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**AMENDED AND RESTATED DECLARATION OF ESTABLISHMENT**

**OF**

**CONDITIONS, COVENANTS AND RESTRICTIONS**

**FOR**

**BELLA VISTA AT PROMONTORY POINTE**

**(LOT 121 OF TRACT NO. 4129)**

**A Condominium Project**

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**AMENDED AND RESTATED DECLARATION OF ESTABLISHMENT OF  
CONDITIONS, COVENANTS AND RESTRICTIONS  
FOR  
BELLA VISTA AT PROMONTORY POINTE**

THIS AMENDED AND RESTATED DECLARATION OF ESTABLISHMENT OF CONDITIONS, COVENANTS AND RESTRICTIONS FOR BELLA VISTA AT PROMONTORY POINTE ("Declaration"), is made by PROMONTORY PROPERTIES, INC., a California corporation ("Declarant"), being the Owner of that certain real property subject to this Declaration, and hereinafter more particularly described.

**WITNESSETH**

WHEREAS, Declarant is the owner of the following real property located in the City of San Buenaventura, County of Ventura, State of California ("Properties"), more particularly described as:

Modules "A" and "B" of Lot 121 of Tract No. 4129, in the City of San Buenaventura, County of Ventura, State of California, as per Map recorded in Book 152, Pages 22 through 26, of Maps, in the Office of the County Recorder of said County, as shown and described on that certain Condominium Plan recorded December 30, 2004, as Instrument No. 20041230-0344692, in the Office of the County Recorder of said County.

WHEREAS, Declarant executed that certain Declaration of Establishment of Conditions, Covenants and Restrictions for Bella Vista at Promontory Pointe ("Original Declaration"), which was recorded against the Properties on December 30, 2004, as Instrument No. 20041230-0344691, of Official Records in the Office of the County Recorder of the County of Ventura, California; and

WHEREAS, pursuant to the provisions of Article 20 of the Original Declaration, during the period of time prior to conversion of the Class B membership to Class A membership, the Original Declaration may be amended by an affirmative vote of at least seventy-five percent (75%) of the voting power of each class of Members of the Association; and

WHEREAS, there are no Class A Members, Declarant is the only Class B Member and holds one-hundred percent (100%) of the Class B votes, and Declarant has all necessary power and authority to execute and record this Declaration; and

WHEREAS, this Declaration shall, cancel and revoke the Original Declaration and amend and restate the conditions, covenants and restrictions imposed on the Properties; and

WHEREAS, it is the desire and intention of Declarant to sell and convey interests in said real property to various individuals subject to certain basic protective restrictions, limitations, easements, covenants, reservations, liens and charges between it and the acquirers or users of said property, as hereinafter set forth.

NOW, THEREFORE, Declarant hereby declares that all of the real property described above, is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following protective restrictions, limitations, conditions, covenants, reservations, liens and charges, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and sale of "condominiums" as defined in Section 783 of the California Civil Code, in a "condominium project," as that term is defined in Section 1351(f) of the Civil Code, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the condominium project and every part thereof. Each and all of the restrictions herein contained shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in the described real property, or any part thereof. The condominium project comprising the real property above described, is intended to be made subject to each and all of the provisions of the Davis-Stirling Common Interest Development Act (Section 1350 et. seq. of the California Civil Code) and any comparable statute or amendment thereto hereinafter enacted. There has been or will be recorded, a "condominium plan" for the real property, as defined herein, which is intended to satisfy the provisions of Section 1352 of the California Civil Code. The provision of this Declaration shall be enforceable by any of the Owners of an interest in the real property above described, against any other Owner or Owners thereof, and shall also be enforceable by the Board of Directors of the Association, which shall be created for the purpose of governing this Project.

## ARTICLE 1 DEFINITION OF TERMS

Section 1.1. Terms. Whenever used in this Declaration, the following terms shall have the following meanings:

1.1.1 Annexation shall mean and refer to the addition of real property and improvements thereto to the scheme of development created by this Declaration. Upon such Annexation, the annexed property shall be governed by, and subject to each and every provision of this Declaration. The procedures for Annexation of property are set forth in Article 21 hereof.

