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Ttl Pd \$188.00 Nbr-0004367133

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SJS/57/1-54

Order No. 1707571

**DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS  
OF  
HAMPTON VILLAGE**

A Common Interest Development

**SECTION 10.6 OF THIS DOCUMENT CONTAINS  
BINDING ARBITRATION PROVISIONS**

**IN ACCORDANCE WITH THE  
FEDERAL ARBITRATION ACT**

**CONSULT WITH AN ATTORNEY  
IF YOU HAVE ANY QUESTIONS ON THESE  
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**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
HAMPTON VILLAGE  
A Common Interest Development**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF HAMPTON VILLAGE ("**Declaration**") is made by KB HOME NORTH BAY INC., a California corporation ("**Declarant**").

**ARTICLE I  
APPLICABILITY**

1.1 **FACTS:** This Declaration is made with reference to the following facts:

1.1.1 **Property Owned by Declarant:** Declarant is the owner of all the real property and Improvements thereon located in the City of Sacramento, County of Sacramento, State of California, described as follows:

**PARCEL ONE (PROJECT COMMON AREA):**

Lot 1, as shown on the final map of Hampton Village, filed for record on June 6, 2006, in Book 353 of Maps, as Map No. 6, in the Official Records of the County of Sacramento, State of California, **excepting therefrom** the parcels shown as Future Phase Condominium Parcels A and B, Project Common Area Parcel 1, Building Common Area Parcel 1, and Units A1, A2, B, C, D, and E, on the Condominium Plan recorded on June 14, 2006, in Book 2006-0614 at Page 1472, of the Official Records of the County of Sacramento, State of California ("**Condominium Plan**").

**PARCEL TWO (PROJECT COMMON AREA):**

Project Common Area Parcel 1, as shown on the Condominium Plan.

**PARCEL THREE (BUILDING COMMON AREA):**

Building Common Area Parcel 1, as shown on the Condominium Plan, **excepting therefrom** Units A1, A2, B, C, D, and E, as shown on the Condominium Plan.

**PARCEL FOUR (UNITS):**

Units A1, A2, B, C, D, and E, as shown on the Condominium Plan.

1.1.2 **Nature of Project:** Declarant intends to develop the Subject Property and the Annexable Property as a Common Interest Development which shall be a condominium project as defined in California Civil Code Section 1351(f). The Project is intended to be created in conformity with the provisions of the Davis-Stirling Common Interest Development Act (California Civil Code, Section 1350,

*et seq.*). To establish the Project, Declarant desires to impose on the Subject Property, and any property annexed thereto, these mutually beneficial restrictions, easements, assessments and liens under a comprehensive general plan of improvement and development for the benefit of all of the Owners, the Units and Common Area within the Subject Property and any property annexed thereto.

1.1.3 Phases of Project: The Subject Property and the Annexable Property are intended to be developed in two (2) or more Phases. The first Phase consists of the Subject Property. Prior to annexation, the Annexable Property will not be subject to any provision of this Declaration. Declarant may, but has no obligation to, annex all or any portion of the Annexable Property to the Project by recording a Declaration of Annexation in compliance with the provisions of this Declaration.

1.2 APPLICABILITY OF RESTRICTIONS: Pursuant to California Civil Code Sections 1353 and 1354, Declarant hereby declares that the Project and all Improvements thereon are subject to the provisions of this Declaration. The Project shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the covenants, conditions and restrictions stated in this Declaration. All such covenants, conditions and restrictions are declared to be in furtherance of the plan for the subdivision, development and management of the Project as a Common Interest Development. All of the limitations, easements, uses, obligations, covenants, conditions, and restrictions stated in this Declaration shall run with the Project and shall inure to the benefit of and be binding on all Owners and all other parties having or acquiring any right, title or interest in any part of the Project. After recordation of a Declaration of Annexation, the property described therein will constitute a part of the Project and will be subject to this Declaration.

1.3 BOUNDARY MODIFICATIONS: If the boundaries of real property change as a result of one or more subsequently recorded final maps, amended final maps, parcel maps, amended parcel maps, certificates of correction, lot line adjustments and/or records of survey, then, for all purposes of this Declaration:

1.3.1 Removed From Declaration: Property which is removed from a Common Area parcel and added to real property which is not subject to this Declaration shall no longer constitute a part of such Common Area and shall no longer be subject to this Declaration.

1.3.2 Added to Declaration: Property not subject to this Declaration which is added to a Common Area parcel shall be part of the Common Area parcel to which it is added and shall automatically be subject to all provisions of this Declaration.

1.4 WATER METERS: One water meter has been installed for the Project which will measure all water used in the Units. Additionally, each Unit has a submeter which measures how much water is actually used in each Unit. While Declarant was required to install the submeters, there is no requirement that the submeters be read or that water be billed individually to Units based on actual use. The Budget includes a single estimate of how much water will be used throughout the Project in the Units. All costs in the budget, including water, are allocated equally against all Units. Under the Budget, the costs of water will not be billed to Units based on actual usage; instead, all Units will pay the same amount for water.

The Budget includes money to Maintain and read the submeters, even though the submeters are not being used. At any time in the future, the Board may decide to charge Members for water based on actual usage. If such a decision is made, the Board shall adopt procedures which are appropriate to institute and operate a system of submeter reading and billing Owners of Units for water based on actual usage. The procedures shall include at least the following issues:

- (a) A requirement that the submeters be read on a regular basis;
- (b) A requirement that the Association bill the Owners of each Unit for water used in the Unit at the same rate paid by the Association for the water received, all in accordance with applicable California law and regulations ("Water Usage Charge"); and
- (c) Amounts collected by the Association to defray the costs of meter reading, bookkeeping and billing related to water usage are in addition to the Water Usage Charge.

**ARTICLE II**  
**DEFINITIONS**

Unless otherwise defined or unless the context clearly requires a different meaning, the terms used in this Declaration, the Map, the Condominium Plan and any grant deed to a Condominium shall have the meanings specified in this Article.

- 2.1 **ADDITIONAL CHARGES:** The term "Additional Charges" shall mean costs, fees, charges and expenditures, including without limitation, attorneys' fees, late charges, interest and recording and filing fees actually incurred by the Association in collecting and/or enforcing payment of assessments, fines and/or penalties.
- 2.2 **ALTERATION:** The term "Alteration" shall mean constructing, performing, installing, remodeling, repairing, replacing, demolishing and/or changing any Improvement or changing the color, tone, intensity, shade or hue of any Improvement.
- 2.3 **ANNEXABLE PROPERTY:** The term "Annexable Property" shall mean Future Phase Condominium Parcels A and B, as shown on the Condominium Plan, Lot A and Lot B, as shown on the Map, and all Improvements situated thereon or therein.
- 2.4 **ARCHITECTURAL STANDARDS:** The term "Architectural Standards" shall mean the portion of the Operating Rules which specifically address architectural and aesthetic matters.
- 2.5 **ARTICLES:** The term "Articles" shall mean the Articles of Incorporation of Hampton Village Owners' Association, which are or shall be filed in the Office of the Secretary of State of the State of California.
- 2.6 **ASSOCIATION:** The term "Association" shall mean Hampton Village Homeowners' Association, its successors and assigns, a nonprofit mutual benefit corporation incorporated under the laws of the State of California.
- 2.7 **BOARD:** The term "Board" shall mean the Board of Directors of the Association.
- 2.8 **BUDGET:** The term "Budget" shall mean a pro forma operating budget prepared by the Board in accordance with Section 6.7.1 (Preparation and Distribution of Budget) of this Declaration.
- 2.9 **BUILDING COMMON AREA:** The term "Building Common Area" shall mean all Building Common Area Parcels. The term "Building Common Area" shall also mean that portion of any property described as Building Common Area in a Declaration of Annexation.

2.10 **BUILDING COMMON AREA PARCEL:** The term "**Building Common Area Parcel**" shall mean the three dimensional parcel shown as Building Common Area Parcel 1 on the Condominium Plan. The horizontal and vertical boundaries of each Building Common Area Parcel are as shown on the Condominium Plan. Each Building Common Area Parcel includes the airspace encompassed within its boundaries and all Improvements therein which are not a part of any Unit. It shall be conclusively presumed that each building shown on the Condominium Plan as being contained within a Building Common Area Parcel is located entirely within the boundaries of the Building Common Area Parcel. The term "Building Common Area Parcel" shall also mean those portions of a Future Phase Condominium Parcel which are described as a Building Common Area Parcel in a Declaration of Annexation.

2.11 **BYLAWS:** The term "**Bylaws**" shall mean the Bylaws of the Association and any amendments thereto.

2.12 **CITY:** The term "**City**" shall mean the City of Sacramento, California.

2.13 **COMMON AREA:** The term "**Common Area**" shall mean all of the Subject Property and Improvements thereon, excluding the Units. The term "Common Area" shall also mean any property described as Common Area in a Declaration of Annexation and any real property estate or interest owned by the Association. All Common Area shall be divided into Project Common Area and Building Common Area; however, any reference in the Project Documents to Common Area shall include both Project and Building Common Area unless otherwise specified.

2.14 **CONDOMINIUM:** The term "**Condominium**" shall mean an estate in real property consisting of an undivided interest in common in a portion of a Building Common Area Parcel, a fee interest in a Unit and easements in portions of the Project as provided in this Declaration.

2.15 **CONDOMINIUM PLAN:** The term "**Condominium Plan**" shall mean the condominium plan prepared in accordance with California Civil Code Section 1351 and recorded on June 14, 2006, in Book 2006-0614 at Page 1472, of the Official Records of the County, including any subsequently recorded amendments thereto. The term "Condominium Plan" shall also mean any recorded condominium plan described in a Declaration of Annexation, including any subsequently recorded amendments thereto.

2.16 **COUNTY:** The term "**County**" shall mean the County of Sacramento, State of California.

2.17 **DECLARANT:** The term "**Declarant**" shall mean KB HOME North Bay Inc., a California corporation. The term "Declarant" shall also mean any person or entity if (i) a notice signed by Declarant and such person or entity has been recorded in the County in which such person or entity assumes the rights and duties of Declarant to some portion of the Subject Property or the Annexable Property, or (ii) such person or entity acquires all of the Subject Property and all of the Annexable Property then owned by a Declarant which must be more than one (1) Condominium. There may be more than one Declarant at any given time.

2.18 **DECLARATION:** The term "**Declaration**" shall mean this Declaration of Covenants, Conditions and Restrictions of Hampton Village and includes any subsequently recorded amendments.

2.19 **DECLARATION OF ANNEXATION:** The term "**Declaration of Annexation**" shall mean any instrument recorded in the County which extends the provisions of this Declaration to all or a portion of the Annexable Property or any other property.

2.20 **DISPUTE:** The term "**Dispute**" shall mean any claim, issue or controversy that arises from or is related in any way to (i) the Project, (ii) the relationship between Owner and Declarant or (iii) the relationship between the Association and Declarant, whether contractual, statutory or in tort. The term "**Dispute**" includes, but is not limited to claims, issues or controversies that arise from or are related to the purchase, sale, condition, design, construction or materials used in construction of any portion of the Project, the agreement between Declarant and an Owner to purchase a Condominium or any related agreement, disclosures, or alleged deficiencies in construction, design, specifications, surveying, planning, supervision, testing, or observation of construction related to the Owner's Condominium or the Common Area. Notwithstanding anything to the contrary contained herein, the term "**Dispute**" expressly excludes (a) all claims brought by any Owner or the Association under Title 7 and (b) all claims and disputes brought by any Owner under any warranty provided by Declarant, including but not limited to any alleged violation of the Fit & Finish Warranty provided to an Owner or the Association by Declarant in accordance with the provisions of California Civil Code Section 900 and any disagreement concerning an Owner's or the Association's notification under a warranty, the enforcement and resolution of which shall be governed solely by the dispute resolution provisions provided in the applicable warranty.

2.21 **EXCLUSIVE USE COMMON AREA:** The term "**Exclusive Use Common Area**" shall mean those portions of the Common Area which are shown on the Condominium Plan and defined in this Section.

2.21.1 **Balcony:** The term "**Balcony**" shall mean each portion of the Common Area which is shown on the Condominium Plan as an individually numbered space designated with the letter "B." The perimeter boundaries of each Balcony are to the interior unfinished surfaces of the fences and/or railings and to the exterior finished surfaces of any Common Area walls enclosing the Balcony. The vertical boundaries of each Balcony are to the interior unfinished surface of the floor and to a plane extended from the ceiling of the Unit which adjoins the Balcony. The approximate dimensions of each Balcony are shown on the Condominium Plan. Each Balcony includes the airspace encompassed within its boundaries.

2.21.2 **Garage:** The term "**Garage**" shall mean each portion of the Common Area which is shown on the Condominium Plan as an individually numbered space designated with the letter "G." The perimeter and vertical boundaries of each Garage are to the interior unfinished surfaces of the doors, walls, floor and ceiling. The approximate dimensions of each Garage are shown on the Condominium Plan. Each Garage includes the airspace encompassed within its boundaries.

2.21.3 **Yard:** The term "**Yard**" shall mean each portion of the Common Area which is shown on the Condominium Plan as an individually numbered space designated with the letter "Y." The perimeter boundaries of each Yard are to the interior unfinished surfaces of the wall and to the exterior finished surfaces of any Common Area walls enclosing the Yard. The vertical boundaries of each Yard are to the surface of the ground and to a horizontal plane extended from the ceiling of the Unit which adjoins the Yard. The approximate dimensions of each Yard are shown on the Condominium Plan. Each Yard includes the airspace encompassed within its boundaries and so much of the area beneath the surface of the earth that is necessary for the cultivating, landscaping and drainage of the Yard.

2.22 **FIRST MORTGAGE:** The term "**First Mortgage**" shall mean a Mortgage which has priority under the recording statutes of the State of California over all other Mortgages encumbering a specific Condominium.

2.23 **FIRST MORTGAGEE:** The term "**First Mortgagee**" shall mean the Mortgagee of a First Mortgage.

2.24 **FUTURE PHASE CONDOMINIUM PARCEL:** The term “**Future Phase Condominium Parcel**” shall mean Future Phase Condominium Parcels A and B, as shown on the Condominium Plan. The horizontal and vertical boundaries of each Future Phase Condominium Parcel are as shown and described on the Condominium Plan. Each Future Phase Condominium Parcel includes the airspace encompassed within its boundaries and all Improvements therein. The term “Future Phase Condominium Parcel” shall also mean any parcel described as such in a Declaration of Annexation. A Future Phase Condominium Parcel may, but is not required to be, further subdivided into Project Common Area Parcels, Building Common Area Parcels, Units and/or Future Phase Condominium Parcels on a Condominium Plan.

2.25 **IMPROVEMENTS:** The term “**Improvements**” shall mean everything constructed, installed or planted on real property, including without limitation, buildings, streets, fences, walls, paving, pipes, wires, grading, landscaping and other works of improvement as defined in California Civil Code Section 3106, excluding only those Improvements or portions thereof which are dedicated to the public or a public or quasi-public entity or utility company, and accepted for maintenance by the public, such entity or utility company.

2.26 **INSTITUTIONAL MORTGAGEE:** The term “**Institutional Mortgagee**” shall mean (i) a First Mortgagee which is the State of California, a bank, a savings and loan association, an insurance or mortgage company or other entity or institution chartered under or regulated by any federal and/or state law or (ii) an insurer or governmental guarantor of a First Mortgage including without limitation the Federal Housing Authority and the Department of Veterans Affairs.

2.27 **INVITEE:** The term “**Invitee**” shall mean any person whose presence within the Project is approved by or is at the request of the Association or a particular Owner, including, but not limited to, lessees, tenants, and the family, guests, employees, licensees or invitees of Owners, tenants or lessees.

