property;

(7) Boundaries of any Condominium Unit;

(8) Convertibility of Corporation Property into Condominium Units or Condominium Units into Corporation Property;

(9) Encroachment by Improvements into Corporation Property;

(10) Expansion or contraction of the Project, or addition, annexation or de-annexation of additional property to or from the Project;

(11) Reduce insurance or fidelity bonds requirements;

(12) Restrictions on the leasing of Condominiums;

(13) Imposition of restrictions on alienation, including, but not limited to, rights of first refusal;

(14) Any decision by the Corporation to establish self-management, if professional management was previously required by an Eligible Mortgage Holder or legal documents governing the Project;

(15) Restoration or repair of the Project in a manner other than as specified in this Declaration;

(16) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; and

(17) Mortgagee protection provisions as set forth in that Article hereinabove entitled "Mortgagee Protection," and such other provisions in this Declaration for which the consent of Mortgagees shall be required or which are expressly for the benefit of Mortgagees, insurers or guarantors of Mortgagees.

An addition or amendment to this Declaration shall not be considered material if it is for the purpose of correcting technical errors or for clarification only or impacting rights which do not impair the security interest of an Eligible Mortgage Holder. In the event the Corporation is considering termination of the legal status of the Project for reasons other than the substantial destruction or condemnation of the Project, then sixty-seven percent (67%) of the Eligible Mortgage Holders must agree to said termination. Notwithstanding the foregoing, in the event any Eligible Mortgage Holders receives a written request, delivered by certified or registered mail with return receipt requested, from the Board to approve any amendment to this Declaration, and such Eligible Mortgage Holder does not deliver a negative response in writing to the Board within sixty (60) days of the mailing of such request by the Board, such Eligible Mortgage Holder shall be deemed to have approved such proposed amendment.

(d) Approval by City. The Declarant or the Corporation shall forward, or cause to be forwarded, to the City a written notice of any amendment of a provision of this Declaration pertaining to or specifying the City. If no notice of disapproval is received by the Corporation within thirty (30) days following the mailing of such notice, such amendment or termination shall be deemed to be approved by the City.

(e) Recordation of Amendments. An amendment made in accordance with the provisions set forth hereinabove shall be effective when executed by the President and Secretary of the Corporation, who shall certify that the amendment has been approved by the membership and, where appropriate, by the first Mortgagees, in the percentages set forth hereinabove, and recorded in the Office of the County Recorder. Upon such recordation, the amendment shall be effective and binding upon all Owners and all Mortgagees, regardless of whether such Owner or such Mortgagee consented to such amendment.

Section 7. Encroachments. None of the rights and obligations of the Owners created herein or by the deed shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause (except intentional or negligent acts of the Owners, other than the Declarant). There shall be valid easements for the maintenance of said encroachments so long as they shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner if said encroachment occurred due to the willful conduct of said Owner.

Section 8. Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by first class, registered or certified mail, it shall be deemed to have been received and delivered forty-eight (48) hours after a

copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Corporation for the purpose of service of such notice, or to the Condominium Unit of such person if no address has been given to the Corporation. If such notice is not sent by first class, regular or certified mail, it shall be deemed to have been delivered when received. Such address may be changed, from time to time, by notice in writing to the Corporation.

Section 9. Attorneys' Fees. Except as otherwise provided herein (e.g., resolution of Disputes whereby each party is responsible for payment of his attorney fees, without the right to reimbursement from the other party and notwithstanding which party may be the "prevailing party"), or in the Limited Warranty, or other express written warranty provided by Declarant, if any, in the event the Board, Corporation, or any Owner of a Condominium shall commence legal proceedings against the Owner of any other Condominium to enforce the covenants of this Declaration, or to declare rights hereunder as the result of any breach, or claim of breach, of said covenants, the prevailing party shall recover the cost of the suit, judicial reference, or alternative dispute resolution, in addition to its costs of suit, including reasonable attorneys' fees, as may be fixed by the court. In addition, if any Owner defaults in making a payment of Assessments and the Corporation has obtained the services of an attorney in connection therewith, the Owner covenants and agrees to pay to the Corporation any costs or fees incurred, including reasonable attorneys' fees, regardless of whether dispute proceedings are instituted.

Section 10. Mergers or Consolidations. Upon a merger or consolidation of the Corporation with another association, the Corporation's 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 Corporation as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the Protective Covenants established by this Declaration governing the Project, together with the covenants and restrictions established upon any other property as one plan.

Section 11. Corporation Property Claims. Notwithstanding any provision to the contrary regarding resolution of disputes regarding the Corporation Property, at such time as an Owner is elected or appointed to the Board, the Declarant shall be deemed to have relinquished control over the Corporation's ability to initiate claims regarding the Corporation Property.

Section 12. Right to Repair Law and "As-Is" Conveyance and Release Provisions. If applicable, provisions pertaining to the construction dispute reform bill known as Senate Bill No. 800, which added section 43.99 and Title 7 (commencing with section 895)



to Part 2 of Division 2 of the California Civil Code ("Right to Repair Law") and "As-Is" Conveyance and Release Provisions are set forth on Exhibit "I" hereto and incorporated by this reference.

Section 13. Maintenance Standards. Each Owner and the Corporation shall maintain everything he/she/it/they are obligated to maintain in a manner consistent with the provisions herein and in conformance with any maintenance obligations and schedules (i.e., procedures, standards, and/or schedules for the maintenance and operation of the Condominium and/or Corporation Property which may be provided to said Owner and/or Corporation by Declarant (e.g., Corporation Property Maintenance Manual and/or Homeowners Resource Guide), as such procedures, standards, and/or schedules may be updated and revised as appropriate), product manufacturer's maintenance guidelines/recommendations, and commonly accepted maintenance standards. Unless otherwise provided in such maintenance obligations and schedules, each Owner and the Corporation shall determine the level and frequency of maintenance of his or her Condominium and Corporation Property, as appropriate.

Section 14. No Representations or Warranties. No representations or warranties of any kind, express or implied, have been given or made by Declarant, or its agents or employees, in connection with the Project, or any portion thereof, its physical condition, zoning, compliance with applicable 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 specifically and expressly set forth in this Declaration or the Limited Warranty, and except as may be filed by Declarant, from time to time, with the DRE.

Section 15. Exhibits. Except for Exhibit "C" (which is attached for informational purposes only), the Exhibits attached hereto are incorporated by this reference. Notwithstanding any depiction thereon, the as-built condition by Declarant shall control. In addition, the Corporation's maintenance obligation with respect to the Corporation Property depicted thereon shall commence when the Corporation levies Assessments applicable to said Improvements (e.g., although the depictions may show all of Tract No. 2005-02, the maintenance obligations for this Corporation only include the Improvements in the Corporation Property of the applicable phase of development which are subject to assessments).

Section 16. Project Disclosures. The following disclosures are made to facilitate each Owner's investigation of the Project prior to purchasing a Condominium in the Project. The disclosures are not exhaustive, and no warranty or representation of any kind or nature is made in connection with the disclosures. The information set forth in the disclosures may change over time. By acceptance of a deed to a Condominium in the Project, each Owner acknowledges and agrees that such Owner is solely responsible for investigating the following matters, as well as all other matters

of interest to such Owner, prior to completing the purchase of a Condominium in the Project.

(a) Conditions of Approval. The Project is subject to, and required to comply with, all terms and conditions set forth in the City's conditions for the approval of the tentative tract map for Tract No. 2005-02 and the development of the Project (including, without limitation, City Council Resolution Nos. 032-2005, 033-2005, 004-2008 and P07-10). Neither this Declaration nor any contract of sale, lease, or other written document or any means or method shall be established, or shall attempt to establish, any requirement, restriction, or limitation on the Declarant, or any person, individual or entity, which would operate, directly or indirectly, to prevent or preclude any other developers of the Property or Project, or any person, individual, or entity, in complying with all applicable conditions for the approval of the tentative map and development of the Project and other City ordinances, rules, policies, or regulations.

(b) Noise and Sounds from Other Condominium Units. Buyer understands and acknowledges that the Project is a residential development located in a mixed residential and commercial/industrial environment. Living in an attached Condominium building within a densely populated community entails living in close proximity to other persons and businesses, with attendant limitations on solitude. The Condominium buildings and individual Condominium Units are not sound and/or odor proof and noises and/or odors from adjacent Condominiums and the Corporation Property may be heard and smelled. Owners will hear noise from adjacent residences within the Project, including, but not limited to, noise from showers, bathtubs, sinks, toilets, dishwashers, washing machines, or other sources of running water. Also, Owners may hear noise from items such as vacuum cleaners, stereos, or televisions, or from people running, walking or exercising on hard surfaces. Owners can also expect to hear noise from adjacent and nearby residential and commercial/industrial areas. Owners may also experience light entering the residences from street lights located in proximity to the windows and doors of the residences. Declarant has no control over the transmission of noise or light and their potential effects on residences within the Project.

The Board may establish certain sound attenuation measures applicable to flooring and the installation thereof (including but not limited to the applicable underlayment materials).

(c) Limited Parking. Parking within and in the vicinity of the Project is very limited. Declarant makes no warranties or representations of any kind, express or implied, regarding the availability of guest parking in the Project.

(d) Maintenance of Private Sewer Laterals. As set forth herein (e.g., in the Article entitled "Repair and Maintenance"), each Owner is responsible for the maintenance of the

private sewer laterals that exclusively serve the Owner's Condominium commencing at the sewer clean-out). If an Owner is required to disturb the Corporation Property in order to maintain his sewer lateral, the Owner will be responsible (at his sole cost and expense) for restoring the Corporation Property to its existing condition prior to such disturbance and to follow any and all procedures and requirements (e.g., insurance, licensed contractors, hours of work, etc.) required by the Corporation.

(e) Light Industrial Property in Vicinity. As required by the City, all Owners are hereby advised that property on the east side of Cottonwood Avenue near the Project is located within a light industrial zone and future light industrial uses will generate noise, light and traffic in the area. Owners and other residents of the Project may also experience or be exposed to unpleasant odors, diesel exhaust, air pollution, water pollution, visual blight, and other adverse impacts relating to the operation and maintenance of any property used for industrial purposes. Declarant makes no representations or warranties of any kind or nature, express or implied, with respect to any property zoned for industrial use. Each Owner is solely responsible for consulting with the City and otherwise investigating this matter to the Owner's full and complete satisfaction prior to completing the purchase of a Condominium in the Project.