1.1.2 Annexable Property shall mean and refer to the real property, which may be annexed to the Project by Declarant, without the consent of the Association, in accordance with the provisions of Section 21.1 hereof. The Annexable Property is that certain real property described in Exhibit "A" attached hereto and incorporated herein by this reference.

1.1.3 Articles shall mean and refer to the Articles of Incorporation of the Association as same may be amended from time to time.

1.1.4 Association shall mean and refer to the Bella Vista at Promontory Pointe Condominium Homeowners' Association, a California nonprofit mutual benefit corporation, having a membership of all Owners of condominiums within the Project. Each Owner shall be and become a Member of the Association contemporaneously with such Owner's acquisition of a Condominium, without further documentation of any kind. Transfer of a membership shall be only by conveyance of the Condominium.

1.1.5 Association Property shall mean all of the real and personal property and improvements to which the Association shall hold fee title for the common use and enjoyment of the Members as provided herein. The Association Property located in Phase 1 shall include "Module A" as shown on the Condominium Plan, including improvements thereon, but specifically excepting therefrom the Condominium Units therein. Additional Association Property may be annexed to the Property pursuant to the provisions of Article 21 hereof. All Association Property within any Phase shall be conveyed to the Association upon the closing of the sale of the first Unit within such Phase.

1.1.5.1 Exclusive Use Association Property shall mean and refer to those portions of the Association Property to which an exclusive right of use is granted to an Owner which shall be appurtenant to such Owner's Unit, as shown and described on the Condominium Plan, and shall consist of a deck or patio area and a carport area. Those Owners who do not have garages as part of their Units, shall have one parking space in a carport as an element of the Exclusive Use Association Property appurtenant to such Owner's Unit, as shown and described on the Condominium Plan.

1.1.6 Board of Directors or Board shall mean and refer to the governing body of the Association.

1.1.7 Bylaws shall mean and refer to the duly adopted Bylaws of the Association as the same may be amended from time to time.

1.1.8 City shall mean and refer to the City of San Buenaventura, a California charter city, in the County of Ventura.

1.1.9 Common Area shall mean and refer to that certain three dimensional volume described in the Condominium Plan as Module "B." The lateral boundaries of which are the vertical prolongations of the boundary lines of Module "A," as defined in the Condominium Plan. The Common Area thus consists of the three-dimensional airspace envelope below the lower vertical boundary of the Units within a Module containing Units, as described in the Condominium Plan.

1.1.10 Common Property shall mean the Common Area and the Association Property.

1.1.11 Condominium shall mean and refer to a Condominium as defined in Section 783 of the California Civil Code, and shall be an estate in real property consisting of (a) a separate fee interest in and to the space within the boundaries of a Unit as further shown and described in the Condominium Plan and all easements appurtenant thereto, and (b) an undivided fractional fee



interest as a tenant in common in and to the Common Area of the Module in which the Unit is located, and (c) easements for the exclusive use and enjoyment of any Exclusive Use Association Property appurtenant to such Condominium. The undivided interest in the Common Area hereby established and which shall be conveyed with each respective Unit in any Phase shall be an undivided fractional fee interest described by having a one (1) as its numerator and the total number of Units in the Module in which such Unit is located, as the denominator, with the ownership thereof held as a tenant in common with the other Owners of Units in such Module. The above-referenced undivided interests established and to be conveyed with the respective Units, cannot be changed, and Declarant, its successors, assigns, and grantees, covenant and agree that the undivided interest in the Common Area and the fee title to the respective Unit conveyed therewith, shall not be separated from or separately conveyed or encumbered without its respective Unit, even though the description in the instrument of conveyance may refer only to the fee title to the Unit. Additionally, each Owner of a Condominium shall receive a membership in the Association.

1.1.12 Condominium Plan shall mean and refer to that certain Condominium Plan recorded pursuant to California Civil Code Section 1351(e) covering a Phase or Phases of development of the Condominium Property, which term is defined hereinbelow, including such amendments thereto as may from time to time be recorded, and consisting of (a) a description or survey map for the Project, which shall refer to or show monumentation on the ground, (b) a three-dimensional description of the Project, one or more dimensions of which may extend for an indefinite distance upwards or downwards, in sufficient detail to identify the Common Area, each Unit, the Association Property, and the Exclusive Use Association Property, if any, and (c) a certificate consenting to the recordation of the Condominium Plan signed and acknowledged by the record Owner of fee title to the real property included in the Project.