2.28 **MAINTAIN:** The term “**Maintain**”, “**Maintaining**” or “**Maintained**” (but not the word “maintenance”) shall mean taking all actions reasonably necessary to satisfy (a) the requirements and obligations imposed by a Maintenance Manual, (b) all requirements and schedules in any warranty offered by Declarant, (c) all requirements and schedules in all warranties provided by manufacturers of components used within the Common Area or a Condominium and (d) all commonly accepted maintenance practices to keep an Improvement in first class condition and repair and to prolong the life of the materials and construction of the Improvements. Actions include but are not limited to regular inspections, painting, maintenance, refinishing, repairing, replacing and reconstructing the Improvement, and in the case of landscaping, irrigating and fertilizing the landscaping. The Owners and the Association shall have no responsibility to Maintain any Improvement Maintained by a third party or the public or a quasi-public entity or utility company even if the third party or the public or quasi-public entity or utility company fails to perform all actions required by this Section.

2.29 **MAINTENANCE MANUAL:** The term “**Maintenance Manual**” shall mean the Association Maintenance Manual and the Owner Maintenance Manual, unless otherwise provided.

2.29.1 **Association Maintenance Manual:** The term “**Association Maintenance Manual**” shall mean the documents which establish procedures, practices, specifications, scopes and intervals for the Association to Maintain the Improvements for which the Association is responsible. The initial Association Maintenance Manual for the first Phase will be delivered to the Association concurrently with the first conveyance of Common Area to the Association. There may be more than one (1) Association Maintenance Manual at any given time, each of which applies to different Improvements.

2.29.2 **Owner Maintenance Manual:** The term "**Owner Maintenance Manual**" shall mean the document entitled "Homeowner Maintenance Guide" which establishes procedures, practices, specifications, scopes and intervals for the Owner to Maintain the Improvements for which an Owner is responsible. The Owner Maintenance Manual will be given to the Owners of each Condominium by Declarant prior to or when Declarant conveys title to the Condominium. The Maintenance Manual applicable to a specific Condominium may be different from the Maintenance Manual applicable to a different Condominium.

2.30 **MAP:** The term "**Map**" shall mean the final map of Hampton Village, filed for record on June 6, 2006, in Book 353 of Maps, as Map No. 6, in the Official Records of the County, including any subsequently recorded amended final maps, parcel maps, certificates of correction, lot line adjustments and/or records of survey. The term "Map" shall also mean any recorded final map described in a Declaration of Annexation.

2.31 **MEMBER:** The term "**Member**" shall mean an Owner.

2.32 **MORTGAGE:** The term "**Mortgage**" shall mean any duly recorded mortgage or deed of trust encumbering a Condominium.

2.33 **MORTGAGEE:** The term "**Mortgagee**" shall mean a Mortgagee under a Mortgage as well as a beneficiary under a deed of trust.

2.34 **NOTICE AND HEARING:** The term "**Notice and Hearing**" shall mean the procedure which gives an Owner notice of an alleged violation of the Project Documents and the opportunity for a hearing before the Board.

2.35 **OPERATING RULES:** The term "**Operating Rules**" shall mean the rules adopted by the Board, including the Architectural Standards.

2.36 **OWNER:** The term "**Owner**" shall mean the holder of record fee title to a Condominium, including Declarant as to each Condominium owned by Declarant. If more than one person owns a single Condominium, the term "Owner" shall mean all owners of that Condominium. The term "Owner" shall also mean a contract purchaser (vendee) under an installment land contract but shall exclude the contract vendor and any person having an interest in a Condominium merely as security for performance of an obligation.

2.37 **PHASE:** The term "**Phase**" shall mean any Condominiums, Building Common Area and/or Project Common Area which are simultaneously made subject to the provisions of this Declaration either by recording this Declaration or by recording a Declaration of Annexation. More than one Phase may be established in any Declaration of Annexation.

2.38 **PROJECT:** The term "**Project**" shall mean the Subject Property and any property described in a Declaration of Annexation.

2.39 **PROJECT COMMON AREA:** The term "**Project Common Area**" shall mean the real property described as Parcels One and Two in Section 1.1.1 (Property Owned by Declarant) of this Declaration and all Improvements thereon or therein which are not a part of any Building Common Area Parcel, Unit or Future Phase Condominium Parcel. The term "Project Common Area" shall also mean that portion of any property described as Project Common Area in a Declaration of Annexation.

2.40 **PROJECT COMMON AREA PARCEL:** The term "Project Common Area Parcel" shall mean the three dimensional parcel shown as Project Common Area Parcel 1 on the Condominium Plan. The term "Project Common Area Parcel" shall also mean each three dimensional parcel shown on a Condominium Plan and described as a Project Common Area Parcel in a Declaration of Annexation. The horizontal and vertical boundaries of each Project Common Area Parcel are as shown on the Condominium Plan. Each Project Common Area Parcel includes the airspace encompassed within its boundaries and all Improvements therein which are not a part of any Building Common Area Parcel or Unit.

2.41 **PROJECT DOCUMENTS:** The term "Project Documents" shall mean the Articles, Bylaws, this Declaration and the Operating Rules.

2.42 **PUBLIC REPORT:** The term "Public Report" shall mean a Final Subdivision Public Report issued by the Department of Real Estate of the State of California for one or more Phases of the Project.

2.43 **RESTORE:** The term "Restore" shall mean repairing, rebuilding or reconstructing a damaged Improvement to substantially the same condition and appearance in which it existed prior to being damaged.

2.44 **SUBJECT PROPERTY:** The term "Subject Property" shall mean the real property described in Section 1.1.1 (Property Owned By Declarant) and all Improvements thereon or therein.

2.45 **TITLE 7:** The term "Title 7" shall mean Title 7, Part 2 of Division 2 of the California Civil Code (Section 895, *et seq.*) as amended from time to time.

2.46 **TITLE 7 NOTICE:** The term "Title 7 Notice" shall mean the document entitled "Notice of Non-Adversarial Procedure, Notice to Successors In Interest, and Notice of Builder's Agent for Notice Under California Civil Code Sections 912(f), 912(h), and 912(e)" recorded against all or a portion of the Project. There may be more than one (1) Title 7 Notice, each of which is applicable to different Improvements.

2.47 **UNIT:** The term "Unit" refers to a Separate Interest as defined in California Civil Code Section 1351(l) and shall mean that portion of the Project which is shown on the Condominium Plan as an individually numbered space designated with the letter "U" or the word "Unit". The boundaries of each Unit shall be to the interior unfinished surfaces of the perimeter walls, floors, ceilings, doors and windows. Each Unit includes the airspace encompassed by its boundaries but does not include load bearing walls. Utility systems and components thereof and fixtures and appliances which are located wholly within the boundaries of a Unit and which service only that Unit are also part of a Unit. The approximate dimensions of each Unit are shown on the Condominium Plan; however, the existing physical boundaries of a Unit as originally constructed or as reconstructed in accordance with the original construction design shall be conclusively presumed to be its boundaries.

2.48 **VISIBLE:** The term "Visible" shall mean the item described can be seen by a six (6) foot tall person standing on the described area or if no area is described, on any portion of the street which provides access to the Condominium.

### **ARTICLE III OWNERSHIP AND EASEMENTS**

3.1 **NON-SEVERABILITY:** The interests in the Common Area in any Phase cannot be changed after the conveyance of the first Condominium in that particular Phase. The undivided interests in each Building Common Area Parcel, the fee title to the respective Units conveyed therewith and the easements



appurtenant thereto are not separable and may not be separately conveyed unless the Condominium Plan is amended in accordance with California Civil Code Section 1351(e). If the Condominium Plan is amended, any conveyances necessary to cause ownership interests to conform to the amended Condominium Plan shall not violate this Section. Each undivided interest in a Building Common Area Parcel and each easement appurtenant to the Unit shall be deemed to be conveyed or encumbered with the respective Unit even though the description in the grant deed or other instrument of conveyance or encumbrance may refer only to the Unit. The ownership interests in the Common Area and Units described in this Article are subject to the easements described, granted and reserved in this Declaration. Each of the easements described, granted or reserved herein shall be established upon the recordation of this Declaration and shall be enforceable as equitable servitudes and covenants running with the land for the use and benefit of the Owners and their Condominiums superior to all other encumbrances applied against or in favor of any portion of the Project.

3.2 OWNERSHIP OF UNITS: Title to each Unit in the Project shall be conveyed in fee to an Owner.

3.3 OWNERSHIP OF COMMON AREA: The Common Area of the Project shall be conveyed and held as follows:

3.3.1 Project Common Area: Title to or a legal ownership interest in the Project Common Area in each Phase shall be conveyed to the Association prior to or concurrently with the conveyance of the first Condominium in that particular Phase to an Owner. The Association shall be deemed to have accepted the Project Common Area conveyed to it when (i) a grant deed conveying title to the Project Common Area has been recorded in the Official Records of the County and (ii) assessments for the Phase in which the Project Common Area is located have commenced.

3.3.2 Building Common Area: The Owners of each Unit situated within a particular Building Common Area Parcel shall be conveyed an undivided interest as a tenant in common with the Owners of all other Units situated within that Building Common Area Parcel (excluding all Units). The tenancy in common interest shall be determined by a fraction, the numerator of which is one (1) and the denominator of which is the number of Units situated within that particular Building Common Area Parcel.

3.4 EASEMENTS: The easements and rights specified in this Article are hereby created and shall exist whether or not they are also set forth in individual grant deeds to Condominiums. By reference to this Declaration, each grant deed to a Condominium shall be deemed to be conveyed with the benefit of and subject to all applicable easements set forth in this Section.

3.4.1 Additional Easements: Notwithstanding anything expressed or implied to the contrary, this Declaration shall be subject to all easements granted by Declarant to install, operate and Maintain utilities and drainage facilities necessary for the development of the Project.

3.4.2 Adjoining Property: Declarant shall have, and hereby expressly reserves, a right and easement over and across the Common Area for the purposes of reasonable ingress to and egress from, over and across the Project, including private roads and pathways, to the Annexable Property until all of the Annexable Property is annexed to the Project.

3.4.3 Annexation of Annexable Property: Upon the recordation of a Declaration of Annexation, the Units and the Owners of Units in the annexed Phase shall have all of the rights and easements specified in this Article and the Units and the Owners of Units in the Project prior to annexation shall have all of the easements specified in this Article as though the annexed Phase were initially part of the Project.

3.4.4 Association: The Association and its duly authorized agents and representatives shall have a non-exclusive right and easement as is necessary to perform the duties and obligations of the Association set forth in the Project Documents, including the right to enter upon Building Common Area, Exclusive Use Common Area and Units, subject to the limitations contained in this Declaration.

3.4.5 Common Area: Every Owner shall have a non-exclusive right and easement for the ingress, egress, use and enjoyment of the Common Area which shall be appurtenant to and shall pass with the title to every Condominium, subject to the following provisions:

(a) The right of the Board, after Notice and Hearing, to suspend an Owner's right to use any recreational facilities;

(b) The grant of any exclusive easements to Owners for Exclusive Use Common Area(s);

(c) The right of the Association to grant, convey and dedicate fee title to or easements over all or any portion of the Project Common Area; and

(d) Any easement which affects the Common Area or which is set forth in the deed which conveys the Project Common Area to the Association.

3.4.6 Encroachment: Non-exclusive rights and easements are reserved and granted (i) for the benefit of each Unit, as dominant tenement, over, under and across each other Unit and the Common Area, as servient tenement, (ii) for the benefit of the Building Common Area, as dominant tenement, over, under and across the Project Common Area and each Unit, as servient tenements, and (iii) for the benefit of the Project Common Area, as dominant tenement, over, under and across the Building Common Area and each Unit, as servient tenements. Such easements shall be for the purposes of encroachment, support, occupancy and use of such portions of Units and/or Common Area as shall be encroached upon, used and occupied by the dominant tenement as a result of any original construction design, accretion, erosion, deterioration, decay, errors in original construction, movement, settlement, shifting or subsidence of any building or structure or any portion thereof. If any portion of the Project is partially or totally destroyed, the encroachment easement shall exist for any replacement structure which is rebuilt pursuant to the original construction design and which substantially conforms to the legal boundaries shown on the Condominium Plan. The easement for the encroaching Improvement shall exist for as long as the encroachment exists; provided, however, that no easement for encroachment shall be created due to the willful misconduct of the Association or any Owner. Any easement for encroachment may but need not be cured by Alteration of the Improvement.

3.4.7 Exclusive Use Common Area: Each Owner shall have an exclusive right and easement for the use, possession and enjoyment of the Balcony, Garage and/or Yard designated on the Condominium Plan which bears the number that corresponds to that of the Owner's Unit, each of which shall be appurtenant to and pass with title to the Owner's Condominium. All easements to Exclusive Use Common Area are subject to the right of the Association to enter in and upon Exclusive Use Common Area as provided by and in accordance with the limitations upon such right as set forth in this Declaration.

3.4.8 Governmental Entities: All governmental and quasi-governmental entities, agencies and utilities and their agents shall have a non-exclusive easement over the Common Area for the purposes of performing their duties within the Project.

3.4.9 Map: The Common Area and Units are subject to all easements and rights of way shown on the Map.

3.4.10 Right of Entry to Inspect: Declarant hereby reserves for itself, and for its agents, employees, contractors, and/or subcontractors (collectively, "Declarant Parties"), the right to enter in and upon the Common Area for the purposes of performing an annual inspection of the Common Area and Improvements thereon. The purpose of any inspection shall be to ascertain the condition of Common Area Improvements. Declarant Parties shall give the Association reasonable advance written notice of the date and time of any inspection. During the inspection, the Association shall provide access to the interiors of any Common Area structures. After completing any inspection, Declarant Parties may give the Association a written report which describes the results of the inspection and makes recommendations for action that Declarant Parties believes is appropriate for the Association to take to Maintain Improvements for which the Association is responsible. This right of entry shall exist until the date which is eleven (11) years following the date of completion of the Common Area in the last Phase of the Project.

3.4.11 Right of Entry to Perform Work: Declarant hereby reserves for itself, and for its agents, employees, contractors, and/or subcontractors (collectively, "Declarant Parties"), the right to enter in and upon those portions of (a) the Common Area, (b) the Exclusive Use Common Area, and (c) each Unit that are necessary or appropriate (as determined in Declarant Parties' reasonable discretion) for the purposes of performing repairs or doing other work that (i) has been agreed to by the Association and Declarant Parties or by an Owner and Declarant Parties or (ii) Declarant Parties elects to perform pursuant to California Civil Code Section 918. This right of entry includes, but is not limited to, entering into one Unit to perform work which benefits another Unit(s). Declarant Parties shall give all affected parties at least seventy two (72) hours advance notice of the dates and times work will be performed (except in an emergency for which no notice is required). Notice shall be written or verbal.

3.4.12 Right to Photograph: Declarant hereby reserves a non-exclusive easement and right in gross to display, use and distribute for any and all purposes photographs, video recordings and similar reproductions of all Units and Improvements constructed anywhere in the Project.

3.4.13 Support: The Association and each Owner shall have a non-exclusive right and easement appurtenant to the Common Area and to all Units through each Unit and the Common Area to support and Maintain the Common Area and all Units.

3.4.14 Utilities: Each Owner shall have a non-exclusive right and easement over, under, across and through the Project, except for portions of the Project on which a structure is situated, for utility lines, pipes, wires and conduits installed by Declarant. Additionally, this Declaration and each Condominium and the Common Area shall be subject to all easements granted by Declarant to install, operate and Maintain utilities necessary or appropriate for the development of the Project.

### 3.5 JUDICIAL PARTITION:

3.5.1 Waiver of Partition: Except as provided in California Civil Code Section 1359, there shall be no judicial partition of the Project or of any part thereof. Each Owner, and each successor of each Owner, specifically waives and abandons all rights, interests and causes of action for judicial partition of the tenancy-in-common ownership of the Building Common Area. Each Owner agrees that no action for judicial partition of the Project shall be instituted, prosecuted or reduced to judgment, except in compliance with California Civil Code Section 1359. If a Condominium is owned by two or more Owners as partners, tenants-in-common, or joint tenants or as community property, nothing contained in this Section shall be deemed to prevent a judicial partition of their co-ownership.

3.5.2 Power of Attorney: If there is judicial partition of the Project pursuant to California Civil Code Section 1359 or this Declaration, each Owner, for the Owner and the Owner's successors and assigns, hereby grants to the Association an irrevocable power of attorney to sell the entire Project for the benefit of all of the Owners. The power of sale shall be exercised only after recordation by the Association of a certificate which provides that the Association has the right to exercise the powers provided in this Section and in California Civil Code Section 1359.