(f) NOTICE OF AIRPORT IN VICINITY. The Project is located in the vicinity of an airport (e.g., Gillespie Field), within what is known as an airport influence area (i.e., an area in which current or future airport-related noise, overflight, safety, or airspace protection factors may significantly affect land uses or necessitate restrictions on those uses as determined by an airport land use commission). For that reason, the Project may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. Each Owner may wish to, and should consider what airport annoyances, if any, are associated with the Project before an Owner completes his/her purchase of a Condominium in the Project and determine whether such location and airport annoyances are acceptable.

(g) Right to Farm. The Project is located within one mile of farm or ranch land designated on the current county-level GIS "Important Farmland Map," issued by the California Department of Conservation, Division of Land Resource Protection. Accordingly, the Project may be subject to inconveniences or discomforts resulting from agricultural obligations that are a normal and necessary aspect of living in a community with a strong rural character and a health agricultural sector. Customary agricultural practices in farm operations may include, but are not limited to, noise, odors, dust, light, insects, the operation of pumps and machinery, the storage and disposal of manure, bee pollination, and the ground or aerial application of fertilizers,

pesticides, and herbicides. These agricultural practices may occur at any time during the 24-hour day. Individual sensitivities to those practices can vary from person to person. You may wish to consider the impacts of such agricultural practices before you complete your purchase. Please be advised that you may be barred from obtaining legal remedies against agricultural practices conducted in a manner consistent with proper and accepted customs and standards pursuant to Section 3482.5 of the Civil Code or any pertinent local ordinance.

(h) Waiver. Each Owner, for and on behalf of himself and the members of his family, his tenants, lessees, guests and invitees, expressly approve all of the foregoing conditions and risks, and waives all causes of action and covenants not to sue the City, the Declarant, and their respective directors, officers, members, employees, agents and consultants for any damages or injuries which may arise from or relate to any of such conditions and/or risks.

Section 17. Priorities and Inconsistencies. If there are conflicts or inconsistencies between this Declaration and either the Articles or By-Laws of the Corporation, the terms and provisions of this Declaration shall prevail, save and except for the provisions of the Articles of Incorporation.

Section 18. Declarant's Representative. Commencing on the date on which Declarant no longer has an elected representative on the Board, and continuing until the date that is ten (10) years after the date of the last close of escrow in the Project, the Declarant shall be entitled to access (in real time) any website maintained by the Corporation or its property manager for the Project and to view all documents posted on the website, shall be entitled to inspect and copy the Corporation's books and records, including, without limitation, maintenance records, on the same terms and conditions as a Member (*i.e.*, as set forth herein and/or in the By-Laws), and shall be entitled to have a representative ("Declarant's Representative") present at all meetings of the Members and the Board. For so long as Declarant's Representative is entitled to attend such meetings, the Corporation and/or Members, as appropriate, shall provide Declarant with written notice of all meetings of the Board as if Declarant were an Owner/Member, and the Corporation shall provide Declarant's Representative with the proposed minutes and approved minutes of the meetings of Owners, the Board and committees. The Declarant's Representative shall be present in an advisory capacity only and shall not be a Board member or have any right to vote on matters coming before the Board or any liability as a Board member. However, the Declarant's Representative shall have the right to speak at all meetings, and the Secretary shall accurately note any statements made by the Declarant in the minutes of the meetings. This Section may not be amended without the prior written approval of the Declarant, which approval may be withheld in Declarant's sole and absolute discretion.

Section 19. Compliance with Requirements of FHLMC, FNMA, and VA/FHA. Notwithstanding any provision of this Declaration, the Declarant and Corporation shall comply with all requirements of FHLMC, FNMA, and/or VA/FHA established by those entities for condominium projects for so long as any of such agencies continue to be a Mortgagee, Owner, insurer or guarantor of a Mortgage in the Project, including, without limitation, the following requirements:

a. All Improvements on the Corporation Property shall be substantially completed before such Corporation Property is conveyed to the Corporation, notwithstanding any regulation of the DRE allowing such conveyance to occur upon the posting of appropriate bonds.

b. The Declarant's right to annex the Annexation Property to the Project pursuant to the overall general plan of development for the Project originally submitted to and approved by the DRE shall terminate on the latter of: (i) the date which is seven (7) years after the date of the recordation of this Declaration; or (ii) a subsequent date after such seven (7) year period as may be approved by the DRE.

Section 20. Declarant's Duty to Convey Easements. No later than three (3) years after the date of recordation of this Declaration in the County, Declarant or its successors or assigns shall convey (i) easements over a portion of Lot 1 of Map 15481 necessary to construct the pool, spa, fountain, recreational building, and any other recreational improvement approved by the City for the Project (collectively the "Recreation Area"), and (ii) ingress, egress, and access easements over that portion of Lot 1 depicted as easement area C on page 4 of Map 15481 as necessary for ingress, egress and access to the Recreation Area. The easements noted above shall be conveyed to the Corporation free and clear of any and all monetary liens or encumbrances. Improvements in the Recreation Area must be completed to include all those applicable recreational items approved by the City for Map 15481 which are identified on Exhibit "J". In the event that Declarant fails to make said conveyance within such three-year period, the Corporation shall have the right, but not the obligation, to initiate an appropriate legal proceeding to compel the Declarant or its successors or assigns to convey fee such easements to the Corporation as Corporation Property, free and clear of any and all monetary liens or encumbrances, and the Corporation shall be entitled to recover from the Declarant its costs and expenses, including reasonable attorney fees, necessary to compel such conveyance. THIS SECTION MAY NOT BE AMENDED SOLELY BY DECLARANT. ANY AMENDMENTS TO THIS SECTION SHALL REQUIRE AN AFFIRMATIVE VOTE OF OWNERS REPRESENTING NOT LESS THAN SIXTY-SEVEN PERCENT (67%) OF THE CLASS A VOTING POWER AND THE CLASS B VOTING POWER OF THE CORPORATION. AT SUCH TIME WHEN THE CLASS B MEMBERSHIP SHALL CEASE AND BE CONVERTED TO CLASS A

MEMBERSHIP, ANY AND ALL AMENDMENTS TO THIS SECTION SHALL BE ENACTED BY REQUIRING THE VOTE OR WRITTEN ASSENT OF OWNERS REPRESENTING SIXTY-SEVEN PERCENT (67%) OF THE VOTES OF MEMBERS, OTHER THAN THE DECLARANT.

[signatures to follow]

IN WITNESS WHEREOF, Declarant has executed this instrument on the day and year first above written.

"DECLARANT"

ENCORE SANTEE HOLDINGS, LLC, a  
Delaware limited liability company

By: TAAG Investors III, LP, a California  
limited partnership  
Its: Manager

By: TAAG Investment Management, LLC  
a California limited liability  
company  
Its: General Partner

BY: 

Name: Lauren Boyd

Title: Authorized Signatory

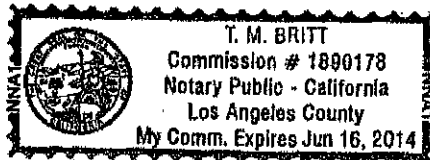
STATE OF CALIFORNIA     )  
                                  ) ss.  
COUNTY OF Los Angeles )

On May 08, 2012, before me, T. M. BRITT, Notary Public, personally appeared Lauren Boyd, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that ~~he~~ she executed the same in his ~~her~~ her authorized capacity, and that by his ~~her~~ her signature on the instrument, the persons or the entities upon behalf of which the person acted executed the instrument.

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

WITNESS my hand and official seal.

  
Signature of Notary Public



[SEAL]

EXHIBIT "A"

LEGAL DESCRIPTION OF PHASE 1

Phase 1 shall mean and refer to that certain real property located in the City of Santee, County of San Diego, State of California, more particularly described as:

The Units, Corporation Property, and Common Area depicted and described on the recorded Phase 1 Condominium Plan as a portion of Lot 1 of City of Santee Tract No. 2005-02, Cottonwood Estates, according to Map thereof No. 15481 in the County of San Diego, State of California, recorded November 28, 2006 as File No. 2006-0842389 in the Office of the County Recorder of San Diego County, California.

The Condominium Units within Phase 1 are Condominium Units 16 through 24, inclusive, as described and/or depicted on the Condominium Plan referenced above.



EXHIBIT "B"

ANNEXATION PROPERTY

The Annexation Property shall mean and refer to that certain real property located in the City of Santee, County of San Diego, State of California, more particularly described as:

All of Lot 1 of City of Santee Tract No. 2005-02, Cottonwood Estates, according to Map thereof No. 15481 in the County of San Diego, State of California, recorded November 28, 2006 as File No. 2006-0842389 in the Office of the County Recorder of San Diego County, California, EXCEPTING THEREFROM PHASE 1.

EXHIBIT "C"

SAMPLE FORM OF LIMITED WARRANTY

(see attached)

# Exhibit "C"

## Sample Contract Coverage

### SHOULD YOU NEED SERVICE PLEASE READ YOUR COVERAGE CAREFULLY

and then place your claim at

[www.firstam.com/warranty](http://www.firstam.com/warranty) or by calling (800) 992-3400. It is helpful to have your contract number, make and/or model of covered item and complete street address available. You will pay the \$60 service call fee when the technician arrives at your home.

#### IMPORTANT

This contract covers only the items mentioned as covered and excludes all others. Items must be in good safe working order at the start of coverage. Items must be installed for diagnosis and located within the confines of the perimeter of the main foundation of the home or garage (except Well Pump, Septic Tank, Sewage Ejector Pump, Pressure Regulator, Air Conditioning and Pool/Spa Equipment). This contract provides coverage for unknown defects if the defect or malfunction would not have been detectable to the buyer, seller or agent through visual inspection or simple mechanical test. This contract provides coverage for covered systems and appliances which malfunction due to lack of maintenance, rust, corrosion and chemical or sedimentary build-up. Coverage is only provided for malfunctions which occur and are reported to First American Home Buyers Protection (Company) during the term of this contract. You must call us for service prior to the expiration of this contract. **The Company will not reimburse you for services performed without approval.**

#### TIMING OF COVERAGE

*Optional Seller's Coverage and Seller's Options* (if elected) start upon receipt of application or confirmation number by Company and continues until expiration of the initial listing period not to exceed 180 days or until close of sale or listing cancellation (whichever is first). Optional Seller's coverage may be extended at the discretion of the Company.