1.1.13 Condominium Property or Property shall mean and refer to that certain real property located in the City of San Buenaventura, County of Ventura, State of California, more particularly described as: "Lot 121 of Tract No. 4129, in the City of San Buenaventura, County of Ventura, State of California, as per Map recorded in Book 152, Pages 22 through 26, of Maps, in the Office of the County Recorder of said County", and all real property, and improvements thereon, annexed into the Project as a Phase of development pursuant to the terms and provisions of Article 21 hereof.

1.1.14 Declarant shall mean PROMONTORY PROPERTIES, INC., a California corporation, or any successor in interest to Declarant by merger or express assignment of the rights of Declarant hereunder by an instrument executed by Declarant, recorded with the County Recorder of Ventura County and filed with the Secretary of the Association.

1.1.15 Declarant Party shall mean and refer to any director, officer, partner, member, employer, contractor, design professional, consultant, subcontractor or agent of Declarant.

1.1.16 Declaration shall mean and refer to this Amended and Restated Declaration of Establishment of Conditions, Covenants and Restrictions for Bella Vista at Promontory as the same may be amended, changed or modified from time to time.

1.1.17 DRE shall mean and refer to the California Department of Real Estate.

1.1.18 Eligible Insurer or Guarantor shall mean and refer to an insurer or governmental guarantor who has requested notice from the Association of those matters which such insurer or guarantor is entitled to notice of by reason of this Declaration or the Bylaws of the Association.

1.1.19 Eligible Mortgage Holder shall mean and refer to a holder of a first Mortgage on a Condominium who has requested notice from the Association of those matters of which such holder is entitled to notice by reason of this Declaration or the Bylaws of the Association.

1.1.20 Institutional Lender shall mean and refer to a Mortgagee, which is a bank or savings and loan association or established mortgage company, or other entity chartered under federal or state laws, any corporation or insurance company, or any federal or state agency.

1.1.21 Member shall mean and refer to an Owner with a membership in the Association.

1.1.22 Module shall mean and refer to a three-dimensional airspace envelope in a Phase shown, designated and described on and in the Condominium Plan as a "Module". A Module will include either Units and Association Property, or Common Area. Units shall not in and of themselves constitute a Module. Each Phase of development will include one or more Modules containing Units and Association Property and may also include one or more Modules containing Common Area.

1.1.23 Mortgage shall mean and include a deed of trust as well as a Mortgage.

1.1.24 Mortgagee shall mean a person or entity to which a Mortgage is made, and shall include the beneficiary of a deed of trust.

1.1.25 Mortgagor shall mean a person or entity, which mortgages his, her or its Condominium to another, i.e., the maker of a Mortgage, and shall include the trustor of a deed of trust.

1.1.26 Occupant shall mean and refer to any person who lawfully possesses or occupies a Unit, and shall include without limitation the Owner and such Owner's family, guests, tenants, servants, employees and invitees of such Owner.

1.1.27 Owner shall mean and refer to the record Owner or Owners, if more than one, of a Condominium in the Project, including Declarant so long as a Condominium belonging to Declarant remains unsold to a member of the general public.

1.1.28 Permitted Health Care Resident shall mean a person hired to provide live-in, long-term or terminal health care to a Qualifying Resident or a Qualified Permanent Resident, as defined herein and in accordance with California Civil Code Section 51.3(b)(7) as such may be amended from time to time.

1.1.29 Phase shall mean and refer to one of the approximately three (3) phases of development as described in Exhibit "A" attached hereto and incorporated herein by this reference. Phase 1 will include the Units and Association Property within Module "A", and the Common Area within Module "B", all as shown on the Condominium Plan. Declarant expressly reserves the right to modify Phases 2 and 3 including, but not limited to, the right to combine or further divide such phases into additional phases and the right to redesign said phases.