## **ARTICLE IV USE RESTRICTIONS**

4.1 ACCESS TO UNITS AND EXCLUSIVE USE COMMON AREA: Occupants shall cooperate with the Association to provide the Association access to the Unit or to the Exclusive Use Common Area appurtenant to the Unit when requested by the Association as appropriate for the Association to perform its obligations or duties as imposed by this Declaration or applicable laws. If an occupant refuses or fails to provide access to the Association when requested, the Association may utilize any other method available to it to gain alternative access and the costs of gaining alternative access shall be assessed against the Owner of the Unit. All damage that results from or is exacerbated by the denial of access to the Association shall be the sole responsibility of the Owner of the Unit.

4.2 ALTERATIONS: Except as otherwise specifically provided in this Declaration, no Alteration may be made to any Improvement until plans have been submitted and approved pursuant to Article XI (Architectural and Landscaping Control).

4.3 ANIMALS: An Owner may keep one (1) customarily uncaged household pet within the Owner's Unit. Each Owner may also keep a reasonable number of small caged animals, birds or fish. Unless the Operating Rules increase the number or type of animals which may be kept, no other animals or pets are permitted in the Project. The Board shall have the right to prohibit the keeping of any pet which, after Notice and Hearing, is found to be a nuisance to other Owners. No animals may be kept for commercial purposes. No dog shall be allowed in the Common Area unless it is under the control of a responsible person by leash or other means. Each Owner or Invitee shall clean up after its pet so that the Common Area is in the same condition it was in immediately preceding its use by any pet permitted on the Common Area by the Owner or Invitee.

4.4 ANTENNAS AND SATELLITE DISHES: No outside television antenna, microwave or satellite dish, aerial, or other such device (collectively "Video Antennas") with a diameter or diagonal measurement in excess of one (1) meter shall be erected, constructed or placed on any Common Area or Unit. Video Antennas with a diameter or diagonal measurement of one (1) meter or less may be installed only if they conform to the Architectural Standards and, if then required by the Architectural Standards, any necessary approval is obtained in accordance with the provisions of Article XI (Architectural and Landscaping Control). Reasonable restrictions which do not significantly increase the cost of the Video Antenna system or significantly decrease its efficiency or performance may be imposed.

### 4.5 EXCLUSIVE USE COMMON AREA:

4.5.1 Balconies: The flooring of Balconies may not be pierced or punctured in any way. Nothing shall be attached or otherwise connected to the flooring of any Balcony in such a manner as that causes the flooring of the Balcony to be pierced or punctured.

4.5.2 Garages: Any use of machinery, power tools or other noise-producing equipment in Garages shall be prohibited between the hours of 6:00 p.m. and 9:00 a.m., but in no event shall such use interfere with a resident's ability to keep the resident's vehicles parked in the resident's Garage at all times.

4.5.3 Yards: Nothing may be placed or planted within Yards that presently extends, or that has the ability or potential in the future to extend, above the top of the wall enclosing the Yard, unless prior approval is obtained in accordance with the provisions of Article XI (Architectural and Landscaping Control).

4.6 EXTERIOR LIGHTING: No Owner shall remove, damage or disable any exterior light, regardless of where located, which is connected to the Association's electric service.

4.7 INVITEES: Each Owner shall be responsible for compliance with the provisions of the Project Documents by that Owner's Invitees. An Owner shall promptly pay any Reimbursement Assessment levied and/or any fine or penalty imposed against an Owner for violations committed by that Owner's Invitees.

4.8 MINERAL EXPLORATION: No portion of the Common Area, including Exclusive Use Common Area, shall be used to explore for or to remove any water, oil, hydrocarbons, or minerals of any kind.

4.9 OPERATING RULES: Owners and their Invitees shall comply with all provisions of this Declaration, the Bylaws and the Operating Rules.

4.10 PARKING: Vehicles shall not be parked anywhere in the Project except in compliance with the provisions of this Section.

4.10.1 Common Area Guest Parking: All parking within the Common Area, except Garages, is reserved for the exclusive use of Invitees. A resident may park the resident's vehicles only in the Garage that resident is entitled to use. Only passenger motor vehicles may be parked in designated spaces within the Common Area. No part of the Common Area may be used by Owners, Invitees or residents for repair, construction or reconstruction of any vehicle.

4.10.2 Garages: Vehicles of any type may be parked in a Garage. Garage doors shall remain closed, except when the Garage is in use. Garages shall be kept sufficiently clear so as to permit parking of the number of vehicles for which the Garage was designed. Residents must park their vehicles in their respective Garages.

4.10.3 Removal: As long as applicable ordinances and laws are observed, including the requirements of California Vehicle Code Section 22658.2 if applicable, any vehicle which is parked in violation of the provisions of this Declaration may be removed at the sole expense of the Owner of the vehicle.

4.10.4 Vehicle Restrictions: No boat, trailer, camper, commercial vehicle, mobile home, recreational vehicle or any inoperable vehicle shall be parked or stored on Common Area.

4.11 RENTAL OF UNITS: An Owner may not rent or lease a Condominium for a period less than thirty (30) days or in violation of any agreement to which the Owner is a party. Any lease or rental agreement shall specify that the tenant is subject to all provisions of the Project Documents and a failure to comply with any provision of the Project Documents shall constitute a default under the lease or rental agreement. Before renting or leasing a Condominium, the Owner shall provide a copy of the Project Documents to each tenant and notify the Board of the lease or rental. All rights to the use and enjoyment of Common Area shall be

exercised by the tenant rather than by the Owner of the leased or rented Condominium; however, the Owner shall not be relieved of the obligations and duties imposed by this Declaration.

4.12 **SIGNS:** All signs displayed in the Project shall be attractive and compatible with the design of the Project and shall comply with all applicable state and federal laws and local ordinances. The only signs of any kind which may be displayed to the public view on or from any Unit or the Common Area shall be as follows:

4.12.1 **Declarant:** Signs may be displayed by Declarant on Common Area or unsold Units, as Declarant deems appropriate, advertising Condominiums owned by Declarant for sale or rent;

4.12.2 **Legal Proceedings:** Signs required by legal proceedings may be displayed;

4.12.3 **Non-Commercial:** Non-commercial signs, posters, flags, or banners may be displayed in accordance with the provisions of California Civil Code Section 1353.6. Any such sign or poster may not exceed nine (9) square feet in size and any such flag or banner may not exceed fifteen (15) square feet in size.

4.12.4 **Project Identification:** Appropriate signs may be displayed by the Association to identify the Project;

4.12.5 **Sale or Rent:** One (1) sign of reasonable dimensions may be placed within the window of a Unit advertising the Condominium for sale or rent; and

4.12.6 **Signs Approved By Board:** Other signs, posters and notices approved by the Board or specified in the Operating Rules or in this Declaration may be posted in locations designated by the Board.

4.13 **SPORTS EQUIPMENT:** No basketball standards, fixed sports apparatus or similar equipment shall be attached to the exterior of any Unit or permanently placed within any Exclusive Use Common Area, except in accordance with the provision of Article XI (Architectural and Landscaping Control). Portable or movable basketball equipment or other movable sports apparatus may not remain overnight where Visible from adjacent Units or streets without the prior approval of the Board.

4.14 **STORAGE OF WASTE MATERIALS:** All garbage, trash and accumulated waste material shall be placed in appropriate covered containers. Containers for recyclable materials need not be covered. Residents must keep all containers for recyclable materials, garbage, trash, and accumulated waste material in their respective Garages at all times except as otherwise provided in this Section 4.14. Containers may be placed on Common Area or where Visible, in the location directed by the local garbage collection company, only on the night before and the day that pick-up is to occur.

4.15 **USE AND OCCUPANCY OF UNITS:** Each Unit may be used for (i) residential purposes, (ii) uses within Units which cannot be prohibited under federal or state law and (iii) uses permitted by local ordinance (provided that home occupations must be conducted in a manner that does not materially and adversely impact the ability of other Owners to use and enjoy the Project). Otherwise, no business of any kind shall be established, operated, permitted or constructed in any portion of the Project, except for the business of Declarant in completing the development and disposition of the Condominiums in the Project. No Unit shall be permanently occupied by any more than two (2) persons per bedroom. No Owner may permit or cause anything to be done in or kept in a Unit which might obstruct or interfere with the rights of other Owners or which would be noxious, harmful or unreasonably offensive to other Owners. Each Owner shall comply with all of the requirements of all federal, state and local governmental authorities, and all laws, ordinances, rules and regulations applicable to the Owner's Condominium.

4.16 USE OF COMMON AREA: All use of Common Area is subject to the Operating Rules. All persons residing within the Project may enjoy the use of all facilities in the Common Area as long as they abide by the terms of the Project Documents. There shall be no obstruction of any part of the Common Area. Nothing shall be stored in or kept in the Common Area (excluding Exclusive Use Common Area) without the prior consent of the Board. Nothing shall be done in or kept in the Common Area which will increase the rate of insurance on the Common Area without the prior consent of the Board. No Owner shall permit anything to be physically done in or kept in the Common Area or any other part of the Project which might result in the cancellation of insurance on any part of the Common Area, which would interfere with rights of other Owners, or which would be a nuisance, noxious, harmful or unreasonably offensive to other Owners. No Owner or Invitee shall perform any act which results in damage to the Common Area. Except as otherwise provided in this Declaration, access to roofs shall be restricted to persons authorized by the Board. The provisions of this Declaration concerning using, Maintaining and managing the Common Area are subject to any rights or limitations established by any easements or other encumbrances which encumber the Common Area.

4.17 WINDOW COVERINGS: All drapes, window shades or other window coverings installed in the windows of Units which are Visible from the exterior of the Unit shall comply with the Operating Rules, if applicable. Any drapes or other window covering installed by Declarant in model residences or in compliance with the Operating Rules may remain for the useful life thereof. All window coverings shall be installed within ninety (90) days after the conveyance of the Unit, unless the Operating Rules provide otherwise.

## **ARTICLE V IMPROVEMENTS**

5.1 MAINTAINING COMMON AREA AND IMPROVEMENTS: Except as otherwise specifically provided in this Declaration or a Declaration of Annexation, the Association shall Maintain the Common Area, all Improvements situated in, upon or under the Common Area (excluding Exclusive Use Common Area) and any Improvements which a Declaration of Annexation provides are to be Maintained by the Association. The Association shall provide for all necessary services and cause all acts to be done which may be appropriate or proper to Maintain the Common Area and Improvements in first class condition. A Declaration of Annexation may impose additional obligations on the Association.

5.1.1 Regular Inspections: The Association shall regularly inspect all major components of the Common Area at least once each year. One of the primary purposes of the inspection shall be to determine how to extend the life of Common Area Improvements and to prevent damage to such Improvements resulting from the Association's neglect or the failure to properly and adequately Maintain.

5.1.2 Association Maintenance Manual: The Association shall Maintain the Project in compliance with all applicable requirements imposed by the Association Maintenance Manual.

5.1.3 Records: The Association shall keep appropriate records to document that it has performed all inspections and Maintained all Improvements in compliance with the Association Maintenance Manual.

5.1.4 Pedestrian Paseo: Pursuant to the document entitled "Joint Maintenance Agreement (Natomas Parcels 14, 15, and 16)" ("Joint Maintenance Agreement") recorded on April 2, 2004, as Series No. 2004040211608 in the Official Records of the County, the Association shall pay fifty percent (50%) of the costs for Maintenance of the pedestrian paseo located along the southern boundary of the Project and

shown as "Lot B" on the Map ("Lot B"), once Lot B is annexed to the Project by a recorded Declaration of Annexation and regular assessments commence thereon. Prior to its annexation to the Project, Declarant shall pay the Association's share of the costs to Maintain Lot B pursuant to the terms of the Joint Maintenance Agreement.

5.1.5 Lot A: The Association shall Maintain that portion of the Project shown as "Lot A" on the Map ("Lot A"), once Lot A is annexed to the Project by a recorded Declaration of Annexation and regular assessments commence thereon. Prior to its annexation to the Project, Declarant shall Maintain Lot A at Declarant's sole expense.

5.1.6 Perimeter Walls and Fences: Unless otherwise provided in a Declaration of Annexation, fences and walls which separate the Project from property located outside the boundaries of the Project shall be Maintained by the Association.

5.1.7 Utility Contracts: The Association shall contract with the City and other utility suppliers, on behalf of all Owners, to provide water and storm drainage services to the Units and Common Area in the Project.

5.1.8 Water Submeters: The Association shall Maintain the domestic water submeter ("Submeter") for each Unit.

5.2 ALTERATIONS TO COMMON AREA (EXCLUDING EXCLUSIVE USE COMMON AREA):

5.2.1 Approval: Except as provided in Section 5.2.3 (Alterations Pursuant to Civil Code Section 1360), Alterations to any Improvements situated in, upon or under the Common Area (excluding Exclusive Use Common Area) may be made only by the Association. A proposal for an Alteration to an Improvement may be made at any meeting. A proposal may be adopted by the Board, subject to the limitations contained in the Bylaws.

5.2.2 Funding: Expenditures to Maintain an existing capital Improvement for which reserves have been collected may be made from the Reserve Account. Subject to the limitations set forth in Section 6.5 (Limitations on Assessments), the Board may levy a Special Assessment to fund any Alteration of an Improvement for which no reserve has been collected.

5.2.3 Alterations Pursuant to Civil Code Section 1360: An Owner may make Alterations to the Common Area and to Exclusive Use Common Area in accordance with the provisions and limitations set forth in California Civil Code Section 1360(a)(2). Any such Alterations to Common Area or Exclusive Use Common Area shall be made in accordance with the provisions of Article XI (Architectural and Landscaping Control).

5.3 MAINTAINING UNITS: Each Owner shall Maintain the Owner's Unit, including any and all fixtures, appliances and appurtenances. Maintenance shall be performed in compliance with the provisions of the Owner Maintenance Manual. The Association may adopt Operating Rules which further clarify those Improvements which are to be Maintained by an Owner and those which are to be Maintained by the Association.

5.3.1 Unit Interiors: Each Owner shall (i) Maintain, paint, paper, panel, plaster, tile and finish the interior surfaces of the ceilings, floors and the walls of that Owner's Unit; and (ii) Maintain, paint, finish, alter, substitute, add or remove any fixtures or utility connections attached to ceilings, floor or walls,



including, without limitation, toilets, showers, bathtubs, sinks, kitchen appliances, lighting and plumbing fixtures, telephone facilities, and doors within the Unit.

5.3.2 Glass Surfaces: Each Owner shall clean the interiors of any windows serving the Owner's Unit. Each Owner shall also clean all exterior windows serving the Owner's Unit except for windows which cannot be readily cleaned from the Owner's Exclusive Use Common Area or while standing on portions of the Project which are suitable for pedestrian use. The Association shall clean the exterior surfaces of all other windows of Units including windows which are accessible only with ladders or other specialized commercial equipment. The Operating Rules may further identify the exterior windows which are to be cleaned by the Owners. All replacement of glass shall be performed by the Owner of the Unit or by the Association at the expense of the Owner of the Unit.

5.3.3 Doors: Each Owner shall Maintain all doors, hardware, locks, and screens covering doors and windows of that Owner's Unit; however, all exterior doors and exterior hardware must precisely match the item replaced unless otherwise approved in accordance with the provisions of Article XI (Architectural and Landscaping Control).

5.3.4 Fire Sprinkler System: The Association shall Maintain the fire sprinkler systems situated within the Project, including, but not by way of limitation, the fire sprinkler heads situated within each Owner's Unit. The system shall be Maintained in accordance with any applicable maintenance standards imposed by the Association's insurance carriers or the Operating Rules at all times. The Association, the Association's insurance carriers and their agents, contractors and employees, shall have the right to enter the Units to inspect and Maintain the fire sprinkler heads and other components of the fire sprinkler system during normal business hours with not less than ten (10) days advance written notice.