*Buyer's Coverage* starts upon payment at close of sale and continues for one year.

*Buyer's Coverage for new construction* starts one year after the close of sale and continues for four years from that date.

*Payment* is due at close of sale and must be received by the Company within 30 days of close of sale.

*Offer for future coverage* is at the sole option of the Company.

### Basic Contract Coverage

The following items are covered by this contract for the buyer when payment is made at close of sale and for the seller when optional seller's coverage is ordered. We show examples of items "not covered" to assist your understanding of the contract. It is also important to review Limits of Liability.

#### PLUMBING

- Pressure regulators
- Circulating hot water pump
- Whirlpool bath motor, pump and air switch assemblies
- Valves: shower, tub, diverter, riser, angle stop and gate valves
- Leaks and breaks of water, drain, gas, vent or sewer lines (except caused by freezing)
- Toilet tanks, bowls and mechanisms (replaced with white builder's standard as necessary)
- Permanently installed sump pumps within perimeter of main foundation or garage (ground water only)

**Not Covered:** Fixtures, faucets, filter, shower head, shower arm, shower enclosure and base pan, caulking and grouting, septic tank, hose bibbs, flow restrictions in fresh water lines, water conditioning equipment, sewage ejectors, saunas or steam rooms, whirlpool jets and fire suppression systems.

**NOTE:** The Company will only be responsible for providing access for covered plumbing repairs through unobstructed walls, floors or ceilings and will return the opening to a rough finish. Coverage for diagnosis, access, repair or replacement of heating systems utilizing steam, heated water, glycol, items located in or below a concrete slab and items encased in or covered by concrete is limited under this contract to a maximum of \$1,000 in the aggregate.

#### PLUMBING STOPPAGES

- Clearing of stoppages in sink, tub, shower drains and water closets (toilets). Clearing of sewer and mainline stoppages (including hydrojetting if stoppage is unable to be cleared with cable) to 125 feet of point of access where ground level cleanout is existing. Clearing of lateral drain lines to 125 feet from point of access including accessible cleanout, p-trap, drain or overflow access point, except;

**Not Covered:** Stoppages caused by foreign objects, roots, collapsed or broken lines outside the main foundation, access to drain or sewer lines from roof vent, costs to locate, access or install a ground level cleanout and removal of water closets (toilets).

## HEATING

- Heat pump
- Heating elements
- Gas valves
- Gas, electrical, oil furnaces
- Radiators
- Hydronic circulating pumps
- Baseboard convectors
- Thermostats (including base)
- Heat pump refrigerant recharging

**Not Covered:** Auxiliary space heaters, cable heat, mini-split ductless systems (including heat pump versions), filters (including electronic air cleaners), registers, fuel storage tanks, heat lamps, fireplaces and key valves, humidifiers, baseboard casings and grills, chimneys, flues and vents, underground or outside components and piping for geothermal and/or water source heat pumps, well pumps and well pump components for geothermal and/or water source heat pumps, grain, pellet, or wood heating units (even if only source of heating) and heat pump refrigerant recapture, reclaim and disposal.

### NOTE:

- Coverage for diagnosis, access, repair or replacement of heating systems utilizing steam, heated water, glycol, items located in or below a concrete slab and items encased in or covered by concrete is limited under this contract to a maximum of \$1,000 in the aggregate.
- Coverage for heat exchangers which fail during optional seller's coverage is limited under this contract to a maximum of \$500 in the aggregate.
- For heat pumps and heat pump package units, Note under Central Air Conditioning applies.

## WATER HEATER (includes tankless water heaters)

- All parts and components, except;

**Not Covered:** Holding or storage tanks, flues and vents, fuel storage tanks and solar equipment.

## ELECTRICAL

- Wiring
- Plugs
- Conduit
- Junction boxes
- Switches and fuses
- Telephone wiring
- Panels and sub panels
- Circuit breakers (including ground fault)

**Not Covered:** Door bells, intercom, fixtures, alarms, inadequate wiring capacity, sensor, relay, low voltage systems, timed circuits, phone jacks, wiring which is the property of the phone company and audio/video/computer/intercom/alarm or security cable or wiring.

## KITCHEN APPLIANCES

- Dishwasher
- Microwave Oven (built-in only)
- Garbage Disposal
- Oven/Range/Cooktop
- Trash Compactor
- Instant Hot Water Dispenser

**Not Covered:** Rotisseries, handles, lights, knobs, dials, racks, baskets, rollers, removable trays, removable buckets, door glass, interior lining, lock/key assemblies, magnetic induction units, meat probe assemblies and clocks (unless they affect the primary function of the unit).

## GARAGE DOOR OPENERS

- Switches
- Capacitor
- Motor
- Track assembly
- Receiver unit
- Carriage
- Push arm

**Not Covered:** Remote transmitters, adjustments, doors, hinges and springs.

**NOTE:** The Company will not proceed with diagnosis, repair or replacement of a unit until current safety standards are met.

## CENTRAL VACUUM SYSTEM

- All parts and components, except;

**Not Covered:** Hoses and accessories which are removable.

**NOTE:** The Company is not responsible for gaining or closing access to floors, walls or ceilings to locate the malfunction or to effect repair or replacement.

## ATTIC AND EXHAUST FANS

- All parts and components.

## CEILING FANS

- All parts and components, except;

**Not Covered:** Light kits and remote transmitters.

## PEST CONTROL SERVICES

- Mice
- Spiders
- Earwigs
- Pillbugs
- Crickets
- Silverfish
- Roaches
- Sowbugs
- Ground Beetles
- Clover Mites
- Centipedes
- Millipedes
- Ants (except Fire, Pharaoh and Carpenter variety)

**Not Covered:** Fire ants, pharaoh ants, carpenter ants, fungus and wood destroying organisms, flying insects, termites, fleas, ticks, rats and any pests not specifically listed above as covered.

## Additional Coverage For Buyer And Optional Coverage For Seller

**NOTE FOR SELLER:** If this optional coverage is elected, the Company will pay up to a combined maximum limit of \$1,000 during the seller's coverage period for Central Air Conditioning and Ductwork.

### DUCTWORK

- Ductwork from the heating or cooling unit to the connection at register or grill.

**Not Covered:** Grills and registers, insulation, dampers, collapsed or crushed ductwork, ductwork damaged by moisture, ductwork where asbestos is present, costs for inspections, locating leaks to ductwork, diagnostic testing of ductwork when required by any federal, state or local law, regulation, or ordinance, or when required due to installation or replacement of any system equipment.

#### NOTE:

- The Company will only be responsible for providing access for covered ductwork repairs through unobstructed walls, floors or ceilings and will return the opening to a rough finish. Coverage for diagnosis, access, repair or replacement of heating systems utilizing steam, heated water, glycol, items located in or below a concrete slab and items encased in or covered by concrete is limited under this contract to a maximum of \$1,000 in the aggregate.

- Coverage for ductwork repair or replacement is limited under this contract to a maximum of \$1,000 in the aggregate.

## Optional Coverage For Buyer And Seller

The buyer is covered for the following optional coverage when additional payment has been made at close of sale.

**NOTE FOR SELLER:** If this optional coverage is elected, the Company will pay up to a combined maximum limit of \$1,000 during the seller's coverage period for Central Air Conditioning and Ductwork.

**NOTE FOR BUYER:** The home buyer may purchase optional coverage up to 60 days from the effective date. Such coverage will not become effective until payment is received by the Company and coverage will expire upon expiration of the basic contract coverage term.

For new construction coverage, the home buyer may purchase optional coverage at any time during the contract term for brand new items. Such coverage will not become effective until payment is received by the Company and coverage will expire upon expiration of the basic contract coverage term.

## CENTRAL AIR CONDITIONING

- Refrigeration System (includes heat pump)
- ✓ Thermostats
- ✓ Refrigerant lines
- ✓ Condensing unit
- ✓ Air handling unit
- ✓ Liquid and suction line dryers
- ✓ Refrigerant recharging
- ✓ Fuses, breakers, disconnect boxes and wiring
- ✓ Evaporator coils (including thermostatic expansion valves)
- Evaporative Cooler
- Built-in Electric Wall Units

**Not Covered:** Mini-split ductless systems (including heat pump versions), registers, grills, filters (including electronic air cleaners), gas air conditioners, window units, underground or outside piping and components for geothermal and/or water source heat pumps, humidifiers, cooler pads, roof jacks or stands and refrigerant recapture, reclaim and disposal.

#### NOTE:

- If the Company determines that a package unit or the condenser of an air conditioning or heat pump split system must be replaced, the Company will replace the unit with a unit that meets current federal, state and/or local government efficiency standards.

- When replacing the condenser of an air conditioning or heat pump split system, the Company will replace any covered component as well as modify the plenum, indoor electrical, air handling transition and duct connections as necessary to maintain compatibility and operating efficiency as required by the manufacturer of the replacement unit, including the installation of thermostatic expansion valves.



## First Class Upgrade

The following items are covered when the First Class Upgrade (FCU) Option is elected. Optional coverage items (\*) must be purchased for FCU to apply. Note: some items are not available (NA) for the seller.