1.1.30 Project or Condominium Project shall mean and refer to the entire parcel of real property subject to this Declaration, and which shall become subject to this Declaration by the Annexation thereof pursuant to the plan of development and Article 21 hereof, including all improvements thereon. The Project, as planned, consists of the underlying real property of the first Phase of development and of each and every subsequent Phase Annexed into the Project, together with the Units and all other improvements located thereon. Subject to Declarant's modification rights reserved below, the Project shall consist of approximately three (3) Phases totaling approximately one hundred and four (104) Units and Common Property.

1.1.31 Qualified Permanent Resident shall mean a person who meets all of the requirements set forth in California Civil Code Section 51.3(a)(2), including that such person (a) was residing with the Qualifying Resident, as defined herein and in accordance with California Civil Code Section 51.3(b)(1) as such may be amended from time to time, prior to the death, hospitalization or other prolonged absence of or the dissolution of marriage with, the Qualifying Resident; and (b) was forty-five (45) years of age or older, or was a spouse, cohabitant or person providing primary physical or economic support to the Qualifying Resident; or (c) is a "disabled" person or person with a disabling illness or injury who is a child or grandchild of the Qualifying Resident or the Qualified Permanent Resident who needs to live with either the Qualifying Resident or the Qualified Permanent Resident because of the disabling condition, illness or injury, as defined in California Civil Code Section 51.3(b)(3).

1.1.32 Qualifying Resident shall mean a person fifty-five (55) years of age or older as set forth in California Civil Code Section 51.3(b)(1).

1.1.33 Rules and Regulations shall mean and refer to the rules and regulations adopted by the Association that are not inconsistent with the provisions of this Declaration and that are subject to Civil Code Sections 1357.100 *et seq.* regarding "operating rules." The Rules and Regulations shall include but not be limited to the use of the Common Property.

1.1.34 Unit shall mean and refer to the elements of a Condominium, which are not owned in common with Owners of other Condominiums in the Project and consists of a separate interest in space, as defined in Section 1351(f) of the California Civil Code. Each Unit shall be a separate freehold estate, consisting of the dwelling space bounded by and contained within the interior unfinished surfaces of the perimeter walls, floors, ceilings, windows and doors of said spaces and some Units may include a garage, each such space being defined and referred to herein as a "Unit", as separately shown, numbered and designated in the Condominium Plan, recorded concurrently herewith. Each Unit includes both the portion of the building so described and the airspace so encompassed, and all windows and doors in said Unit and a garage (some Units, as shown and described on the Condominium Plan), but the following are not a part of the

Unit: bearing walls, columns, beams, floors, roofs, slabs, foundations, chimneys, fences, fire sprinklers, including sprinkler heads, which protrude into the airspace of the condominium Unit, if any, and other central services, pipes, ducts, flues, chutes, conduits, wires, exterior lighting and other utility installations, wherever located (except all utility installations and/or outlets thereof when located within or exclusively serving an individual condominium Unit, including the internal and external telephone wiring designed to exclusively serve a condominium Unit), sidewalks, retaining walls, poles, signs, project monument sign and all landscaping located on the Project Association Property. In interpreting deeds, declarations and plans, the existing physical boundaries of the Unit shall be conclusively presumed to be its boundaries, rather than the description expressed in the deed, Condominium Plan or Declaration, regardless of settling or lateral movement of the building and regardless of minor variances between boundaries, as shown on the Condominium Plan or defined in the deed and Declaration, and those of the building as constructed or reconstructed.

Section 1.2. Applicability of Terms. The aforesaid definitions shall be applicable to this Declaration and to any supplements or amendments thereto, (unless the context shall prohibit), filed or recorded pursuant to the provisions of this Declaration.

## **ARTICLE 2**

### **EASEMENT RIGHTS**

Section 2.1. Owner's Easements of Enjoyment. Each Owner shall have a nonexclusive easement appurtenant to such Owner's Condominium for ingress, egress, use and enjoyment to and over the Common Property and all improvements thereon. Said easement shall be appurtenant to and shall pass with the title to each and every Condominium.