5.3.5 Mechanical and Other Equipment: Each Owner shall Maintain any furnace, hot water heater, air conditioner, including condensers and compressors, and electrical panels and breakers which serve only that Owner's Unit, no matter where the equipment is located. Any replacement condenser or compressor must be approved by the Board unless it is the same model originally installed by Declarant or it is a model specified in the Operating Rules as an approved replacement. Each Owner shall Maintain any exterior dryer vent which serves only that Owner's Unit, no matter where located, unless located more than eight feet (8') above the adjoining ground or floor surface.

5.3.6 Access to Roofs and Other Areas: The Owner shall notify the Association at least one business day (in no event less than twenty four (24) hours) before accessing any roof or other portion of the Common Area for the purposes of performing any Maintenance which requires roof access or other Common Area access. Entry shall be limited to normal business hours and the Association shall have the right to accompany the Owner or any employee or contractor retained by the Owner during the period of any such entry onto a roof or any portion of the Common Area. The Owner shall reimburse the Association for any damages caused to the roof or other portion of the Common Area as a result of such entry.

#### 5.4 ALTERATIONS TO UNITS:

5.4.1 Generally: Alterations may be made to the interiors of Units, including Common Area physically contained within the Unit (excluding structural walls and load bearing walls), if (a) the Alterations do not impair the structural integrity of the Unit or of the building containing the Unit, (b) the Alteration complies with all provisions of Article IV (Use Restrictions) and Article V (Improvements), and (c) the Owner complies with all laws and ordinances regarding Alterations.

5.4.2 Floor Coverings: No Alteration may be made to any floor covering in a Unit or on a Balcony without first obtaining approval pursuant to Article XI (Architectural and Landscaping Control). The Association shall not approve any Alteration to a floor covering which may degrade the acoustical standard of the original floor covering installed by Declarant. The Association may require the Owner to produce a letter from an acoustical engineer which describes the existing floor covering and the proposed new floor covering and states that noise generated when the new floor covering is installed will be the same as or less than the noise generated while using the existing floor covering.

5.5 MAINTAINING EXCLUSIVE USE COMMON AREA: The responsibility for Maintaining Exclusive Use Common Area shall be as follows:

5.5.1 Association: The Association shall Maintain all fences, walls and/or railings enclosing Balconies and Yards. The Association shall Maintain the flooring of Balconies.

5.5.2 Owners: Each Owner shall Maintain all Improvements located within a Balcony, Garage and/or Yard at the Owner's sole expense. The interior surfaces of Garage doors, including structural repair and replacement, interior hardware, if any, exterior hardware, and mechanical and electrical equipment for opening and closing Garage doors shall be Maintained by the Owner using the Garage. The exterior surfaces of Garage doors shall be Maintained by the Association.

5.6 ALTERATIONS TO EXCLUSIVE USE COMMON AREA: No Alteration may be made to Exclusive Use Common Area until it has been approved by the Board and in accordance with the provisions of Article XI (Architectural and Landscaping Control). The Board shall act on any written proposals for Alterations to Exclusive Use Common Area in accordance with the architectural control provisions contained in this Declaration and/or in the Operating Rules. The cost of an Alteration to Exclusive Use Common Area shall be paid by the Owner who has obtained the approval, unless otherwise approved by the Members.

5.7 LANDSCAPING: All landscaping in the Project shall be Maintained in a manner consistent with the standards of design and quality as originally established by Declarant and in accordance with the Maintenance Manual. All landscaping shall be kept in a neat and orderly condition. Any weeds shall be removed and any diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced. All lawn areas shall be neatly mowed and trees and shrubs shall be neatly trimmed. Other specific restrictions on landscaping may be established in the Operating Rules. Irrigation systems, if any, shall be kept in good working condition to ensure continued regular watering of landscape areas, and health and vitality of landscape materials.

5.7.1 Association: The Association shall Maintain all landscaping located on Common Area, excluding Exclusive Use Common Area. The Association shall Maintain all landscaping located within the public right-of way which adjoins Common Area.

5.7.2 Owners: Each Owner shall Maintain all landscaping located within the Owner's Exclusive Use Common Area, including Yards.

5.7.3 Interim Phasing Irrigation Expenses: During construction of the Project, Declarant may use water from an Association water meter to serve Annexable Property which is not then annexed into the Project and Maintained by the Association. So long as Annexable Property which is not then annexed into the Project and Maintained by the Association is so served by water connected to the Association's water meter(s), the Association shall have the right to recover from Declarant the amount by which the Association's costs for water service exceed the costs for water service as set forth in the Association's Budget.

5.8 ASSOCIATION'S RIGHT TO ENTER AND MAINTAIN: If an Owner fails to Maintain an Improvement which that Owner is obligated to Maintain pursuant to this Declaration, and if the Association determines, after Notice and Hearing is provided pursuant to the provisions of the Bylaws, that work must be performed to Maintain the Improvement to preserve the attractiveness, quality, nature and/or value of the Project, the Association may Maintain the Improvement at the expense of the Owner which shall be charged to the Owner as a Reimbursement Assessment. In order to effectuate the provisions of this Declaration, the Association may enter any Unit, Exclusive Use Common Area and Building Common Area whenever entry is necessary to Maintain an Improvement which the Association is authorized to undertake pursuant to this Section. Entry within a Unit or Exclusive Use Common Area shall be made with as little inconvenience to an Owner as practicable and only after reasonable advance written notice of not less than forty-eight (48) hours, except in emergency situations.

5.9 DAMAGE AND DESTRUCTION: If fire or other casualty damage extends to any Common Area which is so insured, the Association shall proceed with the filing and adjustment of all claims arising under the existing insurance policies and shall represent all Owners in such proceedings. The insurance proceeds shall be paid to and held by the Association for the benefit of the Owners and their Mortgagees.

5.9.1 Bids: Whenever an Improvement is to be Restored pursuant to this Section, the Board shall obtain such bids from responsible licensed contractors to Restore the damaged Common Area as the Board deems reasonable; and the Board, on behalf of the Association, shall contract with the contractor whose bid the Board deems to be the most reasonable. The contractor shall provide a completion bond naming the Association and each Owner as beneficiaries.

5.9.2 Sufficient Proceeds: The cost to Restore the damaged Common Area shall be funded first by any insurance proceeds paid to the Association under existing insurance policies. If the insurance proceeds exceed the cost to Restore the Common Area, the excess proceeds shall be paid to the Reserve Account and held for the benefit of the Association. If the insurance proceeds are insufficient to Restore the damaged Common Area, the Board shall then add to the insurance proceeds all Reserve Account funds designated for the repair or replacement of the capital Improvement(s) which has been damaged. If the total funds then available are sufficient to Restore the damaged Common Area, the damaged Common Area shall be Restored. If the aggregate amount of insurance proceeds and such Reserve Account funds are still insufficient to pay the total cost to Restore the damaged Common Area, a Special Assessment against all Owners shall be levied by the Board up to the maximum amount permitted without the approval of the Members in accordance with the limitations set forth in Section 6.5 (Limitations on Assessments). If the total funds then available are sufficient to Restore the damaged Common Area, the damaged Common Area shall be Restored. If the total funds then available are still insufficient to Restore the damaged Common Area, then the Board shall attempt to first impose an additional Special Assessment pursuant to Section 5.9.3 (Additional Special Assessment); secondly, use a plan of Alternative Reconstruction pursuant to Section 5.9.4 (Alternative Reconstruction); and lastly, purchase the damaged Units pursuant to Section 5.9.5 (Purchase of Units of Affected Owners). If the Members do not approve action under Section 5.9.3 (Additional Special Assessment), Section 5.9.4 (Alternative Reconstruction), or Section 5.9.5 (Purchase of Units of Affected Owners), then the entire Project shall be sold by the Board pursuant to Section 5.9.6 (Sale of Entire Project).

5.9.3 Additional Special Assessment: If the total funds available to Restore the damaged Common Area as provided in Section 5.9.2 (Sufficient Proceeds) are insufficient, then a meeting shall be called for the purpose of voting whether to impose an additional Special Assessment and deciding upon the amount thereof ("**Additional Special Assessment**"). If the amount of the Additional Special Assessment approved by each class of Members, together with the amounts available pursuant to Section 5.9.2 (Sufficient Proceeds), is sufficient to Restore the damaged Common Area, the damaged Common Area shall be Restored.

If the amount of the Special Assessment approved by each class of Members, together with the amounts available pursuant to Section 5.9.2 (Sufficient Proceeds), is insufficient to Restore the damaged Common Area or if no Additional Special Assessment is approved, the Association shall consider a plan of Alternative Reconstruction in accordance with Section 5.9.4 (Alternative Reconstruction).

5.9.4 Alternative Reconstruction: The Board shall consider and propose plans to reconstruct the damaged Common Area ("**Alternative Reconstruction**") making use of whatever funds are available to it pursuant to Section 5.9.2 (Sufficient Proceeds) and whatever funds, if any, are available to it pursuant to Section 5.9.3 (Additional Special Assessment). All proposals shall be presented to the Owners. If one hundred percent (100%) of the Owners whose Units were directly affected by the damage to Common Area ("**Affected Owners**") and a majority of the Members (including the Affected Owners) agree to any plan of Alternative Reconstruction, then the Board shall contract for the reconstruction of the damaged Common Area in accordance with the plan of Alternative Reconstruction making use of whatever funds are then available to it. If no plan of Alternative Reconstruction is agreed to, then the Association shall consider purchasing the Units of the Affected Owners pursuant to Section 5.9.5 (Purchase of Units of Affected Owners).

5.9.5 Purchase of Units of Affected Owners: If no plan of Alternative Reconstruction is agreed to within six (6) months after the date of the damage, then the Board shall seek to obtain the approval of all Affected Owners and their Mortgagees to the Association's purchase of the Condominiums of the Affected Owners. The purchase price ("**Purchase Price**") for each Condominium shall be the fair market value of the Condominium immediately prior to the damage as determined by an independent appraiser selected by the Board with a "Member of the Appraisal Institute" certificate or the equivalent. If a majority of the Members (including the Affected Owners) agree to the purchase, the Association shall purchase the Condominiums of the Affected Owners who, together with all of their Mortgagees, agree to the purchase. If there are insufficient funds to pay the Purchase Price for all Condominiums owned by Affected Owners who, together with all of their Mortgagees, agree to the purchase, then a Special Assessment shall be levied against all Owners. The aggregate amount of the Special Assessment shall be the amount needed to pay the difference between the aggregate amount of available funds pursuant to Section 5.9.2 (Sufficient Proceeds) and Section 5.9.3 (Additional Special Assessment) and the aggregate fair market values of the Condominiums to be purchased.

5.9.6 Sale of Entire Project: If the aggregate amount of funds available to Restore the Common Area is insufficient to Restore the damaged Common Area, Alternative Reconstruction as defined in Section 5.9.4 (Alternative Reconstruction) cannot be agreed to, and the Owners did not approve a purchase pursuant to Section 5.9.5 (Purchase of Units of Affected Owners), then the Board shall be empowered to sell the entire Project, including all Units and the Common Area in their then present condition, on terms to be determined by the Board. If the entire Project is sold, the proceeds from the sale, together with the insurance proceeds received and any balance of funds held by the Association, shall be distributed among those Owners who then own Condominiums and their respective Mortgagees in proportion to the respective fair market values of the Condominiums immediately prior to the destruction, as determined by an independent appraisal made by an independent real estate appraiser with a Member of the Appraisal Institute certificate or the equivalent as selected by the Board.

5.10 CONDEMNATION: If all or any portion of the Project is taken for any public or quasi-public use under any statute, by right of eminent domain or by purchase in lieu of eminent domain, the following procedures shall be used for distribution of any condemnation awards:

5.10.1 Project Common Area: If the portion of the Project condemned is Project Common Area, the entire award shall be paid to the Association. The award shall be deposited into the Current Operation Account until distributed. The Association shall distribute such funds proportionately to all Owners and their Mortgagees as their interests appear according to the respective fair market values of their Condominiums immediately prior to the condemnation, as determined by an independent appraisal made by an independent real estate appraiser with a Member of the Appraisal Institute Certificate or the equivalent, as selected by the Board. The Association shall represent the interests of all Owners in any proceeding relating to condemnation of Project Common Area.

5.10.2 Building Common Area: If the portion of the Project condemned is Building Common Area, the entire award shall be paid either (i) as apportioned by court judgment, (ii) as apportioned among the Owners of the Building Common Area and their Mortgagees by agreement between the condemning authority and each of the Owners of the Building Common Area and their Mortgagees or (iii) to such Owners and their Mortgagees proportionately according to the respective fair market values of their Condominiums immediately prior to the time of condemnation, as determined by an independent appraisal made by an independent real estate appraiser with a Member of the Appraisal Institute Certificate or the equivalent, as selected by the Board. The Association shall represent the interests of the Affected Owners.

5.11 MECHANIC'S LIENS: If a notice of mechanic's lien is filed against the Project for labor or material alleged to have been furnished to or delivered for any Owner within the Project or at that Owner's Unit, the Owner shall immediately cause the lien to be discharged by payment, bond or otherwise. If the Owner fails to discharge the lien, the Board may provide Notice and Hearing to the Owner to determine the effect of the lien and any offsets or defenses thereto. At the hearing, if the Board determines that the lien adversely and improperly affects and encumbers the ownership interests of other Owners and that no adequate protection of the interests of other Owners has been provided, the Board may cause the lien to be discharged by payment, bond or otherwise. The Board shall then levy a Reimbursement Assessment against the Owner(s) responsible for the existence of the lien together with any Additional Charges incurred. If the Board determines that the lien does not adversely affect the interests of other Owners, it may take whatever other action may be necessary to properly protect the interests of the Owners.

## **ARTICLE VI**

### **FUNDS AND ASSESSMENTS**

6.1 COVENANTS TO PAY: Declarant and each Owner covenant and agree to pay to the Association the assessments and any Additional Charges levied pursuant to this Article VI.

6.1.1 Liability for Payment: The obligation to pay assessments shall run with the land so that each successive record Owner of a Condominium shall in turn be liable to pay all such assessments. No Owner may waive or otherwise escape personal liability for assessments or release the Owner's Condominium from the liens and charges hereof by non-use of the Common Area, abandonment of the Condominium or any other attempt to renounce rights in the Common Area or the facilities or services within the Project. Each assessment shall constitute a separate assessment and shall also be a separate, distinct and personal obligation of the Owner of the Condominium at the time when the assessment was levied and shall bind the Owner's heirs, devisees, personal representatives and assigns. Any assessment not paid within fifteen (15) days after its due date is delinquent. The personal obligation of an Owner for delinquent assessments shall not pass to a successive Owner unless the personal obligation is expressly assumed by the successive Owner. No such assumption of personal liability by a successor Owner (including a contract purchaser under an installment land contract) shall relieve any Owner from personal liability for delinquent

assessments. After an Owner transfers fee title of record to a Condominium, the Owner shall not be liable for any charge thereafter levied against that Condominium.

6.1.2 Funds Held in Trust: The assessments collected by the Association shall be held by the Association for and on behalf of each Owner and shall be used solely to operate and Maintain the Project as provided in this Declaration.

6.1.3 Offsets: No offsets against any assessment shall be permitted for any reason, including, without limitation, any claim that the Association is not properly discharging its duties.

## 6.2 REGULAR ASSESSMENTS:

6.2.1 Payment of Regular Assessments: Regular Assessments for each fiscal year shall be established when the Board approves the Budget for that fiscal year. Regular Assessments shall be levied on a fiscal year basis; however, each Owner shall be entitled to pay the Regular Assessment in twelve (12) equal monthly installments, one installment payable on the first day of each calendar month during the fiscal year, as long as the Owner is not delinquent in the payment of any monthly installment. If an Owner fails to pay any monthly installment by the sixtieth (60<sup>th</sup>) day after the date the installment was due, the Board may terminate that Owner's right to pay the Regular Assessment in monthly installments and declare the then unpaid balance of the Regular Assessment for that year immediately due and payable. Regular Assessments shall commence for all Condominiums in each Phase on the first day of the first month following the month in which the first Condominium in that Phase is conveyed to an Owner (other than a Declarant) and may commence at any earlier date at the option of Declarant. Declarant may exercise its option to commence Regular Assessments in a Phase at an earlier date, by providing a written notice to the Association which identifies the Phase and specifies the date on which Regular Assessments are to commence.