Buyer / Seller

- \* \* **Air Conditioning:** Filters, registers, grills, window units.
- ✓ ✓ **Dishwasher:** Racks, baskets, rollers, knobs, dials.
- \* NA **Clothes Washer and Dryer:** Knobs, dials.
- ✓ ✓ **Heating:** Registers, grills, filters, heat lamps.
- ✓ ✓ **Plumbing:** Faucets (replaced with chrome builder's standard), shower head and shower arm, hose bibbs, toilets (replaced with like quality up to \$600 per occurrence).
- ✓ ✓ **Over/Range/Cooktop:** Rotisseries, racks, handles, knobs, dials, interior lining.
- ✓ ✓ **Microwave Oven (built-in only):** Interior lining, door glass, dials, racks, knobs.
- ✓ ✓ **Smoke Detector:** Both battery operated and hardwired.
- ✓ ✓ **Trash Compactor:** Removable buckets, knobs.
- ✓ ✓ **Garage Door Openers:** Hinges, springs, remote transmitters.
- \* \* The Company will cover fees associated with the use of cranes or other lifting equipment required to service roof-top air conditioning units.
- ✓ ✓ The Company will cover fees associated with the use of cranes or other lifting equipment required to service roof-top heating units.
- ✓ ✓ Where local building permits are required prior to commencing replacement of appliances, systems or components, the Company will pay up to \$250 per occurrence for such local building permits. The Company will not be responsible for replacement service when permits cannot be obtained.
- ✓ ✓ The Company will pay costs related to refrigerant recapture, reclaim and disposal (if required) and the removal of an appliance, system or component when the Company is replacing a covered appliance, system or component.
- ✓ ✓ The Company will repair or replace a system or appliance (excluding roofs) that was improperly installed, modified or repaired, or was not properly matched in size or efficiency at any time prior to or during the term of this contract provided the system is not undersized relative to the square footage of area being cooled or heated. In the event that a covered mismatched system or improper installation, modification or repair is in violation of a code requirement, Limited Code Upgrade applies.
- ✓ ✓ **Limited Code Upgrade:** The Company will pay up to \$250 in the aggregate under this contract to correct code violations when effecting approved repairs or replacements. The Company may, at its option, pay the contract holder in lieu of performing the work.

## Optional Coverage For Buyer

Prices listed are for Single-Family Homes/Condominiums/Townhomes/Mobile Homes under 5,000 sq. ft. Call 800.444.9030 for quotes and optional pricing for homes over 5,000 sq. ft., multiple units and new construction.

The buyer is covered for the following optional coverage when additional payment has been made at close of sale.

**NOTE FOR BUYER:** The home buyer may purchase optional coverage up to 60 days from the effective date. Such coverage will not become effective until payment is received by the Company and coverage will expire upon expiration of the basic contract coverage term.

For new construction coverage, the home buyer may purchase optional coverage at any time during the contract term for brand new items. Such coverage will not become effective until payment is received by the Company and coverage will expire upon expiration of the basic contract coverage term.

### POOL / SPA EQUIPMENT - \$150

- Timer • Filter • Valves • Heating unit
- Pump • Pump motors • Pool sweep motor and pump
- Above ground plumbing and electrical

**Not Covered:** All cleaning equipment, including pop up heads, turbo valves, pool sweeps, liners, lights, structural defects, solar equipment, inaccessible components, jets and fuel storage tanks, disposable filtration medium, chlorinators, ozonators and other water chemistry control equipment and materials, waterfalls, ornamental fountains and their pumping systems and heat pumps.

### SALT WATER POOL/SPA EQUIPMENT - \$175

(May only be purchased when optional Pool/Spa Equipment is purchased)

Additional coverage for Salt Water Pool/Spa Equipment:

- Salt water cell • Circuit board

**Not Covered:** All items listed as not covered for Pool/Spa Equipment as well as salt, panel box, remote controls and dials.

**NOTE:** Coverage for Salt Water Pool/Spa Equipment salt water cell and circuit board is only available under this optional coverage item and is limited under this contract to a maximum of \$1,500 in the aggregate.

### KITCHEN REFRIGERATOR (Built-in or Free Standing) - \$50

- All parts and components, except;

**Not Covered:** Insulation, racks, shelves, handles, lights, interior thermal shells, food spoilage, stand alone freezers, refrigerators located outside kitchen area and refrigerant recapture, reclaim and disposal.

#### NOTE:

Coverage is for any one of the following types of kitchen refrigerator/freezer units and is limited under this contract to a maximum of \$5,000: a built-in kitchen refrigerator/freezer unit, a built-in combination of an All Refrigerator unit and an All Freezer unit, or a free standing kitchen refrigerator/freezer.

- Repair or replacement of ice makers, ice crushers, beverage dispensers and their respective equipment will only be completed when parts are available.

#### **ADDITIONAL REFRIGERATION - \$35**

This option provides coverage for the following appliances with a combined total of four appliances: additional refrigerator, wet bar refrigerator, wine refrigerator, free standing freezer and free standing ice maker.

- All parts and components of a refrigerator (including wet bar and wine refrigerator) and free standing freezer, except;

**Not Covered:** Kitchen Refrigerator, insulation, racks, shelves, handles, lights, ice makers, ice crushers, beverage dispensers and their respective equipment, interior thermal shells, food spoilage and refrigerant recapture, reclaim and disposal.

- Free standing ice maker

All parts and components which affect the primary function of the ice maker and water dispenser, except;

**Not Covered:** Filters, removable components which do not affect the primary function, interior thermal shells, insulation and refrigerant recapture, reclaim and disposal.

**NOTE:** Coverage is provided for up to four additional refrigeration systems and is limited to a total maximum of \$1,000 in the aggregate.

#### **CLOTHES WASHER AND DRYER - \$80**

- All parts and components, except;

**Not Covered:** Plastic mini-tubs, soap dispensers, filter and lint screens, knobs and dials, venting and damage to clothing.



#### **ECO UPGRADE - \$15**

In the event that any of these covered appliances (dishwasher, refrigerator, free standing freezer, clothes washer) or gas furnace cannot be repaired, subject to all other contract terms and limitations, including modifications, will be replaced with **ENERGY STAR®** qualified products (if available) with similar features, efficiency and capacity. The contract holder has the option of replacing the gas furnace with a 90 percent efficiency model.

#### **WELL PUMP (limited to one well pump per home) - \$85**

- All parts and components of well pump utilized exclusively for domestic use, except;

**Not Covered:** Well casings, booster pumps, piping or electrical lines, holding, pressure or storage tanks, redrilling of wells, damage due to lack of water, tampering, well pump and well pump components for geothermal and/or water source heat pumps, improper installation and access to repair well pump system.

#### **SEPTIC TANK PUMPING - \$25**

- One time pumping per contract if the stoppage is due to septic tank backup.

**Not Covered:** Septic tanks, leach lines, cesspool, mechanical pump or systems, cost of locating or to gain access to the septic tank, cost of hook-ups, disposal of waste and chemical treatment of the septic tank and/or sewer lines.

#### **SEPTIC TANK SYSTEM - \$50**

- Jet pump    • Aerobic pump    • Sewage ejector pump
- Septic tank and sewer line from house to septic tank

**Not Covered:** Seepage pits, leach lines, leach beds, lateral lines, cleanout and pumping of septic tank.

**NOTE:** Coverage for diagnosis, access, repair or replacement of septic tank, sewer lines from house to septic tank, sewage ejector, jet and aerobic pumps is limited to a maximum of \$500 in the aggregate.

#### **SEWAGE EJECTOR PUMP - \$25**

- All parts and components of sewage ejector pump not associated with the operation of a septic tank, except;

**Not Covered:** Basins and any costs associated with locating or gaining access to or closing access from the sewage ejector pump.

**NOTE:** Coverage for repair and/or replacement of the sewage ejector pump is limited under this contract to a maximum of \$500 in the aggregate. Coverage is limited to one pump per contract.

#### **LIMITED ROOF LEAK COVERAGE - \$100**

- Leaks caused by rain to tar and gravel, tile, shingle, shake and composition roofs over occupied living areas will be repaired as long as leaks are caused by normal wear and tear and the roof was in good, water tight condition at the start of coverage. If replacement of the existing roof, in whole or in part, is necessary, the Company's liability is limited to the estimated cost of repair of the leaking area only, as if the repair of that area were possible.

**Not Covered:** Roof leaks caused by or resulting from: roof mounted installations, metal roofs, improper construction or repair, missing or broken materials, skylights, patio covers, gutters, drains, downspouts, scuppers, chimneys and defects in balcony or deck serving as a roof. Routine periodic maintenance is not covered by this contract.

Company will direct a technician to contact you for an appointment or, at its option, may authorize you to contact a technician directly. If you are authorized to contact a technician directly, you will be given a spending limit established by the Company. Secondary or consequential water damage is not covered by this contract.

**NOTE:**

- Service delays frequently occur during the first rains of the season or in heavy storms. While we will make every effort to expedite service, no guarantees can be made.
- Limited Roof Leak Coverage is limited under this contract to a maximum of \$1,000 in the aggregate.
- Limited Roof Leak Coverage is not renewable.
- Limited Roof Leak Coverage is not available for new construction.

## Limits of Liability

1. Common areas and facilities of mobile home parks and condominiums are not covered. If dwelling is 5 units or more, common systems and appliances not located within the confines of each individual unit are excluded.
2. Repairs or replacements required as a result of missing parts, fire, flood, smoke, lightning, freeze, earthquake, theft, storms, accidents, mud, war, riots, vandalism, improper installation, acts of God, damage from pests, lack of capacity or misuse are not covered by this contract.
3. Company's liability is limited to failure of systems due to normal wear and tear. Cosmetic defects are not covered.
4. Company is not liable or responsible for consequential, incidental and/or secondary damage or loss resulting from the malfunction of any covered item, or a Service Contractor's delay or neglect in providing, or failing to provide, repair or replacement of a covered item, including, but not limited to, personal and/or property damage, food spoilage, additional living expenses, utility bills or loss of income.
5. Solar systems and components including holding tanks are not covered. Electronic, computerized, pneumatic and manual system management and zone controllers are not covered.
6. The Company will not be responsible for any corrections, repairs, replacements, upgrades, inspections or other additional costs to comply with federal, state or local laws, utility regulations, zoning or building codes. The Company will not be responsible to pay any costs relating to permits, haul away fees, construction, carpentry or relocation of equipment. The Company will not be responsible for gaining or closing access to covered items except where noted in this contract. The Company will not be responsible for alterations or modifications made necessary by existing equipment or installing different equipment except where noted in the Central Air Conditioning section of this contract. The Company will not al-

ter structure to effect repair or replacement, nor refinish or replace cabinets, countertops, tile, paint, wall or floor coverings or the like.

7. The Company will not effect service involving hazardous or toxic materials, including asbestos or any other contaminants. The Company is not responsible for any claim arising out of any pathogenic organisms regardless of any event of cause that contributed in any sequence to damage or injury. Pathogenic organisms mean any bacteria, yeasts, mildew, virus, fungi, mold, or their spores, mycotoxins or other metabolic products.