Section 2.2. Owner's Easements for Vehicular Access. In addition to the general right to use and enjoy said easements for ingress and egress granted herein, there shall be and Declarant hereby covenants for itself and its successors and assigns that each and every Owner shall have a nonexclusive easement appurtenant to such Owner's Condominium for vehicular traffic over all private streets and drives within the Project.

Section 2.3. Maintenance and Repair. Declarant expressly reserves for the benefit of the Association nonexclusive easements over the Common Property as necessary to maintain and repair the Common Property, and to perform all other obligations of the Association in accordance with the provisions of this Declaration. Such easements over the Common Property shall be appurtenant to, binding upon, and shall pass with the title to, every Condominium conveyed.

Section 2.4. Age Restricted Housing. The Project is an age restricted housing development and each and every Unit in the Project is restricted for use by Qualifying Residents, Qualified Permanent Residents and Permitted Health Care Residents, as defined herein and in accordance with California Civil Code Sections 51.3(b)(1), 51.3(b)(2) and 51.3(b)(7) as such may be amended from time to time. It is the intention of Declarant that the Project and the restrictive covenants of this Declaration comply with all applicable local, state and federal laws. No Owner

shall use or occupy such Owner's Unit, or permit such Unit or any portion thereof, to be occupied or used for any purpose other than for single-family residential purposes. At all times, one of the Occupants residing in the Unit must be a Qualifying Resident or a Qualified Permanent Resident. No Owner shall permit any person who is not a Qualifying Resident or a Qualified Permanent Resident to temporarily reside as a guest in the Owner's Unit for more than sixty (60) days during any twelve (12) month period. Nothing contained herein shall be deemed to prohibit a Permitted Health Care Resident from occupying a Unit during any period when such Permitted Health Care Resident is actually providing live-in, long-term or terminal health care to a Qualifying Resident or a Qualified Permanent Resident. The Association is and shall be empowered to and shall take the necessary actions to enforce this provision. Declarant assumes no responsibility for the enforcement of these restrictive covenants and makes no representations as to the present or future enforceability of these provisions. Neither this Section 2.4, nor any other provision of this Declaration shall be amended to provide for the operation of this Project as something other than a senior citizen housing development, without the prior written consent of the City.

**Section 2.5. Income Restricted Units.** This Section 2.5 applies exclusively to the ten (10) Units described hereinbelow and not to other Units covered by this Declaration. Notwithstanding any provision of this Declaration to the contrary, this Section 2.5 is for the benefit of the City of San Buenaventura and said ten (10) Units and not for other Units covered by this Declaration. The sale and occupancy of ten (10) Units within the Project shall be restricted to "low-income" Qualifying Residents or Qualified Permanent Residents ("Affordable Senior Units") for a minimum period of thirty (30) years. In compliance with Section III of the First Amendment to Westwood "Promontory Point" Agreement No. DA-29 ("First Amendment"), which shall be recorded in the Office of the County Recorder of Ventura County, such Affordable Senior Units shall be clearly designated on the Condominium Plan for the Project. Said Affordable Senior Units shall include the following: 1740 Tanager, Unit 2-203; 1740 Tanager, Unit 2-303; 6215 Turnstone, Unit 3-203; 6215 Turnstone, Unit 3-303; 6325 Turnstone, Unit 5-203; 6325 Turnstone, Unit 5-303; 1759 Hill Road, Unit 6-203; 1759 Hill Road, Unit 6-303; 1690 Tanager, Unit 8-203; and 1690 Tanager, Unit 8-303. "Low-income" is defined in Section III of the First Amendment as "household income at or below 80% of the Area Median Income ("AMI"), as adjusted for household size, as determined on an annual basis issued most recently prior to the time of sale or resale of Affordable Senior Units in accordance with the applicable regulations of the Federal Department of Housing and Urban Development ("HUD")." This Section 2.5 shall not be amended or revised without the prior written consent of the City.