6.2.2 Allocation of Regular Assessments: The total amount of the Association's anticipated revenue attributable to Regular Assessments as reflected in the Budget for that fiscal year shall be allocated equally among the Condominiums. For the first fiscal year, the Budget shall be substantially based upon the operating budget accepted by the Department of Real Estate of the State of California. After Annexation of each Phase, the allocation and assessment of the charges in the Budget shall be reallocated equally among all Condominiums in the Project, including those in the annexed portions of the Annexable Property.

6.2.3 Exemptions from Regular Assessment: Notwithstanding the provisions of Section 6.2.1 (Payment of Regular Assessments) and Section 6.2.2 (Allocation of Regular Assessments), the Board shall exempt each Owner of a Condominium which satisfies Section 6.2.3(a) (Condominium Buildings) and may exempt all Owners if Section 6.2.3(b) (Other Common Area) is satisfied, from the payment of a portion of the Regular Assessment levied against that Condominium as described in those paragraphs.

(a) Condominium Buildings: An Owner of a Condominium is exempt from payment of that portion of the Regular Assessment which is allocated for defraying operating expenses and reserves directly attributable to the existence and use of buildings containing Units until the first to occur of the following events: (i) a notice of completion of construction of the Building in which the Owner's Unit is contained has been recorded; (ii) the Owner's Condominium is occupied or otherwise used; or (iii) the structural components of the Building in which the Owner's Unit is contained are complete.

(b) Other Common Area: Each Owner may be exempted from payment of that portion of the Regular Assessment which is allocated for defraying operating expenses and reserves directly attributable to the existence and use of a common facility (including landscaping) that is not complete at the

time Regular Assessments commence until the first to occur of the following events: (i) a notice of completion of the common facility is recorded; (ii) the common facility has been placed into use; or (iii) in the case of landscaping, the landscaping is installed and no one other than the Association has any obligation to Maintain the landscaping.

6.2.4 Non-Waiver of Assessments: If before the expiration of any fiscal year the Association fails to fix Regular Assessments for the next fiscal year, the Regular Assessment established for the preceding year shall continue until a new Regular Assessment is fixed.

6.3 SPECIAL ASSESSMENTS: Subject to the limitations set forth in Section 6.5 (Limitations on Assessments), Special Assessments may be levied in addition to Regular Assessments for (i) constructing capital Improvements, (ii) correcting an inadequacy in the Current Operation Account, (iii) defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of Improvements in the Common Area, or (iv) paying for such other matters as the Board may deem appropriate for the Project. Special Assessments shall be levied in the same manner as Regular Assessments.

6.4 REIMBURSEMENT ASSESSMENTS: The Association shall levy a Reimbursement Assessment against an Owner to (a) reimburse the Association for the costs of repairing damage caused by that Owner or that Owner's Invitee or (b) if a failure to comply with the Project Documents has resulted in (i) an expenditure of monies, including attorneys' fees, by the Association to bring the Owner or the Owner's Condominium or Improvements into compliance or (ii) the imposition of a fine or penalty. A Reimbursement Assessment shall be due and payable to the Association when levied. A Reimbursement Assessment shall not be levied by the Association until Notice and Hearing has been given in accordance with the Bylaws. Reimbursement Assessments may not be enforced by lien.

6.5 LIMITATIONS ON ASSESSMENTS: All Regular and Special Assessments levied by the Board must comply with the provisions of California Civil Code Section 1366, and to the extent applicable, California Civil Code Section 1363.03.

6.6 ACCOUNTS:

6.6.1 Types of Accounts: Assessments collected by the Association shall be deposited into at least two (2) separate accounts with a responsible financial institution, which accounts shall be clearly designated as (i) the Current Operation Account and (ii) the Reserve Account. The Board shall deposit those portions of the assessments collected for current maintenance and operation into the Current Operation Account and shall deposit those portions of the assessments collected as reserves for replacement and deferred maintenance of major components which the Association is obligated to Maintain into the Reserve Account.

6.6.2 Reserve Account: Withdrawal of funds from the Reserve Account shall require the signatures of either two (2) Directors or one (1) Director and one (1) officer of the Association who is not a Director. The Association may expend funds from the Reserve Account only for the purposes set forth in California Civil Code Section 1365.5.

6.6.3 Current Operation Account: All other costs properly payable by the Association shall be paid from the Current Operation Account.

6.7 BUDGET, FINANCIAL STATEMENTS, REPORTS AND STUDIES:

6.7.1 Preparation and Distribution of Budget: The Board shall annually prepare, adopt and distribute a Budget in accordance with the requirements of California Civil Code Section 1365. A summary of the Budget may be distributed in lieu of the entire Budget if the requirements set forth in California Civil Code Section 1365 are satisfied. Each Budget or summary shall be accompanied by the disclosures required by California Civil Code Sections 1365.1 and 1363.850.

6.7.2 Annual Report: The Board shall annually prepare and distribute an annual report in accordance with the requirements of California Civil Code Section 1365.

6.7.3 Quarterly Reconciliation: If then required by California Civil Code Section 1365, at least quarterly, the Board shall: (i) cause a current reconciliation of the Association's Operating Account(s) to be made and review the same; (ii) cause a current reconciliation of the Association's Reserve Account to be made and review the same; (iii) review the current year's actual reserve revenues and expenses compared to the current year's Budget; (iv) review the most current account statements prepared by the financial institution where the Association has its Operation and Reserve Accounts; and (v) review an income and expense statement for the Association's Operation and Reserve Accounts.

6.7.4 Reserve Account Study: The Board shall (i) cause a study of the Reserve Account to be conducted, (ii) review or cause the study to be reviewed annually and (iii) consider and implement necessary adjustments to the Board's analysis of the Reserve Account requirements as a result of that review in compliance with the provisions of California Civil Code Section 1365.5.

6.8 ENFORCEMENT OF ASSESSMENTS: A lien may not be recorded against an Owner's Condominium for failure to pay assessments until all of the requirements of California Civil Code Sections 1367.1 and 1367.4 have been satisfied.

6.8.1 Procedures: In addition to all other remedies provided by law, the Association, or its authorized representative, may enforce the obligations of the Owners to pay each assessment provided for in this Declaration in any manner provided by law or by either or both of the following procedures:

(a) By Suit: The Association may commence and prosecute a suit at law against any Owner personally obligated to pay a delinquent assessment. The suit shall be prosecuted in the name of the Association. Any judgment rendered in any action shall include the amount of the delinquency, and such additional costs, fees, charges and expenditures ("**Additional Charges**") and any other amounts as the court may award. A proceeding to recover a judgment for unpaid assessments may be prosecuted without the necessity of foreclosing or waiving the lien established herein.

(b) By Lien: The Association or a trustee nominated by the Association may commence and prosecute proceedings to establish and/or foreclose assessment liens in accordance with the provisions of California Civil Code Section 1367.1.

6.8.2 Additional Charges: In addition to any other amounts due or any other relief or remedy obtained against an Owner who is delinquent in the payment of any assessments, each Owner agrees to pay such Additional Charges as the Association may incur or levy in collecting the monies due and delinquent from that Owner. All Additional Charges shall be included in any judgment in any suit or action brought to enforce collection of delinquent assessments or may be levied against a Condominium as a Reimbursement Assessment. Additional Charges shall include, but not be limited to, the following:



(a) Attorneys' Fees: Reasonable attorneys' fees and costs incurred in the event an attorney(s) is employed to collect any assessment or sum due, whether by suit or otherwise;

(b) Late Charges: A late charge in an amount to be fixed by the Board in accordance with the then current laws of the State of California to compensate the Association for additional collection costs incurred in the event any assessment or other sum is not paid when due or within any "grace" period established by law;

(c) Costs of Suit: Costs of suit and court costs incurred as are allowed by the court;

(d) Interest: Interest on the delinquent assessment and Additional Charges at a rate fixed by the Board in accordance with the then current laws of the State of California; and

(e) Other: Any such other additional costs that the Association may incur in the process of collecting delinquent assessments or sums.

6.8.3 Satisfaction of Lien: All amounts paid by an Owner toward a delinquent assessment shall be credited first to reduce the principal amount of the debt. Within twenty-one (21) days of payment or other satisfaction of a delinquent assessment for which a Notice of Delinquent Assessment was recorded pursuant to California Civil Code Section 1367.1(d), the Association shall record a certificate stating the satisfaction and release of the assessment lien.

6.8.4 Lien Eliminated By Foreclosure: If the Association has recorded a Notice of Delinquent Assessment and the lien is eliminated as a result of a foreclosure of a Mortgage or a transfer pursuant to the remedies provided in the Mortgage, the new Owner of the Condominium shall pay to the Association a pro-rata share of the Regular Assessment for each month remaining in the Association's fiscal year after the date of the foreclosure or transfer pursuant to the remedies provided in the Mortgage.

6.8.5 Waiver of Homestead Protections: Each Owner, does hereby waive, to the extent permitted by law, the protections of any declared homestead or homestead exemption or redemption laws under the laws of California as applied to any action to enforce or collect assessments levied by the Association.

6.9 SUBORDINATION OF LIEN: Notwithstanding any provision to the contrary, the liens for assessments created pursuant to this Declaration shall be subject and subordinate to and shall not affect the rights of the holder of a First Mortgage made in good faith and for value. Upon the foreclosure of any First Mortgage on a Condominium, any lien for assessments which became due prior to such foreclosure shall be extinguished; provided, however, that after such foreclosure there shall be a lien on the interest of the purchaser at the foreclosure sale to secure all assessments, whether Regular or Special, charged to such Condominium after the date of such foreclosure sale, which lien shall have the same effect and shall be enforced in the same manner as provided herein. For purposes of this Section, a Mortgage may be given in good faith or for value even though the Mortgagee has constructive or actual knowledge of the assessment lien provisions of this Declaration.

**ARTICLE VII**  
**MEMBERSHIP IN AND DUTIES OF THE ASSOCIATION**

7.1 **THE ORGANIZATION:** The Association is a nonprofit mutual benefit corporation. Its affairs shall be governed by and it shall have the powers set forth in the Project Documents.

7.2 **MEMBERSHIP:** Each Owner (including Declarant for so long as Declarant is an Owner), by virtue of being an Owner, shall be a Member of the Association. No other person shall be accepted as a Member.

7.2.1 **Appurtenant to Ownership:** Association membership is appurtenant to and may not be separated from the ownership of a Condominium. Membership shall terminate upon termination of Condominium ownership. Ownership of a Condominium shall be the sole qualification for Association membership. Membership shall not be transferred, pledged or alienated in any way except upon transfer of title to the Owner's Condominium (and then only to the transferee of title to such Condominium). Any attempt to make a prohibited transfer is void. Membership shall not be related to the use or non-use of the Common Area and may not be renounced. The rights, duties, privileges and obligations of all Members shall be as provided in the Project Documents.

7.2.2 **Annexation:** Upon the commencement of Regular Assessments in a subsequent Phase, the Owners of the Condominiums described in the Declaration of Annexation for that Phase shall become Members.

7.3 **VOTING:** Any action required by law or by the Project Documents to be approved by the Owners, the Members or each class of Members shall be approved, if at all, in accordance with the procedures set forth in the Bylaws.

7.4 **OPERATING RULES:** Operating Rules may be adopted and changed in accordance with the provisions of California Civil Code Division 2, Part 4, Title 6, Chapter 2, Article 4 (Section 1357.100 et seq.), and to the extent applicable, California Civil Code Section 1363.03. In all votes held pursuant to California Civil Code Section 1357.140(d), Class A Members shall be entitled to cast Class A votes, Class B Members shall be entitled to cast Class B votes and all votes shall be counted pursuant to the provisions of Section 4.3.3 (Of the Members) of the Bylaws. Operating Rules may address any matter that is related to the operation or management of the Project. Each provision of the Operating Rules must be consistent with the then current law and the Project Documents and may not reduce any standard established by this Declaration unless mandated by then current law. The Operating Rules may include Architectural Standards. Architectural Standards may include, but are not limited to, (a) standards and procedures for architectural review, (b) guidelines for architectural design, placement of buildings, color schemes, exterior finishes and materials, landscaping, fences, and similar features, and (c) a schedule of fees for processing submittals which shall not exceed the amount necessary to defray all costs incurred in processing the submittals.

7.5 **TRANSFERS OF COMMON AREA:** The Board shall have the exclusive power and right in the name of the Association to grant, convey, dedicate, mortgage, or otherwise transfer (collectively referred to as "Transfer") to any Owner or other person or entity, fee title, easements, exclusive use easements, security rights or other rights or licenses in, on, over or under the Project Common Area, subject only to the following limitations:

7.5.1 Exclusive Use Rights to Owners: Transfers to Owners which are subject to the provisions of California Civil Code Section 1363.07 require the approval of sixty-seven percent (67%) of the Members in accordance with the Secret Ballot Procedure described in Section 2.7 of the Bylaws (Secret Ballot Procedure).

7.5.2 Value of Property Being Sold: Any sales of Project Common Area during a fiscal year which have an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association require the approval of the Members in accordance with the provisions of Section 3.3 of the Bylaws (Limitations on Powers of Board). The Board may rely upon an appraisal provided to it or obtained by it at the time of the sale. The Secret Ballot Procedure does not apply to this approval unless the approval is also subject to Section 7.5.1 (Exclusive Use Rights to Owners).

7.5.3 Building Common Area, Units and Exclusive Use Common Area: Transfers of Building Common Area require the approval of the Owners of seventy-five percent (75%) of the Units located within the Building Common Area. Transfers of any portion of a Unit or Exclusive Use Common Area require the approval of the Owner of the Unit or Exclusive Use Common Area.

The Board is hereby granted the power and right, in the names of all Owners of any Building Common Area which is to be Transferred, as their attorneys-in-fact, to execute any deed, easement, license or other instrument appropriate to make a Transfer which is approved in accordance with this Section 7.5.

7.6 INSURANCE: The Board shall make every reasonable effort to obtain and keep in full force and effect the insurance policies as provided in this Section. If the Board is unable to purchase a policy or if the Board believes that the cost of the policy is unreasonable, the Board shall call a special meeting of Members to determine what action to take. The Board shall comply with any resolution concerning insurance coverage adopted at such a meeting.

7.6.1 General Provisions and Limitations: All insurance policies shall be subject to and, where applicable, shall contain the following provisions and limitations:

(a) Underwriter: All policies (except earthquake insurance) shall be written with a company legally qualified to do business in the State of California and (i) holding a "B" or better general policyholder's rating and a "6" or better financial performance index rating as established by Best's Insurance Reports, (ii) reinsured by a company described in (i), above, or (iii) if such a company is not available, the best rating possible or its equivalent.

(b) Named Insured: Unless otherwise provided in this Section, the named insured shall be the Association or its authorized representative, as a trustee for the Owners. However, all policies shall be for the benefit of Owners and their Mortgagees, as their interests may appear.

(c) Certificate of Insurance: If reasonably available, provision shall be made for the issuance of a certificate of insurance to each Owner and that Owner's Mortgagee which shall specify the amount of such insurance attributable to the particular Owner's Condominium.

(d) Authority to Negotiate: Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board; provided, however, that no Mortgagee having an interest in such losses may be prohibited from participating in any settlement negotiations related thereto.

(e) Contribution: In no event shall the Association's insurance coverage be brought into contribution with insurance purchased by Owners or their Mortgagees.

(f) General Provisions: To the extent possible, the Board shall make every reasonable effort to secure insurance policies providing for the following:

(i) A waiver of subrogation by the insurer as to any claims against the Board, the manager, the Owners and their respective servants, agents and guests;

(ii) That the policy will be primary, even if an Owner has other insurance which covers the same loss;

(iii) That no policy may be cancelled or substantially modified without at least ten (10) days' prior written notice to the Association and to each First Mortgagee listed as a scheduled holder;

(iv) An agreed amount endorsement, if the policy contains a coinsurance clause;

(v) A guaranteed replacement cost or replacement cost endorsement; and

(vi) An inflation guard endorsement.