8. This contract covers only single family residential-use resale and new construction property, under 5,000 square feet, unless amended by the Company. Resale and new construction homes over 5,000 square feet, multiple units, mother-in-law units, guest houses and other structures are covered if the appropriate fee is paid. This coverage is for owned or rented residential property, not for commercial property or premises converted into a business, including but not limited to, nursing/care homes, fraternity/sorority houses or day care centers.

9. The Company will determine whether a covered system or appliance will be repaired or replaced. When replacing any appliance, the Company will not consider any failures that do not contribute to the appliance's primary function including, without limitation, TVs or radios in the kitchen refrigerator. The Company will replace with equipment of similar features, efficiency and capacity but is not responsible for matching brand, dimensions or color. The Company reserves the right to have a component or part rebuilt or to replace with a rebuilt component or part.

10. The Company reserves the right to require a second opinion at no additional charge to the customer.

11. The Company is not responsible for repairs arising from manufacturer's recall of covered items, manufacturer's defects or for items covered under an existing manufacturer's, distributor's or in-home warranty. The covered items must be domestic or commercial grade and specified by the manufacturer for residential use.

12. The Company is not responsible for repair or replacement of any system or appliance or component or part thereof that has previously, or is subsequently, determined to be defective by the Consumer Product Safety Commission or the manufacturer, and for which either entity has issued, or issues a warning or recall, or when a failure is caused by manufacturer's improper design, use of improper materials, formula, manufacturing process or manufacturing defect.

13. The Company will not perform routine maintenance. The contract holder is responsible for cleaning and routine maintenance as specified by the manufacturer of the equipment.



## Customer Service

1. Telephone service is available at all times. Call us to describe the problem. All calls including weekends and holidays are dispatched within 48 hours. During normal working hours your call will be dispatched within 4 hours of confirmation of coverage; additional efforts are made in emergency situations. The contractor will call you to schedule a mutually convenient appointment time. If you should request the Company to perform non-emergency service outside of normal business hours, you will be responsible for payment of additional fees, including overtime charges.

2. The customer pays the \$60 service call fee for each separate trade call. Trade call means each visit by an approved contractor, unless multiple visits are required to remedy the same problem. The Company warrants its work for 30 days. If the item fails outside this time period, an additional service fee will be charged. Failure to pay the service call fee may delay processing of future claims.

3. Homeowner and Company may agree on payment of cash in lieu of repair or replacement. Payment will be made based on Company's negotiated rates with its suppliers, which may be less than retail.

4. Sometimes there are problems and delays in securing parts or equipment. When the items are secured, they will be installed promptly without any further service charge.

## Transfer of Contract

If your covered property is sold during the term of this contract, you must notify First American of the change in ownership and must submit the name of the new owner by phoning (800) 992-3400 in order to transfer coverage to the new owner.

## Cancellation

A home service contract is noncancelable by the Company during the initial term for which it was issued, except for any of the following reasons: (i) Nonpayment of contract fees; (ii) The subscriber's fraud or misrepresentations of facts material to the issuance of the contract; (iii) The contract provides coverage prior to the time that an interest in residential property to which it attaches is sold and the sale of the residential property does not occur. If this contract is cancelled, the provider of funds shall be entitled to a pro rata refund of the paid contract fee for the unexpired term, less a \$45 administrative fee and all service costs incurred by the Company.

## Duties of the Contract Holder

The contract holder is responsible for the following: (i) Protecting appliances/systems from further damage should a failure occur; (ii) Reporting claims promptly to First American on the toll free number given in this contract; (iii) Installing all appliances/systems in accordance with the manufacturer's specifications and (iv) Maintaining all appliances/systems in accordance with the manufacturer's specifications, including performing normal, routine maintenance.

CA12-11 Ver R/RY

First American home warranty plans have reasonable dollar limitations on coverages. Although this sample contract provides specific details, here is a quick reference for your convenience.

### Warranty Coverage Dollar Limitations

Diagnosis, access, repair and/or replacement limits

Code Violations Under Upgrade	\$250
Kitchen Refrigerator (includes built-in)	\$5,000
Additional Refrigeration (up to 4 units)	\$1,000
Limited Roof Leak	\$1,000
Permits Under Upgrade (per occurrence)	\$250
Salt Water Pool/Spa Equipment	\$1,500
Ductwork	\$1,000
Seller's Central Air Conditioning and Ductwork	\$1,000
Seller's Heat Exchanger	\$500
Septic Tank System	\$500
Sewage Ejector Pump	\$500
Steam, Heated Water or Glycol Heating, Concrete Encased Items	\$1,000
Toilet Replacement Under Upgrade (per occurrence)	\$600

All coverage limits are per contract unless otherwise specified.

Any time a covered item fails, simply call **800.992.3400**

or go online at [www.firstam.com/warranty](http://www.firstam.com/warranty) to request service.

It is important that First American is contacted first, as the Company will not reimburse for services performed without approval.

# Protecting Your Home Made Simple

## 1. COMPLETE YOUR CONTRACT INFORMATION

(Single-family residence under 5,000 square feet)

ADDRESS TO BE COVERED:

\*Street Address \_\_\_\_\_ Unit # \_\_\_\_\_

\*City \_\_\_\_\_ \*State \_\_\_\_\_ \*Zip \_\_\_\_\_

REAL ESTATE COMPANY \_\_\_\_\_

\*Phone \_\_\_\_\_ \*Fax \_\_\_\_\_  
(Main Office #)

\*Email \_\_\_\_\_

\*Agent \_\_\_\_\_ Representing  
(Referring Agent) ☐ Buyer ☐ Seller

OTHER BROKER COMPANY \_\_\_\_\_

(If applicable)

Phone \_\_\_\_\_ Fax \_\_\_\_\_  
(Main Office #)

Email \_\_\_\_\_

Agent \_\_\_\_\_ Representing  
☐ Buyer ☐ Seller

CLOSING COMPANY \_\_\_\_\_

Name \_\_\_\_\_  
(Closing Officer's Name)

Phone \_\_\_\_\_ Fax \_\_\_\_\_  
(Main Office #)

Est. Close Date \_\_\_\_\_ File # \_\_\_\_\_

\*BUYER'S NAME \_\_\_\_\_

\*BUYER'S PHONE \_\_\_\_\_

\*BUYER'S EMAIL \_\_\_\_\_

\*SELLER'S NAME \_\_\_\_\_

(\* Requested fields if available. Any missing information or incomplete fax may result in delay of order being placed or placed incorrectly.)

## 3. SIGN & ORDER ONLINE AT FIRSTAM.COM/WARRANTY

☐ I DESIRE the home warranty coverage and options I have marked above.

☐ I DECLINE the benefits of this coverage. I agree not to hold the above real estate company, broker and/or agents liable for the repair or replacement of a system or appliance that would otherwise have been covered by this plan.

Signature \_\_\_\_\_

Date \_\_\_\_\_

Confirmation # \_\_\_\_\_ Please give your client a sample contract. Contract will be sent to the buyer upon receipt of payment by First American.

## 2. CHOOSE YOUR COVERAGE & OPTIONS

### BASIC PLANS FOR BUYERS

Service Call Fee \$60

Buyer's coverage one year.

#### BUYER'S COVERAGE

- |   |       |
|---|-------|
| <input type="checkbox"/> Single-Family Home               | \$275 |
| <input type="checkbox"/> Condominium/Townhome/Mobile Home | \$240 |

#### VALUE PLUS PLANS

Buyer's coverage includes basic plan, air conditioning and First Class Upgrade.

- |   |       |
|---|-------|
| <input type="checkbox"/> Single-Family Home (\$35 SAVINGS!)               | \$380 |
| <input type="checkbox"/> Condominium/Townhome/Mobile Home (\$45 SAVINGS!) | \$335 |

#### MULTIPLE UNITS

Not available for new construction.

- |                                   |       |
|-----------------------------------|-------|
| <input type="checkbox"/> Duplex   | \$440 |
| <input type="checkbox"/> Triplex  | \$540 |
| <input type="checkbox"/> Fourplex | \$640 |

#### NEW CONSTRUCTION COVERAGE

Covers years 2-5.

- |  |       |
|--|-------|
| <input type="checkbox"/> Single-Family Home/Condominium/Townhome/Mobile Home | \$455 |
|--|-------|

### OPTIONAL COVERAGE

Seller's optional coverage available when basic buyer's and seller's coverage is selected. Buyer's optional coverage is available when basic buyer's coverage is selected.

#### FOR SELLER

Seller's coverage maximum 180 days.

- |  |          |
|--|----------|
| <input type="checkbox"/> Single-Family Home Basic Plan               | \$75/day |
| <input type="checkbox"/> Condominium/Townhome/Mobile Home Basic Plan | \$66/day |
| <input type="checkbox"/> Air Conditioning/Ductwork                   | \$18/day |
| <input type="checkbox"/> FIRST CLASS UPGRADE                         | \$21/day |

#### FOR BUYER

- |   |       |
|---|-------|
| <input type="checkbox"/> FIRST CLASS UPGRADE  | \$75  |
| <input type="checkbox"/> NEW! Eco Upgrade   | \$15  |
| <input type="checkbox"/> NEW! Additional Refrigeration (Up to 4 units)                          | \$35  |
| <input type="checkbox"/> Central Air Conditioning (Electric)                                    | \$65  |
| <input type="checkbox"/> Clothes Washer/Dryer   | \$80  |
| <input type="checkbox"/> Kitchen Refrigerator (Includes built-in)                               | \$50  |
| <input type="checkbox"/> Limited Roof Leak Coverage   | \$100 |
| <input type="checkbox"/> Pool and/or Spa Equipment (No additional charge if separate equipment) | \$150 |
| <input type="checkbox"/> Salt Water Pool and/or Spa Equipment                                   | \$175 |
| (May only be purchased when Pool and/or Spa Equipment option is selected)                       |       |
| <input type="checkbox"/> Septic Tank Pumping  | \$25  |
| <input type="checkbox"/> Septic Tank System   | \$50  |
| <input type="checkbox"/> Sewage Ejector Pump  | \$25  |
| <input type="checkbox"/> Washer/Dryer/Kitchen Refrigerator (\$15 savings)                       | \$115 |
| <input type="checkbox"/> Well Pump  | \$85  |

TOTAL: \_\_\_\_\_

\*Call 800.444.9030 for quote on homes over 5,000 sq. ft., 5-10 units, guest homes and optional coverage pricing for new construction homes and multiple units. See contract for coverage details. Member of the NATIONAL HOME SERVICE CONTRACT ASSOCIATION.

Phone Orders, 800.444.9030 | Fax: 800.772.1151 | Service: 800.992.3400 | P.O. Box 10180, Van Nuys, CA 91410-0180 | Web: www.firstam.com/warranty

## EXHIBIT "D"

MAINTENANCE MATRIX

ITEMS	CORPORATION RESPONSIBILITY	OWNER'S RESPONSIBILITY
Residential living element of Condominium.	None.	Owner maintains the entirety of the residential living element of the Condominium, including, without limitation, all interior doors and their hardware, interior wall surfaces, drywall, cabinets, floor coverings, ceilings, permanent fixtures, appliances, electrical outlets and switches, toilets, smoke detectors (including periodic testing and replacement of batteries) and washing machine water hoses.
Residential Living Element entry door	The Corporation periodically paints the exterior surface of the entry door.	Owner maintains the structural integrity and interior surfaces, the handle, locking mechanism, kick plates and the screen door and performs any touch up painting on the exterior surface if necessary before the Corporation's periodic painting.
Sliding glass doors and screen doors serving the Condominium Unit	None.	The Owner maintains all portions of these items, including the locking mechanism, weatherproofing, sheathing, frame and any glass. The Owner also paints, stains, seals or otherwise weatherproofs the exterior surfaces.
Windows in the Condominium Unit	None.	Each Condominium Owner is responsible for cleaning all windows in his Condominium and maintaining all portions of the windows including the frame, screens, locking mechanism for the screen, weather stripping, caulking, panes and sheathing.

Light Fixtures and Fans	The Corporation maintains all light fixtures and fans not actuated from switches controlled from, or separately metered to, an Owner's Condominium Unit.	The Owner maintains the light fixtures and fans actuated from switches controlled from, or separately metered to, the Owner's Condominium Unit.
Covered Porch	The Corporation maintains the painted surfaces of any solid porch railings and the exterior and interior surfaces of open railings (e.g., iron or tubular steel railings).	The Owner sweeps the porch regularly and keeps it free from debris and reasonably protected against damage. The Owner maintains any hose bibs, faucets, spigots, water shut-off valves, and electrical outlets and switches in the porch area. The Owner maintains any landscaping and any drain openings within the enclosed porch area. The Owner maintains the structural integrity of the porch.
Balcony	The Corporation maintains the painted surfaces of solid balcony railings, the exterior and interior surfaces of open railings (e.g., iron or tubular steel railings), any waterproofing or coating originally installed by Declarant on the balcony floor, the balcony support structure, and all other structural elements of the balcony.	The Owner maintains any surface on the balcony floor that he has installed. The Owner sweeps the balcony regularly and keeps it free from debris and reasonably protected against damage. The Owner maintains any hose bibs, faucets, spigots, water shut-off valves, and electrical outlets and switches in the balcony area. The Owner maintains any landscaping and any drain openings within the enclosed balcony area.

Garage	The Corporation maintains the exterior painted surface of the garage door (however, all repairs to exterior doors and garage doors, including the structural maintenance thereof, shall be at the sole expense of the respective Owner unless otherwise agreed to by the Board).	Owner maintains the interior of the garage, including, without limitation, the interior painted surface of the garage door, the structural integrity of the garage door (unless otherwise determined by the Board) all other doors within the garage, all interior wall surfaces, drywall, ceilings, permanent fixtures, appliances, and electrical outlets and switches.
Telephone wiring exclusively serving a Condominium.	None.	The Owner maintains.
Utilities.	The Corporation maintains the utilities serving the Common Property and all utilities which serve individual Condominiums but which are subject to a common meter (e.g., common domestic water, fire water), and the master meter and submeters.	The Owner maintains the utilities serving his Condominium that are separately metered. This includes all electric and gas lines serving the Condominium that are not serviced by the gas company, all water lines exclusively serving the Condominium, all individual Condominium sewer laterals (commencing at the clean-out) and waste water drain lines that connect to the Common Property drain lines serving multiple Condominium Units, the water pressure regulator, all plumbing outlets and fixtures, furnace, ducts (HVAC, dryer, stove, oven), and circuit breakers exclusively serving the Condominium.

Roof, Exterior Walls, and Structure of Buildings.	The Corporation maintains the structural components of the buildings, including, without limitation, exterior perimeter walls, bearing walls, columns, fire-rated walls, roofs, roof tiles, slabs, foundations, exterior stairs (if any), railings, the structural floors (but not the floor coverings), including the structural floors separating the different stories of the buildings, an inspection and preventive program for the prevention and eradication of infestation by wood destroying pests and organisms, exterior finished surfaces, gutters, and downspouts).	None.
Fire Sprinkler Heads, Fire Sprinkler System, Fire Alarm System, Fire Extinguishers In the Corporation Property, and Other Common Fire Prevention Equipment Installed in Corporation Property.	The Corporation maintains all elements.	None.

Private Entry Gates and Access System, Private Drives, Parking Areas, and Common Walkways.	The Corporation maintains.	None.
Common Landscaping and Irrigation	The Corporation maintains all landscaping and irrigation located in the Corporation Property and any potted plants placed on the Corporation Property by the Corporation.	The Owner maintains any landscaping (including potted plants) within his balcony or covered porch area.
Common Recreational Facilities (e.g., pool, spa, fountain, recreational building, etc.)	The Corporation maintains.	None.
Signs	The Corporation maintains all Project monumentation and signs.	None.
Private Storm Drainage System	The Corporation maintains.	None.
Perimeter Walls	The Corporation maintains the Project perimeter walls.	None.

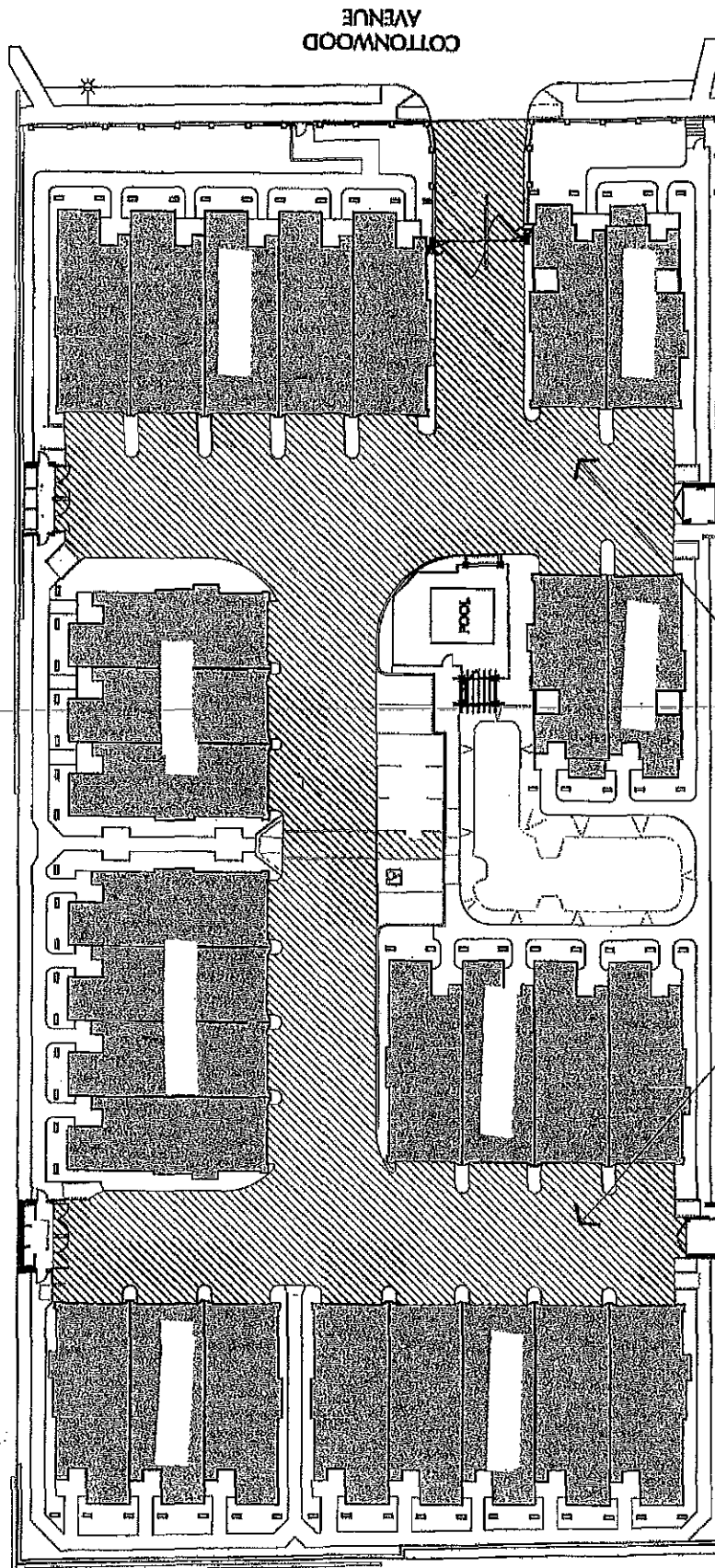


EXHIBIT 'E'  
**NO-PARKING AREAS**  
(INDICATED BY CROSS-HATCHING)

CROSS-HATCHING INDICATES  
AREA OF NO PARKING.