(g) Term: The period of each policy shall not exceed three (3) years. Any policy for a term greater than one (1) year must permit short rate cancellation by the insureds.

(h) Deductible: The policy may contain a reasonable deductible and the amount of the deductible shall be added to the face amount of the policy in determining whether the insurance equals replacement cost.

7.6.2 Types of Coverage: Unless the Association determines otherwise pursuant to Section 7.6 (Insurance), the Board shall obtain at least the following insurance policies in the amounts specified:

(a) Property Insurance: A Special Form or "All-Risk" policy of property insurance for all insurable Common Area Improvements, including fixtures and building service equipment, against loss or damage by fire or other casualty, in an amount equal to the full replacement cost (without respect to depreciation) of the Common Area, and exclusive of land, foundations, excavation and other items normally excluded from coverage. A replacement cost endorsement shall be part of the policy.

(b) Liability Insurance: A combined single limit policy of liability insurance in an amount not less than Three Million Dollars (\$3,000,000.00) covering the Common Area and all damage or injury caused by the negligence of the Association, the Board or any of its agents or the Owners against any liability to the public or to any Owner incident to the use of or resulting from any accident or intentional or unintentional act of an Owner or a third party occurring in or about any Common Area. If available, each policy shall contain a cross liability endorsement in which the rights of the named insured shall not be prejudiced with respect to any action by one named insured against another named insured.

(c) Worker's Compensation: Worker's compensation insurance to the extent necessary to comply with all applicable laws of the State of California or the regulations of any governmental body or authority having jurisdiction over the Project.

(d) Fidelity Bond: A fidelity bond naming the Board, the Owners, the Association and such other persons as the Board may designate as obligees, in an amount equal to at least one-fourth (1/4) of the total sum budgeted for the Current Operation Account and Reserve Account for the current fiscal year.

The fidelity bond shall contain a waiver of any defense based on the exclusion of persons serving without compensation.

(e) Directors and Officers: Errors and omissions insurance covering individual liability of Directors and officers for their negligent acts or omissions while acting in their capacities as Directors and officers in an amount equal to at least the minimum amount specified in California Civil Code Section 1365.7(a)(4).

(f) Other Insurance: Other types of insurance as the Board determines to be necessary to fully protect the interests of the Owners.

(g) Additional Insurance by Owner: The insurance policies carried by the Association are not intended to cover any Improvement or any personal property situated within an individual Unit. Therefore, each Owner is responsible for determining and obtaining the type and amount of insurance needed to insure all Improvements (which existed at the time of purchase of the Unit and which are subsequently added) and personal property located within the Owner's Unit. If a policy carried by the Association offers coverage for a claim made by an Owner as a result of damage to any Improvement or personal property within a Unit, the Owner shall be responsible for paying any deductible, if the Owner wishes to adjust the claim under the Association's policy. No Owner shall be entitled to procure insurance coverage which decreases the amount which the Association, on behalf of all Owners and their Mortgagees, may realize under any insurance policy which the Association may have in effect at any time.

7.6.3 Annual Review: The Board shall review the adequacy of all insurance, including the amount of liability coverage and the amount of property damage coverage, at least once every year. At least once every three years, the review shall include a replacement cost appraisal of all insurable Common Area Improvements without respect to depreciation. The Board shall adjust the policies to provide the amounts and types of coverage and protection that are customarily carried by prudent owners of similar property in the area in which the Project is situated.

7.7 ANNUAL NOTICES TO MEMBERS: The notices described in this Section shall be given to the Members annually at the same time the Budget is distributed to the Members.

7.7.1 Insurance: A summary of the Association's property damage, general liability, earthquake, flood and fidelity insurance policies as required by California Civil Code Section 1365(e).

7.7.2 Assessments and Foreclosure: The notice required by California Civil Code Section 1365.1.

7.7.3 Assessment Enforcement Procedure: The statement of the Association's policies and practices in enforcing its remedies against Owners for defaults in the payment of Regular and Special Assessments, including the recording and foreclosing of liens against Condominiums required by California Civil Code Section 1365(d).

7.7.4 Increase in or Levy of Assessments: Notice of any increase in Regular Assessments or the levy of any Special Assessments in accordance with the provisions of California Civil Code Section 1366.

7.7.5 Informal Alternative Dispute Resolution: A description of any internal dispute resolution process adopted by the Association or, if no such process has been adopted, a statement that the Association's informal internal dispute resolution process is that provided in California Civil Code Section 1369.540.

7.7.6 Formal Alternative Dispute Resolution: A summary of the provisions of California Civil Code Sections 1369.510 through 1369.590 as required by and in accordance with the provisions of California Civil Code Section 1369.590. The summary shall include the following language:

"Failure of a member of the association to comply with the alternative dispute resolution requirements of Section 1369.520 of the Civil Code may result in the loss of your right to sue the association or another member of the association regarding enforcement of the governing documents or the applicable law."

7.7.7 Architectural Approvals: The Association shall provide notice of the requirements for Association approval of proposed Alterations. The notice shall describe the types of Alterations that require approval and shall include a copy of (a) Article XI (Architectural and Landscaping Control) of this Declaration, (b) all sections of the Operating Rules that establish Architectural Standards, and (c) any other provisions of the Project Documents which include procedures used to review and approve or disapprove a proposed Alteration.

7.8 SCHEDULE OF MONETARY PENALTIES: If the Board adopts a policy imposing any monetary penalty on or charging any fee to any Owner for a violation of the Project Documents by that Owner or that Owner's Invitee, the Board shall adopt a schedule of the monetary penalties that may be assessed for those violations. The penalties must be consistent with the Project Documents. A copy of the schedule shall be personally delivered or mailed by first-class mail, postage prepaid, to each Owner by the Board. Each time the schedule is modified, the Board shall again deliver a copy to each Owner, either personally or by first-class mail, postage prepaid.

7.9 CIVIL CODE SECTION 1368: Upon written request by a Member, the Association shall provide the Member with a copy of any or all items described in California Civil Code Section 1368(a) within ten (10) days of the mailing or delivery of the request. The items required to be made available pursuant to Section 1368 may be kept in electronic form and the Member shall have the option of receiving the items by electronic transmission or machine readable storage media if the Association keeps the items in electronic form. The Association may charge a reasonable fee for this service upon the Association's actual cost to procure, prepare, and reproduce the requested items.

7.10 AUTHORITY TO REPRESENT ASSOCIATION: Neither an Owner nor the Association (including its officers and Directors) may represent that the Association or the Members are in favor of or against any proposed residential, commercial, recreational or industrial development or a governmental approval connected with any such development, including, but not by way of limitation, zoning or rezoning decision, specific or general plan amendment or decision, tentative or final map approval or use permit, without the approval of each class of Members.

**ARTICLE VIII**  
**DEVELOPMENT RIGHTS**

8.1 LIMITATIONS OF RESTRICTIONS: Declarant is undertaking the work of developing Condominiums and other Improvements within the Project. The completion of the development and the marketing, sale, lease, rental and/or other disposition of the Condominiums is essential to the establishment and welfare of the Subject Property and the Annexable Property as a residential community. In order that the work may be completed and the Project established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be interpreted to deny Declarant the rights set forth in this Article.

8.2 RIGHTS OF ACCESS AND COMPLETION OF CONSTRUCTION: Until three (3) years after all of the Annexable Property has been annexed to the Project, Declarant, its contractors and subcontractors shall have the right to: (i) obtain reasonable access over and across the Common Area of the Project and/or do within any Unit owned or controlled by it whatever is reasonably necessary or advisable in connection with the completion of the Project; and (ii) erect, construct and use on the Common Area of the Project and/or within any Unit owned or controlled by it such structures as may be reasonably necessary for the conduct of its business to complete the work, establish the Project as a residential community and dispose of the Project in parcels by sale, lease, rental or otherwise. Each Owner acknowledges that: (a) the construction of the Project may occur over an extended period of time; (b) the Owner's quiet use and enjoyment of the Owner's Condominium may be disturbed as a result of the noise, dust, vibrations and other nuisances associated with construction activities; and (c) the nuisances will continue until the completion of the construction of the entire Project.

8.3 SIZE AND APPEARANCE OF PROJECT: Declarant shall not be prevented from increasing or decreasing the number of Condominiums that may be annexed to the Project or from changing the exterior appearance of Common Area structures, the landscaping or any other matter directly or indirectly connected with the Project in any manner deemed desirable by Declarant, if Declarant obtains all governmental consents required by law.

8.4 MARKETING RIGHTS: Declarant has the right to: (i) construct, establish and use model homes, signs, banners, flags, inflatable balloons, blimps, sales offices, sales and construction trailers, leasing offices, rental offices, storage areas, parking lots and related facilities in any Units owned or controlled by Declarant or in Common Area within the Project as is appropriate in the opinion of Declarant for the sale, lease, rental or other disposition of the Condominiums in the Project and Units in any other neighborhood in the vicinity of the Project in which Declarant is constructing and selling the same or a similar product type ("**Related Units**"); (ii) make reasonable use of the Common Area and facilities for the sale, lease, rental or other disposition of Condominiums and Related Units; (iii) use Units owned or controlled by Declarant in accordance with any promotional programs established from time to time by Declarant; and (iv) conduct its business of disposing of Condominiums and Related Units by sale, lease, rental or otherwise; provided, however, Declarant shall pay reasonable rent for the use of any Common Area facilities to the Association if Declarant's use of those Common Area facilities materially interferes with the full use and enjoyment of the Common Area facilities by Owners.

8.5 TITLE RIGHTS: This Declaration shall not be construed to constitute a limitation on Declarant's title rights to the Annexable Property prior to its annexation, nor shall it impose any obligation on Declarant or any other person or entity to improve, develop or annex any portion of the Annexable Property. This Declaration shall not be construed to limit the right of Declarant at any time prior to such an annexation to establish additional licenses, easements, reservations, restrictions and rights-of-way for itself,

utility companies or others as reasonably necessary for the proper development and disposition of property owned by Declarant.

**ARTICLE IX**  
**RIGHTS OF MORTGAGEES**

9.1 **CONFLICT:** Notwithstanding any contrary provision in the Project Documents, the provisions of this Article shall control with respect to the rights and obligations of Mortgagees specified herein.

9.2 **RESERVE FUND:** The Reserve Account described in Section 6.6 (Accounts) shall be funded by Regular Assessments at a level which is adequate to replace those Improvements that the Association is obligated to Maintain.

9.3 **CONTRACTS AND AGREEMENTS:** Any agreement providing for services of Declarant shall be for a term not to exceed one (1) year without the approval of fifty-one percent (51%) of each class of Members; provided, however, that in no event shall such an agreement exceed a term of three (3) years. Any such agreement shall provide that the agreement may be terminated by either party without cause and without payment of a termination fee upon not more than ninety (90) days written notice.

9.4 **NOTICES TO FIRST MORTGAGEES:** The Association shall give timely written notice of each of the following events to each First Mortgagee:

9.4.1 **Loss:** Any condemnation loss or casualty loss which affects either a material portion of the Project or the Condominium on which the First Mortgagee holds a First Mortgage;

9.4.2 **Delinquency:** Any delinquency in the payment of assessments or charges owed by the Owner of a Condominium which is subject to a First Mortgage held by the First Mortgagee if the delinquency is not cured within sixty (60) days after its due date;

9.4.3 **Insurance:** Any lapse, cancellation or material modification of any Association insurance policy;

9.4.4 **Specific Actions:** Any proposal to take any action specified in this Article or in Section 10.1.1 (Mortgagee Requirements); or

9.4.5 **Default:** Any default by an Owner in the performance of obligations under this Declaration or the Bylaws which is not cured within sixty (60) days.

9.5 **INSPECTION OF BOOKS AND RECORDS:** Upon request, any Owner or First Mortgagee shall be entitled to inspect and copy the books, records and financial statements of the Association, the Project Documents and any amendments thereto during normal business hours.

9.6 **FINANCIAL STATEMENTS FOR MORTGAGEES:** If an audited financial statement for the immediately preceding fiscal year is available, the Association shall provide a copy to any Institutional Mortgagee who makes a written request for it. If an audited financial statement is not available and an Institutional Mortgagee requests one, the Association, at its expense, shall prepare an audited financial statement for the immediately preceding fiscal year.



9.7 **TERMINATION OF PROJECT:** Any decision, by act or omission, to abandon or terminate the legal status of the Project as a Condominium Project shall require the approval of sixty-seven percent (67%) of the Institutional Mortgagees, based on one (1) vote for each Condominium encumbered by a First Mortgage owned by the Institutional Mortgagee, and the approval of sixty-seven percent (67%) of the total voting power of the Association.

9.8 **ACTIONS REQUIRING APPROVAL:** Except as provided by statute in the case of condemnation or substantial loss to Units and/or Common Area, unless sixty-seven (67%) of the Institutional Mortgagees, based on one (1) vote for each Condominium encumbered by a First Mortgage owned by the Institutional Mortgagee, or sixty-seven percent (67%) of the Members, excluding the vote of Declarant have given their prior written approval, the Association shall not be entitled to:

9.8.1 **Insurance Proceeds:** Use hazard insurance proceeds for losses to any Project property (whether to Units or Common Area) for other than the repair, replacement or reconstruction of the Project property;

9.8.2 **Condominium Partition:** Partition or subdivide any Condominium;

9.8.3 **Actions Affecting Common Area:** By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area. (The granting of easements for public utilities or for the other public purposes consistent with the intended use of the Common Area by the Project shall not be deemed a transfer within the meaning of this clause);

9.8.4 **Change In Assessments Or Distributions:** Change the pro rata interests or obligations of any individual Condominium for the purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards.

9.9 **MORTGAGE PROTECTION:** A breach of any of the conditions or the enforcement of any lien provisions contained in this Declaration shall not defeat or render invalid the lien of any First Mortgage made in good faith and for value as to any Condominium in the Project; but all of the covenants, conditions and restrictions contained in this Declaration shall be binding upon and effective against any Owner of a Condominium if the Condominium is acquired by foreclosure, trustee's sale or otherwise.

## **ARTICLE X AMENDMENT AND ENFORCEMENT**

10.1 **AMENDMENTS:** Prior to the conveyance of the first Condominium to an Owner other than a Declarant, any Project Document may be amended by Declarant alone. After the conveyance of the first Condominium to an Owner other than a Declarant, the Project Documents may be amended if each of the following requirements is satisfied:

10.1.1 **Mortgagee Requirements:** The approval of each class of Members and fifty-one percent (51%) of the First Mortgagees, based on one (1) vote for each Condominium encumbered by a First Mortgage owned by the First Mortgagee, is obtained to amend any provision of this Declaration or the Bylaws which establishes, provides for, governs or regulates any of the following subjects:

- (a) Any amendment of a material and adverse nature to Mortgagees; or

(b) The provisions of Section 6.9 (Subordination of Lien), Article IX (Rights of Mortgagees) and this Section 10.1.1.

Any amendment or addition to the Declaration or Bylaws regarding any of the foregoing subjects shall not be considered material and need not be approved by First Mortgagees if the amendment or addition is solely for the purposes of correcting technical errors or for clarification. Any First Mortgagee who receives a written request to approve the taking of any action under the Project Documents which the First Mortgagee has a right to approve and who does not deliver or have its response postmarked within sixty (60) days of the date contained within the written request shall be deemed to approve the action. All notices or other communications made pursuant hereto shall be in writing and shall be deemed properly delivered, given or served when (i) personally delivered against receipted copy; or (ii) mailed by certified or registered mail, postage prepaid, return receipt requested, in either case (i) or (ii) to the parties at their last known address.

10.1.2 Approval of Each Class: The approval of each class of Members is obtained in accordance with the procedure described in Section 2.7 (Secret Ballot Procedure) of the Bylaws; provided, however, that no provision of this Declaration which provides for a vote of more than fifty-one percent (51%) may be amended by a vote less than the percentage specified in the Section to be amended.