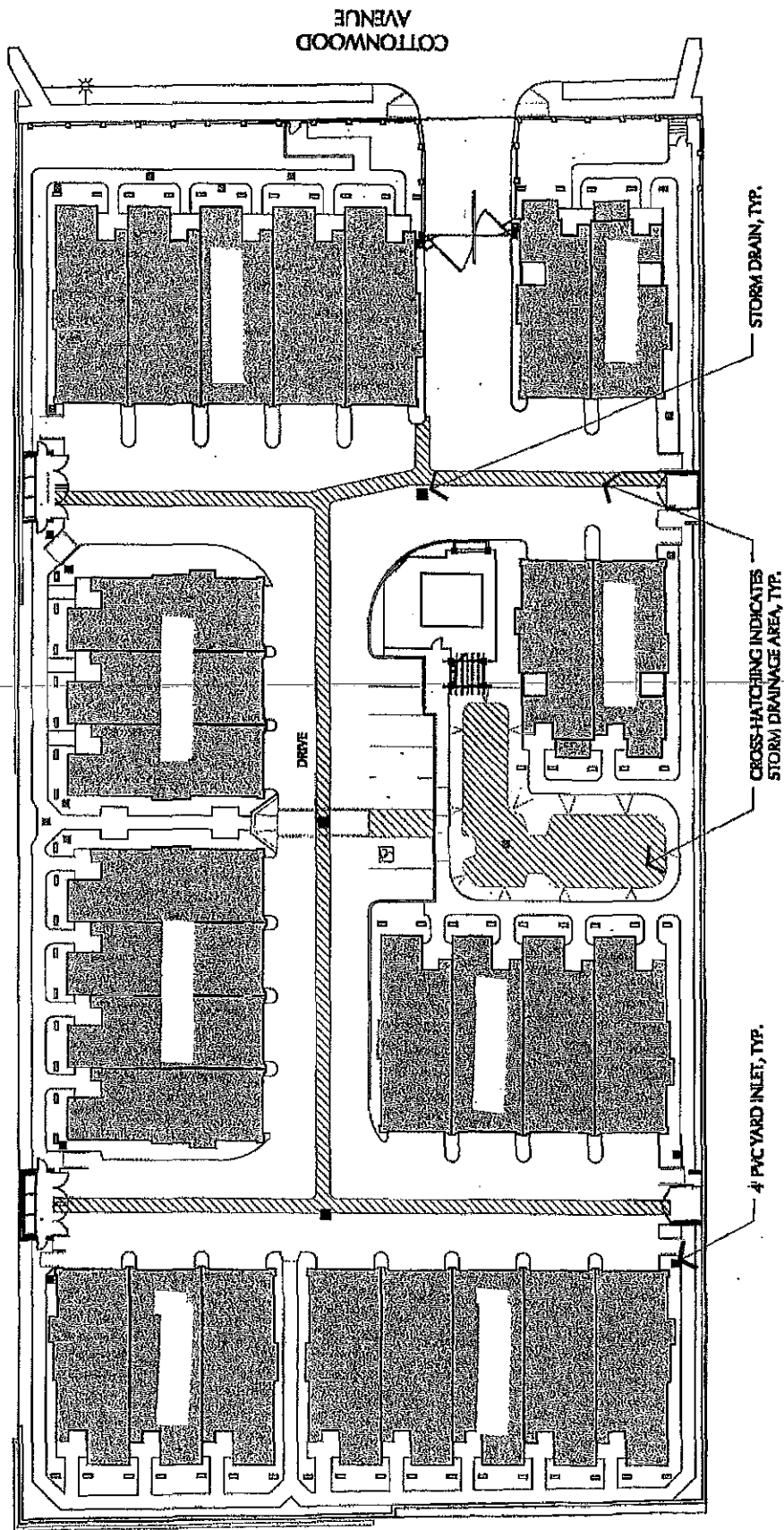
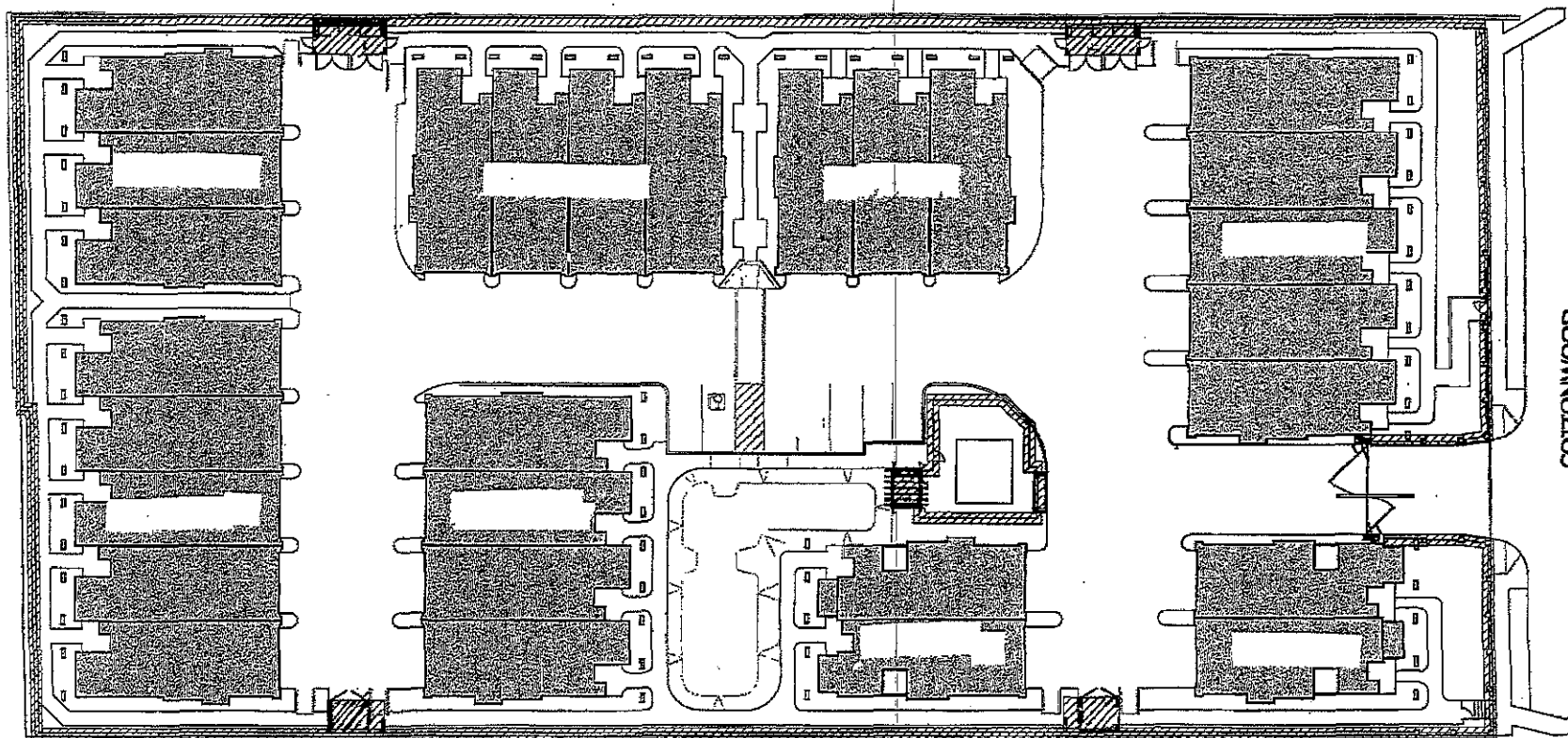


EXHIBIT 'F'

**STORM DRAINAGE AREAS**  
(INDICATED BY CROSS-HATCHING)



COTTONWOOD  
AVENUE

CROSS-HATCHING INDICATES AREA OF SITE WALLS AND FENCES UNDER HOA JURISDICTION, TYP. THIS INCLUDES THE PERIMETER WALLS, TRASH ENCLOSURE WALLS, POOL EQUIPMENT ROOM WALLS, AND POOL AREA FENCE.



EXHIBIT 'G'  
**SITE WALLS & FENCES**  
(INDICATED BY CROSS-HATCHING)

EXHIBIT "H"

(Intentionally Omitted)

## EXHIBIT "I"

### RIGHT TO REPAIR LAW AND "AS-IS" CONVEYANCE AND RELEASE PROVISIONS

Unless otherwise stated in a Notice of Annexation recorded in the Office of the County Recorder, the provisions set forth in this Exhibit "I" are applicable only to the Property (i.e., Phase 1). Each Owner, by acceptance of a deed to a Condominium in the Project, and the Corporation, by acceptance of a deed to the Corporation Property in the Project, shall be deemed to acknowledge and agree to each of the provisions set forth in this Exhibit "I." Each of the provisions set forth in this Exhibit shall constitute covenants running with the land and equitable servitudes and shall inure to the benefit of, and be binding upon, each Owner and any person to whom an Owner may convey or assign all or a portion of its interest in the Property (or portion thereof), and their respective grantees, heirs, executors, administrators, devisees, successors and assigns.

1. "As-Is" Conveyance; Declarant's Disclaimer Of All Warranties Other Than The Limited Warranty. Each Owner, by acceptance of a deed to a Condominium, and the Corporation, by acceptance of a deed to the Corporation Property, acknowledges and agrees that Declarant acquired the Condominium and Corporation Property (and other improvements thereon) already in place, and that Declarant is not the builder or original seller of the residence and other improvements in the Condominium or Corporation Property, although Declarant may have retained one or more third parties to perform certain nonstructural work (e.g., installation of flooring in Condominium Units, etc.). Each Owner and the Corporation also acknowledge and agree, on behalf of himself/herself/itself and his/her/its respective successors, heirs, and assigns, that Declarant is conveying, and the Owner and Corporation (as applicable) are accepting the conveyance of, each Condominium (including an interest in the Common Area) and Corporation Property in its "as-is, where-is" existing condition, subject to all observable and non-observable defects and deficiencies therein, except as expressly stated in the Limited Warranty provided to the original purchaser of a Condominium from Declarant (i.e., the sample form of which may be set forth in Exhibit "C" attached to this Declaration). Each Owner and the Corporation also acknowledges and agrees that Declarant has not made, does not make, and specifically negates and disclaims any representations or warranties to the Owner, express or implied, concerning the design, fitness for development, construction, or use, value, or any other aspect of the Condominium or Common Property or the Project, except as expressly stated in the Limited Warranty. The provisions of this Section 1 apply only with respect to the Condominiums and Corporation Property conveyed by Declarant to Owners and the Corporation, as well as the Owners' and Corporation's successors, grantees, and assigns, and are not intended to release or discharge any "builder" (as defined in Civil Code Section 911) from liability for any claims arising out of such builder's construction of improvements on the Condominiums and Corporation Property. However, Declarant makes no warranties or representations of any kind or nature, express or implied, regarding the continued viability of any such builder, the existence or extent of any insurance coverage that may be or may have been maintained by such builder, or the ability of any Owner or the Corporation to compel such "builder" to correct any construction defect that may

exist in the Condominiums or Corporation Property or to collect any judgment that may be obtained against such builder relating thereto, and each Owner and the Corporation acknowledges and agrees that he/she/it is assuming all risks relating to such matters.