10.1.3 Development Rights: The provisions of Article VIII (Development Rights) and this Section 10.1.3 may not be amended without the consent of Declarant until (i) all of the Annexable Property has been annexed to the Project and (ii) all of the Condominiums in the Project owned by Declarant have been conveyed.

10.1.4 Maintenance & Dispute Provisions: The provisions of Section 2.20 (Dispute), Section 2.28 (Maintain), Section 2.29 (Maintenance Manual), Section 3.4.10 (Right of Entry to Inspect), Section 3.4.11 (Right of Entry to Perform Work), Section 3.4.12 (Right to Photograph), Section 10.1.7 (Unilateral Amendment and Prospective Application), Section 10.5 (Disputes), Section 10.6 (Binding Arbitration) and this Section 10.1.4 may not be amended nor shall other provisions be adopted that purport to eliminate or supersede them without the consent of Declarant.

10.1.5 Architectural Control: The provisions of Section 11.1.3 (Declarant Exemption) and this Section 10.1.5 may not be amended without the consent of Declarant until all of the Annexable Property has been annexed to the Project and all of the Condominiums in the Project owned by Declarant have been conveyed.

10.1.6 Annexation: The provisions of Article XII (Annexation) and this Section 10.1.6 may not be amended without the consent of Declarant until three years (3) after all of the Annexable Property has been annexed to the Project.

10.1.7 Unilateral Amendment and Prospective Application: If statutory changes are adopted or the law is changed through the decision of a court (collectively "New Law"), Declarant shall have the right to change the provisions of this Declaration which are affected by the New Law as to Common Area and/or Condominiums then owned by Declarant. Declarant shall record a Supplementary Declaration that (i) describes the Common Area and/or Condominiums owned by Declarant, (ii) references this Section 10.1.7, (iii) describes the Sections in this Declaration that are affected by the New Law and (iv) contains the new provisions being imposed on the Common Area and/or Condominiums owned by Declarant. The Supplementary Declaration shall apply only to those portions of the Project then owned by Declarant and shall not have any force or effect as to any Common Area which has been conveyed to the Association or Owners or any Condominium which has been conveyed to an Owner.

10.2 RESTATEMENT: After an amendment is duly approved in accordance with the requirements of Section 10.1 (Amendments), the Board may prepare a restatement of the Declaration and record the restatement of the Declaration which restates the entire text of the original document, with these exceptions: (a) changes incorporating all amendments approved by the Owners; (b) changes made to rearrange or delete the text for consistency with the approved amendments; and (c) changes made to delete material no longer legally effective or legally required. Upon recordation of the restatement, the restatement shall supersede the Declaration and all prior amendments in their entirety, without, however, affecting the priority of the Declaration in the chain of title to all properties that are subject to the Declaration, as established by the Declaration's initial date of recordation.

10.3 RECORDATION: Any amendment to this Declaration shall be effective upon the recordation in the Official Records of the County of either (a) a restatement approved by the Board as provided above which includes a statement executed by the President and Secretary of the Association which certifies that the required percentage of Members has approved all amendments made by the restatement and that the form of the restatement was duly approved by a resolution of the Board, or (b) an amending instrument which sets forth the terms of the amendment and includes a statement executed by the President and Secretary of the Association which certifies that the required percentage of Members has approved all amendments made by the amending instrument.

#### 10.4 ENFORCEMENT:

10.4.1 Rights to Enforce: Subject to the provisions of Section 10.5 (Disputes) or Section 10.6 (Binding Arbitration), Declarant, the Association and/or any Owner shall have the power to enforce the provisions of the Project Documents in any manner provided by law or in equity and in any manner provided in this Declaration. In addition to instituting appropriate legal action, the Association may temporarily suspend an Owner's use of the recreation facilities or voting rights and/or levy a fine against an Owner in a standard amount to be determined by the Board from time to time. No determination of whether a violation has occurred may be made until Notice and Hearing has been provided to the Owner pursuant to the Bylaws. If legal action is instituted by the Association, any judgment rendered shall include all appropriate Additional Charges. Notwithstanding anything to the contrary contained in this Declaration, the Association has no power to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of the Owner's Condominium, including access thereto, due to the Owner's failure to comply with the provisions of the Project Documents unless the loss or forfeiture is the result of an order of a court or an order pursuant to a final and binding arbitration decision. The provisions of this Declaration are equitable servitudes, enforceable by any Owner, Declarant or the Association against the Association, Declarant or any other Owner or resident in the Project. Except as otherwise provided, Declarant, the Association or any Owner(s) has the right to enforce, in any manner permitted by law or in equity, any and all of the provisions of the Project Documents, including any decision made by the Association, upon the Owners, Declarant, the Association or upon any property in the Project.

10.4.2 Request to Enforce: If any Owner believes that the Association should take action to enforce any claimed violation of this Declaration, the Owner shall notify the Board in writing of the claimed violation and the Owner's request that the Association take steps to enforce the provision which the Owner claims has been violated. Upon receipt of a request, the Board shall review the matter and shall determine what enforcement action, if any, is appropriate. Neither the Board nor the Association (including its Directors and officers) shall have any obligation to enforce the provision which the Owner claims has been violated if the Board decides not to take any enforcement action.

10.4.3 Violation of Law: The Association may treat any Owner's violation of any state, municipal or local law, ordinance or regulation, in the same manner as a violation of the Project Documents by making such violation subject to any or all of the enforcement procedures set forth in this Declaration, as long as the Association complies with the Notice and Hearing requirements.

10.4.4 Remedies Cumulative: Each remedy provided in this Declaration is cumulative and not exclusive.

10.4.5 No Waiver: The failure to enforce the provisions of any covenant, condition or restriction contained in this Declaration will not constitute a waiver of any right to enforce any such provisions or any other provisions of this Declaration.

## 10.5 DISPUTES:

10.5.1 Actions Against Declarant: At least ninety (90) days prior to the initiation of any civil action, including arbitration, by the Association against Declarant, the Board shall provide written notice to each Member specifying (a) that a meeting of the Board will be held to discuss problems that may lead to the filing of a civil action or arbitration, (b) the options, including civil actions, that are available to address the problems, and (c) the time and place of the Board meeting. Before the Association institutes any action against Declarant, the Board must obtain the approval of the Members other than Declarant.

10.5.2 Warranty Claims: The resolution and enforcement of all claims brought by any Owner or the Association under any warranty provided by Declarant, including but not limited to any alleged violation of the Fit & Finish Warranty provided to an Owner or the Association by Declarant in accordance with the provisions of California Civil Code Section 900 and any disagreement concerning an Owner's or the Association's notification under a warranty shall be governed solely by the dispute resolution provisions provided in the applicable warranty.

10.5.3 Title 7 Claims: Any disputes between any Owner and Declarant or between the Association and Declarant regarding any matters that arise from or are in any way related to Title 7, whether contractual, statutory or tort, including, but not limited to, the condition, design, construction or materials used in construction of any portion of the Project or any deficiency, as that term is defined in California Civil Code Section 896, shall be resolved in accordance with the procedures described in the applicable Title 7 Notice.

10.5.4 Civil Code Section 1363.840: This Section does not apply to any claim that is subject to the provisions of Section 10.5.2 (Warranty Claims) or Section 10.5.3 (Title 7 Claims). Any Dispute between the Association and a Member which is described in California Civil Code Section 1363.810(a) shall be addressed in accordance with the provisions of California Civil Code Section 1363.840(b) and (c). If the Dispute is not resolved in accordance with the procedures set forth in California Civil Code Section 1363.840(b) and (c), then the Dispute shall be addressed in accordance with the provisions of California Civil Code Section 1369.520. If an Owner fails to comply with the alternative dispute resolution requirements of California Civil Code Section 1369.520, the Owner may lose the Owner's rights to sue the Association or another Owner to enforce the Project Documents or applicable law. If at any point it appears that the Dispute arises from or is in any way related to a warranty or Title 7 claim, then such dispute shall then be resolved in accordance with the procedures described in the applicable warranty or Title 7 Notice and not in accordance with the provisions of this Section 10.5.4.

10.6 **BINDING ARBITRATION:** Subject to the provisions of Section 10.5.1 (Actions Against Declarant), any Dispute involving Declarant that is not (a) subject to the provisions of Section 10.5.2 (Warranty Claims) or Section 10.5.3 (Title 7 Claims) and (b) which is either not subject to Section 10.5.4 (Civil Code Section 1363.840) or finally resolved by the procedures described in Section 10.5.4 shall be resolved in accordance with the provisions of this Section 10.6.

10.6.1 **Mediation:** Owner, the Association and Declarant agree to submit any and all Disputes to mediation before commencing arbitration. The cost of mediation shall be paid by Declarant. Each party to the mediation shall bear its own attorneys' fees and costs in connection with such mediation.

10.6.2 **Arbitration:** Notwithstanding California Code of Civil Procedure Section 1298.7, if a Dispute is not resolved through mediation, Owner, the Association and Declarant shall resolve the Dispute exclusively through binding arbitration conducted in accordance with the rules for residential construction then in effect for the American Arbitration Association ("AAA"). If the rules for residential construction do not exist, the AAA Commercial Arbitration Rules shall apply.

(a) **Selection of Arbitrator:** There shall be only one arbitrator who shall be selected by mutual agreement of the parties. If the parties are unable to agree on an arbitrator within ten (10) days after any party initiates the arbitration, a neutral and impartial arbitrator shall be selected by the AAA.

(b) **Applicable Law and Remedies:** Venue for the arbitration shall be in the County, unless the parties mutually agree to another venue at the time the arbitration is initiated. The arbitrator shall apply California substantive law in rendering a final decision. The arbitrator shall have the power to grant all legal and equitable remedies and award compensatory damages. The arbitration shall commence and conclude promptly, in accordance with the commercial rules of the AAA.

(c) **Resolution Opportunity:** When the arbitrator is prepared to make the award, the arbitrator shall first so inform the parties, who shall have ten (10) days to attempt to resolve the matter by a binding agreement between them. If the parties resolve the matter, the arbitrator shall not make any award. If the parties do not so resolve the matter within the ten (10) day period, the arbitrator shall make the award on the eleventh day following the arbitrator's notice of being prepared to make the award.

(d) **Fees and Costs:** The arbitrator may award the prevailing party those costs that would be awarded to the prevailing party under California law if the matter had been resolved by court trial. In addition, to the extent permitted by law, the arbitrator may award or divide the post-initiation arbitration fees and costs to prosecute and complete the arbitration as the arbitrator finds just and reasonable. If the arbitrator makes no award or division of such arbitration fees and costs, the parties shall divide them equally with each party bearing one-half of such fees and costs of the arbitration, to the extent permitted by law. Notwithstanding anything herein to the contrary, the parties shall each bear their own costs, expenses and attorneys' fees.

(e) **Participation by Other Parties:** An Owner, the Association and Declarant, to such extent any such party is defending a claim in the arbitration, may, if it chooses, have all necessary and appropriate parties included as parties to the arbitration.

(f) **Final and Binding Award.** The parties agree to be bound by the decision of the arbitrator, which shall be final and non-appealable.

(g) Judgment by a Court: Judgment upon the decision rendered by the arbitrator may be entered in any court having proper jurisdiction or application may be made to such court for judicial acceptance of the award and an order of enforcement.

(h) Federal Arbitration Act: Because many of the materials and products incorporated into the home are manufactured in other states, the development and conveyance of the Property evidences a transaction involving interstate commerce and the Federal Arbitration Act (9 U.S.C. §1 et seq.) now in effect and as it may be hereafter amended will govern the interpretation and enforcement of the arbitration provisions set forth herein.

**10.6.3 AGREEMENT TO ARBITRATE: DECLARANT, THE ASSOCIATION AND EACH OWNER AGREE TO HAVE ANY DISPUTE DECIDED BY NEUTRAL ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT. DECLARANT, THE ASSOCIATION AND EACH OWNER AGREE THAT BY SUBMITTING TO NEUTRAL ARBITRATION, THEY ARE EACH GIVING UP ALL RIGHTS THEY MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. DECLARANT, THE ASSOCIATION AND OWNER ARE ALSO GIVING UP JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THIS "ARBITRATION OF DISPUTES" PROVISION. IF DECLARANT, THE ASSOCIATION OR OWNER REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, DECLARANT, THE ASSOCIATION OR OWNER MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. DECLARANT'S, THE ASSOCIATION'S AND EACH OWNER'S AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.**

**ARTICLE XI**  
**ARCHITECTURAL AND LANDSCAPING CONTROL**

**11.1 APPLICABILITY:**

11.1.1 Generally: Except as otherwise provided in this Declaration, proposals for Alterations (which includes all landscaping) are subject to the provisions of this Article and may not be made until approved in accordance with the provisions of this Article.

11.1.2 Exceptions: The provisions of this Declaration requiring architectural approvals do not apply to repainting or refinishing any Improvement in the same color, hue, intensity, tone, and shade, or repairing or replacing any Improvement with the same materials. All landscaping within Yards must conform with the restrictions of Section 4.5.3 (Yards); otherwise, the provisions of this Declaration requiring architectural approvals do not apply to landscaping installed within Yards. The Architectural Standards may establish additional exceptions from time to time.

11.1.3 Declarant Exemption: The provisions of this Declaration requiring architectural approvals do not apply to the original construction of any Improvements by Declarant, its agents, contractors or employees.

11.1.4 Relationship to Governmental Approvals: Proposals for Alterations may also be subject to review and approval by state or local governmental entities or agencies. Satisfying the provisions of this Declaration does not automatically satisfy any requirement for governmental approval, permitting or inspection. All approvals, permits and inspections which are required under local, state or federal law for any proposed Alteration are the responsibility of the Owner and must be obtained by the Owner in addition to the approvals required by this Declaration.

11.2 RESERVATION TO DECLARANT: Notwithstanding the power of the Board to appoint committees, Declarant hereby reserves to itself the right to appoint an Architectural Committee in accordance with the provisions of this Article.

11.3 MEMBERS: The Architectural Committee ("**Committee**") shall initially consist of a chairman and two (2) additional members. Persons appointed to the Committee by the Board shall be Members of the Association. Persons appointed to the Committee by Declarant need not be Members of the Association.

11.3.1 Declarant's Right to Appoint: Declarant may appoint all of the original members of the Committee and all replacements until the first anniversary of the issuance of the Public Report for the first Phase of the Project. After the date which is one (1) year from the date of issuance of the Public Report for the first Phase of the Project, Declarant may appoint all but one (1) member of the Committee. Declarant's right to appoint Committee members shall terminate when title to ninety percent (90%) of the total of all Condominiums in the Project and all Condominiums proposed for the Annexable Property have been conveyed or the fifth (5th) anniversary of the issuance of the Public Report for the first Phase of the Project, whichever first occurs.

11.3.2 Board's Initial Right to Appoint: On the first anniversary of the date of issuance of the Public Report for the first Phase of the Project, the Board shall have the power to appoint one member of the Committee. A Declarant appointed member must resign if there is then no vacant Committee seat.

11.3.3 Vacancies: The Board may appoint a replacement for any member of the Committee originally appointed by the Board who resigns or otherwise fails to act. Declarant may appoint a replacement for any member of the Committee originally appointed by Declarant who resigns or otherwise fails to act, unless such member resigns in order to enable the Board to appoint a member as provided in Section 11.3.2 (Board's Initial Right to Appoint). If Declarant fails to appoint a replacement it is authorized to appoint within fifteen (15) days after receiving notice of the vacancy, the Board shall appoint the replacement.

11.3.4 Rights of Board: When Declarant's right to appoint members of the Committee terminates:

(a) The Board has the right to appoint, remove and replace all of the members of the Committee, as the Board determines in its discretion; and

(b) The Board may increase the number of Committee members or decide to dissolve the Committee and undertake the Committee's responsibilities. If the Board decides to dissolve the Committee, it may adopt a resolution and appoint a new Committee at any time in the future.

#### 11.4 DUTIES AND POWERS:

11.4.1 Duties: The Committee shall review and approve, conditionally approve, or deny all plans, submittals, applications and requests made or tendered to it by Owners or their agents, pursuant to the provisions of this Declaration. In connection therewith, the Committee may investigate and consider the architecture, design, layout, landscaping, energy conservation measures, water conservation measures, fence or wall detail, and other features of the proposed Improvements.