2. General Release of Known and Unknown Claims Against Declarant. To the maximum extent permitted by law, each Owner, by acceptance of a deed to a Condominium, and the Corporation, by acceptance of a deed to the Corporation, for himself/herself/itself and on behalf of his/her/its successors, heirs, and assigns, releases and discharges, and Declarant hereby accepts such release and discharge of, Declarant and Declarant's members, officers, directors, principals, attorneys, affiliates, employees, agents and representatives (collectively, the "Released Parties") from any and all actions, causes of action, claims, debts, demands, liabilities, and costs arising out of or in any way relating to any aspect of the Condominiums, Corporation Property, Common Area, and the Project and/or any improvements thereon, including, without limitation, construction defect claims (collectively, "Claims"), regardless of whether such Claims are known or unknown or suspected or unsuspected by the Owner or Corporation at the time the Owner acquires a Condominium or the Corporation acquires the Corporation Property (but specifically excluding Claims for the enforcement of the Limited Warranty). This release shall be interpreted as broadly as possible, and each Owner, by acceptance of a deed to a Condominium, and the Corporation, by acceptance of a deed to the Corporation Property, shall be deemed to have knowingly and voluntarily waived the benefits of Civil Code Section 1542, which provides as follows: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." This release applies only with respect to the Condominiums and Corporation conveyed by Declarant to Owners and the Corporation, as well as the Owners' and Corporation's successors, grantees, and assigns, and is not intended to release or discharge any "builder" (as defined in Civil Code Section 911) from liability for any Claims arising out of such builder's construction of the improvements on the Condominiums, Corporation Property, or Common Area. However, Declarant makes no warranties or representations of any kind or nature, express or implied, regarding the continued viability of any such builder, the existence or extent of any insurance coverage that may be or may have been maintained by such builder, or the ability of any Owner or the Corporation to compel such builder to correct any construction defect that may exist in the Condominiums, Corporation Property, or Common Area or to collect any judgment that may be obtained against such builder relating thereto, and each Owner and the Corporation acknowledges and agrees that he/she/it is assuming all risks relating to such matters.

3. Right to Repair Law. Declarant contends that it is not a "builder" within the meaning of, and is therefore not subject to, Division 2, Part 2, Title 7 (commencing with Section 895) of the California Civil Code ("Right to Repair Law"). Nevertheless, to the extent the Right to Repair Law is applicable, the following provisions shall apply:

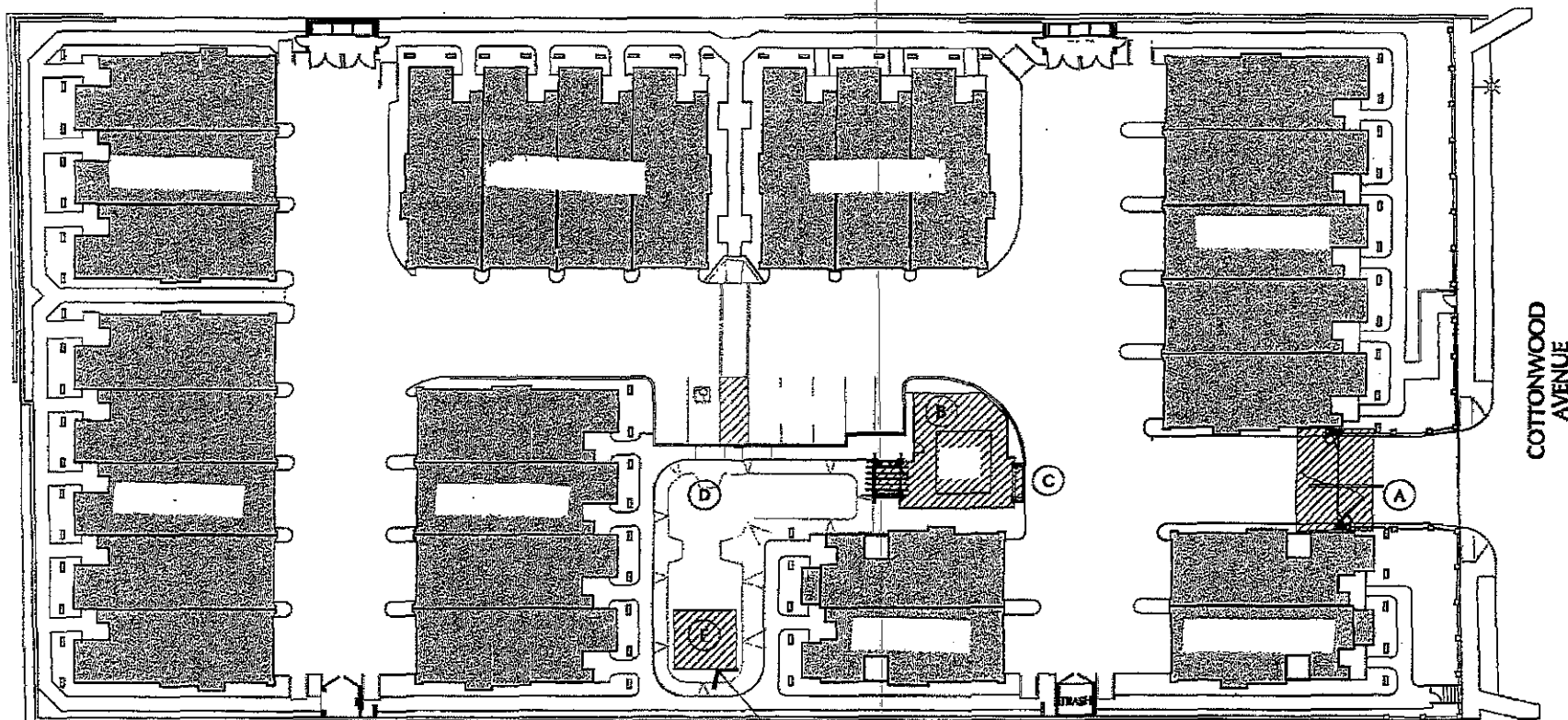
a. Notice of Procedures. On September 20, 2002, the Governor of the State of California signed into law the construction dispute reform bill known as Senate Bill No. 800, which added section 43.99 and Title 7 (commencing with section 895) to Part 2 of Division 2 of the California Civil Code ("Right to Repair Law"). The Right to Repair Law contains various procedures which may impact an Owner's legal rights as a homeowner. Each Owner may wish to consult with an attorney or other legal advisor to ascertain the requirements of the Right to Repair Law and its impact upon his legal rights.

b. No Enhanced Protection Agreement. As noted earlier, no provisions herein, and no representations or warranties, expressed or implied, by Declarant, constitute, or shall be interpreted to constitute, an "enhanced protection agreement," as defined in Section 901 of the California Civil Code.

c. DECLARANT'S ELECTION TO OPT IN TO PRE-LITIGATION PROCEDURES SET FORTH IN RIGHT TO REPAIR LAW. BY ACCEPTANCE OF A DEED TO A CONDOMINIUM OR THE CORPORATION PROPERTY, EACH OWNER AND THE CORPORATION ACKNOWLEDGE THAT DECLARANT HAS ELECTED TO USE CERTAIN PROCEDURES REFERRED TO AS THE "STATUTORY PRE-LITIGATION PROCEDURES" FOR THE RESOLUTION OF CONSTRUCTION DEFECT CLAIMS, AS SET FORTH IN SECTIONS 910 THROUGH 938 OF THE CALIFORNIA CIVIL CODE. ANY CLAIM OR DISPUTE WHICH IS NOT SUBJECT OR RESOLVED PURSUANT TO SUCH STATUTORY PRE-LITIGATION PROCEDURES SHALL BE RESOLVED BY THE DISPUTE RESOLUTION PROCEDURES SET FORTH IN THE LIMITED WARRANTY (E.G., IF THE LIMITED WARRANTY REQUIRES BINDING ARBITRATION OF DISPUTES, THEN BY BINDING ARBITRATION) OR ADOPTED BY GRANTOR (E.G., JUDICIAL REFERENCE, AS SET FORTH IN THIS DECLARATION). NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS SECTION SHALL BE DEEMED TO CONSTITUTE A WAIVER OF DECLARANT'S RIGHTS, IF ANY, TO REQUIRE AN OWNER AND THE CORPORATION TO COMPLY WITH THE PROCEDURES OF THE LIMITED WARRANTY OR THE CALDERON ACT (SET FORTH AT CIVIL CODE SECTION 1375) OR TO ENFORCE ANY PROVISION OF LAW RELATING TO THE RESOLUTION OF DISPUTES OTHER THAN SECTIONS 910 THROUGH 938 OF THE CALIFORNIA CIVIL CODE. EACH OWNER, ON BEHALF OF ITSELF AND ITS SUCCESSORS IN INTEREST, SHALL PROVIDE COPIES OF ALL DOCUMENTS PROVIDED BY DECLARANT TO SUCH OWNER TO ANY SUBSEQUENT PURCHASER OF SAID OWNER'S CONDOMINIUM.

d. Agent for Notice for Declarant. Notice of disputes shall be given to the agent for service of process for Declarant set forth in the most current records of the Secretary of State of California.

5. This Exhibit may not be amended, terminated, or revoked by anyone other than the Declarant.



COTTONWOOD AVENUE

- PROVIDED AMENITIES:
- A. FRONT ENTRY GATE
  - B. POOL
  - C. FOUNTAIN
  - D. BBQ
  - E. TOT LOT

CROSS-HATCHING AND CIRCULAR  
CALLOUT INDICATE LOCATION OF  
RECREATIONAL ITEMS.



RECREATIONAL ITEMS  
(INDICATED BY CROSS-HATCHING)

EXHIBIT 'J'