11.4.2 Powers: The Committee may adopt procedures for the transaction of business, scheduling of meetings, conduct of meetings and related matters. The Committee may also adopt criteria, consistent with the purpose and intent of this Declaration to be used in making its determination to approve, conditionally approve or deny any matter submitted to it for decision.

11.4.3 Consultants: With the consent of the Board, the Committee may hire and the Association shall pay consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the Committee in performing its duties.

11.5 APPLICATION FOR APPROVAL OF IMPROVEMENTS: Except as provided in Section 11.1.2 (Exceptions) and Section 11.1.3 (Declarant Exemption), any Owner who wants to perform any Alteration for which approval is required shall notify the Committee in writing of the nature of the proposed work and shall furnish such information as may be required by the Architectural Standards or reasonably requested by the Committee.

11.6 BASIS FOR APPROVAL OF IMPROVEMENTS: As conditions precedent to approval of any matter submitted to it, the Committee must ordinarily be able to find that (i) the plans and specifications conform to this Declaration and to the Architectural Standards in effect at the time the proposal was submitted and (ii) the proposed Alteration will be aesthetically consistent with the other Improvements in the Project as to harmony of exterior design, landscaping, color schemes, exterior finishes, visibility with respect to existing structures and environment, and placement of structures with respect to topography and finished grade elevation. The Association may not disapprove an application for approval based on a provision of the Project Documents that has been superseded by a law or regulation that is applicable to the Project.

11.7 FORM OF APPROVALS, CONDITIONAL APPROVALS AND DENIALS: All approvals, conditional approvals and denials must be in writing. Any proposal which has not been approved, conditionally approved or rejected in writing within sixty (60) days from the date of submission will be deemed approved. Any denial of a proposal must (a) state the reasons for the decision and (b) if the decision was made by the Committee (rather than the Board), notice of the appeal rights provided in Section 11.12 (Appeal of Decision of Committee) of this Declaration.

11.8 WORK: Upon approval of the Committee, the Owner must diligently proceed with the commencement and completion of all work so approved. Completion of the work approved must occur within one (1) year following the approval of the work unless the Committee grants an extension. This Section shall not be interpreted to extend any other time period imposed by this Declaration. If the Owner fails to complete the work within the required time period, the Committee may notify the Owner in writing of the non-compliance and proceed in accordance with the provisions of Section 11.10 (Failure to Remedy the Non-Compliance).

11.9 DETERMINATION OF COMPLIANCE: Any work performed, whether or not the Owner obtained proper approvals, may be inspected and a determination of compliance made as follows:



11.9.1 Notice of Completion: Upon the completion of any work performed by an Owner for which approval was required, the Owner must give written notice of completion to the Committee.

11.9.2 Inspection: Within sixty (60) days after the Committee's receipt of the Owner's notice of completion, or, if the Owner fails to give a written notice of completion to the Committee within the completion period specified in Section 11.8 (Work), a designee of the Committee may inspect the work performed and determine whether it was performed and completed in substantial compliance with the approval granted. If the Committee finds that the work was not performed or completed in substantial compliance with the approval granted or if the Committee finds that the approval required was not obtained, the Committee shall notify the Owner in writing of the non-compliance. The notice shall specify the particulars of non-compliance and require the Owner to remedy the non-compliance.

11.10 FAILURE TO REMEDY THE NON-COMPLIANCE: If the Committee has determined that an Owner has not constructed an Improvement consistently with the specifications of the approval granted or within the time permitted for completion and if the Owner fails to remedy such non-compliance in accordance with the provisions of the notice of non-compliance, then after the expiration of thirty (30) days from the date of such notification, the Committee shall notify the Board, and the Board shall provide Notice and Hearing to consider the Owner's continuing non-compliance. At the Hearing, if the Board finds that there is no valid reason for the continuing non-compliance, the Board shall determine the estimated costs of correcting it. The Board shall then require the Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Board's determination. If the Owner does not comply with the Board's ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board may either remove the non-complying Improvement or remedy the non-compliance. The costs of such action shall be assessed against the Owner as a Reimbursement Assessment.

11.11 WAIVER: Approval of any plans, drawings or specifications for any work proposed, or for any other matter requiring approval shall not be deemed to constitute a waiver of any right to deny approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

11.12 APPEAL OF DECISION OF COMMITTEE: This Section does not apply if the Board has dissolved the Committee or during the period of time that a majority of the Members of the Committee have been appointed by Declarant. If the Owner who applied or who the Committee determined should have applied for approval of an Alteration disputes the jurisdiction or powers of the Committee, the interpretation or application of an Architectural Standard or a decision of the Committee applicable to the denial or conditional approval of the Owner's application for a proposed Alteration (collectively referred to as "Decision"), that Owner may appeal such Decision to the Board. Any request to the Board for appeal of a Decision must be written. Within twenty (20) days of receipt by the Board of an Owner's written appeal request, the Board shall notify the Owner of the time, date and place of the Board meeting at which the appeal of the Decision of the Committee will take place. The notice shall be given at least fifteen (15) days prior to the date set for the hearing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after it has been deposited in the United States mail, first class, postage prepaid, addressed to the Owner at the address given by the Owner to the Board for the purpose of service of notices or to the address of the Owner's Condominium if no other address has been provided. After the meeting has taken place, the Board shall notify the Owner of its determination. The determination of the Board shall become effective not less than five (5) days after the date of the hearing. The determination of the Board shall be final.

11.13 NOLIABILITY: If members of the Committee have acted in good faith, neither the Committee nor any member will be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed due to: (a) the approval or disapproval of any plans, drawings and specifications, whether or not

defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (c) the development of any property within the Project; or (d) the execution and filing of any estoppel certificate, whether or not the facts therein are correct.

11.14 EVIDENCE OF APPROVAL OR DISAPPROVAL: After a determination of compliance is made pursuant to Section 11.9 (Determination of Compliance), the Board may issue a written Notice of Architectural Determination. The Notice of Architectural Determination must be executed by any two (2) Directors and shall certify that as of the date of the Notice either (i) the work completed complies with the provisions of this Declaration and the approval(s) issued by the Committee ("**Notice of Approval**") or (ii) the work completed does not comply with the provisions of this Declaration or the approval(s) issued by the Committee ("**Notice of Disapproval**"). A Notice of Disapproval must also identify the particulars of the non-compliance. Any successor in interest of the Owner will be entitled to rely on a Notice of Architectural Determination with respect to the matters set forth. Each Owner must disclose to the Owner's subsequent purchaser any Notice of Disapproval unless the Owner has a subsequently issued Notice of Approval which covers the same Alteration. The Notice of Architectural Determination will be conclusive as between the Association, the Committee, Declarant and all Owners and such persons deriving any interest through any of them. Any Owner may make a written request that the Board prepare and execute a Notice of Architectural Determination, and the Board must do so within sixty (60) days of its receipt of the request.

## **ARTICLE XII ANNEXATION**

12.1 PROPERTY WHICH MAY BE ANNEXED: Property may be added to the Project by annexation only in accordance with the provisions of this Article.

12.1.1 Annexable Property: All or any portion of the Annexable Property may be added to the Project as one or more subsequent Phases without the approval of the Association or any Owner if the annexation of the Phase is in substantial conformance with a plan of phased development approved by the Department of Real Estate of the State of California. The issuance of a Public Report for a Phase by the Department of Real Estate of the State of California shall be evidence that the annexation of that Phase was in substantial conformance with a plan of phased development.

12.1.2 Other Property: Property other than the Annexable Property may be annexed to the Project only with the approval of two-thirds (2/3) of each class of Members.

12.2 PROCEDURE FOR ANNEXATION: In addition to any required approval by Members, a final map(s) or final parcel map(s), a condominium plan and a Declaration of Annexation for the property to be annexed must be recorded. The Declaration of Annexation must: (i) describe the portion of the Annexable Property to be annexed; (ii) describe the Building Common Area and, if applicable, the Project Common Area to be annexed; (iii) set forth the ownership of the Common Area; and (iv) specify that all of the covenants, conditions and restrictions of this Declaration will apply to the annexed portions of the Annexable Property in the same manner as if it were originally covered by this Declaration. The Declaration of Annexation must also provide that if and only if at the time of the first conveyance of a Condominium in a Phase Declarant has rented or leased Condominiums in that Phase for a period of at least one (1) year after the most recent review of a budget for that Phase by the Department of Real Estate, Declarant shall pay to the Association the following amount: an amount equal to that portion of the Regular Assessment which would have been attributable to each Condominium in that Phase and which would have been allocable to reserves for replacement and deferred maintenance of Common Area Improvements had Regular Assessments in that Phase commenced at the time of the most recent review of a budget for that Phase. Such amount, if any, must

be paid to the Association prior to or concurrently with the first conveyance of a Condominium in that Phase. The Declaration of Annexation may also (i) impose any additional covenants, conditions or restrictions on the Annexable Property that are appropriate to include the Annexable Property in the Project or to reflect differences in nature, if any, of the Improvements to be constructed on the Annexable Property, (ii) provide for a specified date on which assessments will commence for Condominiums in that Phase, provided that the date specified may not be later than the first day of the first month following the month in which the first Condominium in that Phase is conveyed to an Owner, and (iii) describe additional Improvements to be Maintained by the Association regardless of whether the Improvements are located on property to be owned by the Association. No Declaration of Annexation may diminish the covenants, conditions or restrictions established by this Declaration or discriminate between the Owners in the Project. No Declaration of Annexation may alter or change the general common plan or scheme created by this Declaration or affect the provisions hereof as covenants running with the land or as equitable servitudes.

12.3 EFFECT OF ANNEXATION: After complying with the procedures for annexation and upon the commencement of assessments for Condominiums in the annexed Phase, Owners of Condominiums in the annexed Phase will be Members, will be subject to this Declaration and will be entitled to use all Common Area in the Project. The Association must reallocate the Regular Assessments so as to assess each Owner of a Condominium in the Project for a proportionate share of the total expenses of the Project.

12.4 AMENDMENT AND DEANNEXATION: Declarant has the right, at its sole option, to (i) amend a Declaration of Annexation by executing and recording an amendment of the Declaration of Annexation provided that the amendment is consistent with this Article, or (ii) remove from the Project any property described in a recorded Declaration of Annexation for a Phase by executing and recording a rescission of the Declaration of Annexation, as long as all of the following conditions are satisfied at the time of the execution and recordation of the amendment or rescission: (a) no Condominium in that Phase has been conveyed to an Owner; (b) no Project Common Area in that Phase has been conveyed to the Association; and (c) assessments have not commenced for any Condominium in the annexed property.

## **ARTICLE XIII**

### **MISCELLANEOUS PROVISIONS**

13.1 BINDING: This Declaration is for the benefit of and binding upon all Owners, their respective heirs, legatees, devisees, executors, administrators, guardians, conservators, successors, purchasers, tenants, encumbrancers, donees, grantees, mortgagees, lien holders and assigns.

13.2 BONDED OBLIGATIONS: When Common Area Improvements have not been completed prior to the issuance of the original Public Report to which the Common Area is subject and the Association is the obligee under a bond or other arrangement ("**Bond**") to secure performance of the commitment of Declarant to complete the Improvements, the following provisions apply.

13.2.1 Action by Members: If the Board decides not to act or fails to initiate action to enforce bonded obligations, then upon receipt by the Board of a petition for a special meeting signed by Members entitled to cast five percent (5%) or more of the total number of votes which may be cast by the Members, the Board shall call a special meeting of the Members. If the Board has failed to initiate action, the Members shall determine whether they wish to initiate action. If the Board has decided not to initiate action, the Members shall determine whether to override the Board's decision. The meeting shall be held not less than thirty-five (35) nor more than forty-five (45) days after receipt of the petition by the Board. At the meeting, the approval of the Members, excluding the vote of Declarant, to take action to enforce the

obligations under the Bond shall be deemed to be the decision of the Association. The Board shall thereafter implement the decision by initiating and pursuing appropriate action in the name of the Association.

13.2.2 **Improvements Complete:** If all Improvements in the planned construction statement appended to the Bond are covered by one or more recorded notices of completion, the Board shall execute whatever documents are required by the surety to release the Bond.

13.2.3 **Improvements Not Complete:** If a notice of completion has not been filed within sixty (60) days after the completion date specified for that Improvement in the planned construction statement appended to the Bond, the Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond. If the Association has given a written extension for the completion of any Common Area Improvements, the Board shall consider and vote whether to take action if a notice of completion has not been filed within thirty (30) days after the expiration of the most recent extension.

13.2.4 **Release of Bond:** On satisfaction of Declarant's obligation to complete the Common Area Improvements, the Association shall acknowledge in writing that it approves the release of the Bond and shall execute any other documents as may be reasonably necessary to effect the release of the Bond. The Association may not condition its approval on the satisfaction of any condition other than completion of the Common Area Improvements. If the Association breaches any of the foregoing obligations, it will be liable to Declarant for any damages incurred thereby, including reasonable attorneys' fees. Any dispute between Declarant and the Association regarding the completion of Common Area Improvements shall be resolved in accordance with the provisions of the escrow instructions which accompany the Bond.

13.3 **CONFLICT:** To the extent there are conflicts or inconsistencies between a Maintenance Manual and this Declaration, the provision which requires the highest standard of Maintenance shall prevail. In the event of any conflicts or inconsistencies between this Declaration and the Bylaws or the Operating Rules, this Declaration shall prevail.

13.4 **CONSTRUCTION OF PROVISIONS:** The provisions of this Declaration are to be liberally construed to effect its purpose of creating a uniform plan for the development and operation of a condominium project pursuant to the provisions of the Davis-Stirling Common Interest Development Act, California Civil Code Section 1350, *et seq.*

13.5 **DOCUMENTS TO BE GIVEN TO PURCHASERS:** As soon as practical before transferring title to the Condominium, the Owner shall give to the purchaser copies of all documents and statements required by California Civil Code Section 1368(a) and the Owner Maintenance Manual.

13.6 **EXHIBITS:** All exhibits, if any, attached to this Declaration are incorporated by this reference as though fully set forth herein.

13.7 **GENDER, NUMBER AND CAPTIONS:** As used herein, the singular includes the plural and masculine pronouns include feminine pronouns, where appropriate. The title and captions of each paragraph hereof are not a part thereof and shall not affect the construction or interpretation of any part hereof.

13.8 **REQUIRED ACTIONS OF ASSOCIATION:** The Association shall at all times take all reasonable actions necessary for the Association to comply with the terms of this Declaration or to otherwise carry out the intent of this Declaration.

13.9 SEVERABILITY OF PROVISIONS: The provisions hereof shall be deemed independent and severable, and the validity or enforceability of any one provision will not affect the validity or enforceability of any other provision hereof.

13.10 SUCCESSOR STATUTES: Any reference in the Project Documents to a statute will be deemed a reference to any amended or successor statute.

13.11 TERM OF DECLARATION: This Declaration will continue for a term of fifty (50) years from its date of recordation. Thereafter, this Declaration will be automatically extended for successive periods of ten (10) years until two-thirds (2/3) of the Owners approve a termination of this Declaration.

IN WITNESS WHEREOF, the undersigned has executed this Declaration on the 19 day of June, 2006.

DECLARANT:

KB HOME NORTH BAY INC.,  
a California corporation

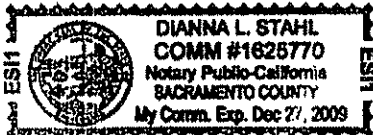
By: John A. Barnhart  
Name: JOHN A. BARNHART  
Title: SENIOR VP LAND DEVELOPMENT

STATE OF CALIFORNIA  
COUNTY OF Sacramento } ss.

On June 20, 2006, before me, Dianna L Stahl, Notary Public,  
personally appeared John A Barnhart,  
personally known to me (or ~~proved to me on the basis of satisfactory evidence~~) to be the person(s) whose  
name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the  
same in his/~~her/their~~ authorized capacity(ies); and that by his/~~her/their~~ signature(s) on the instrument, the  
person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Dianna L Stahl  
Notary Public



**EXHIBITS**

NONE