**Section 2.6. Utility And Drainage Easements.**

2.6.1 Declarant expressly reserves for the benefit of the Association the right of Declarant to grant additional easements and rights-of-way over the Property to utility companies and public agencies, as necessary, for the proper development and sale of the Property. Such right of Declarant shall expire (i) with respect to any Phase of development, upon the close of escrow for the sale of all Condominiums in such Phase by Declarant, or (ii) with respect to all Phases, upon expiration of seven (7) years from the date of issuance by the DRE of the Final Subdivision Public Report for Phase 1.

2.6.2 Each Owner whose Unit is served by a sanitary sewer lateral which crosses any adjacent Unit(s) is hereby granted a nonexclusive, perpetual easement, for the benefit of such Unit, on, over, under, along and across such adjacent Unit(s) for the purpose of constructing, maintaining, inspecting and repairing such sewer lateral.

2.6.3 Each Owner whose Unit is served by a yard drain for surface water runoff and/or the drainage line therefor which crosses any adjacent Unit(s) is hereby granted a nonexclusive, perpetual easement, for the benefit of such Unit, on, over, under, along and across such adjacent Unit(s) for the purpose of constructing, maintaining, inspecting and repairing such drainage line.

2.6.4 Private Sewer and Water Facilities. All water and sewer lines located within the boundaries of the Properties, and facilities appurtenant to those lines, shall be and remain private water and sewer systems and a part of the Common Area, and shall be maintained by the Association as provided in this Declaration.

Section 2.7. Completion of Improvements. Declarant expressly reserves for its benefit, the right and easement to enter the Property to complete any improvements which Declarant deems desirable to implement Declarant's development plan, to enter any portion of the Property in order to perform necessary repair work thereon, and to enter any adjacent portion of the Property in connection with the development of additional Phases of the overall Project; provided, however, that such use shall not be for a period of more than three (3) years after the conveyance of the first Condominium in the most recent Phase, or, with respect to all Phases, upon expiration of seven (7) years from the date of issuance by the DRE of the Final Subdivision Public Report for the first Phase; and such use of the Property by Declarant shall not unreasonably interfere with the use thereof by the Members of the Association.

Section 2.8. Right of Entry by the Association. The Association shall have a limited right of entry in and upon all Units, for the purpose of inspection, and taking whatever corrective action may be deemed necessary or proper by the Board of Directors, consistent with the provisions of this Declaration. Such entry upon a Unit shall be made, except to effect emergency repairs or other emergency measures, only after three (3) days prior written notice to the Owner of such Unit and after authorization of two-thirds (2/3rds) of the Board of Directors. Nothing contained herein shall be construed to impose any obligation upon the Association to maintain or repair any Unit or improvements required to be maintained or repaired by the Owners. Nothing in this Article 2 shall in any manner limit the right of the Owner to exclusive occupancy and control over such Owner's Unit. In the case of an emergency, an Owner shall be deemed to have given permission of entry to the Board of Directors or any other person authorized by the Board of Directors, as reasonably necessary, whether the Owner is present or not. Any damage caused to a Unit by such entry by the Board of Directors shall be repaired by the Association as a common expense of the Association.

Section 2.9. Right of Entry by Other Owners. An Owner shall permit other Owners, or their representatives, to enter such Owner's Unit for the purpose of performing required installations, alterations or repairs to the mechanical or electrical services to a Unit, provided that such requests for entry are made in advance and entry is made at a time reasonably convenient to the

Owner whose Unit is to be entered; and provided further, that the entered Unit is left in substantially the same condition as existed immediately preceding such entry. In case of an emergency, such right of entry shall be immediate. Any damage caused to a Unit by such entry by an Owner or its representative shall be repaired by such Owner.

### **ARTICLE 3**

#### **OWNERS' PROPERTY RIGHTS AND RESTRICTIONS**

Section 3.1. Delegation of Use. Any Owner may delegate such Owner's right to the use and enjoyment of the Association Property to the members of such Owner's family, guests and invitees, tenants, or contract purchasers who reside within the Project.

Section 3.2. Personal Liability of Owner. No Member may be exempt from personal liability for assessments duly levied by the Association, nor release the Condominium owned by such Member from the liens and charges thereof, by waiver of the use and enjoyment of the Common Property and the facilities thereon or by abandonment of such Member's Unit.

Section 3.3. Leasing of Units. If such Owner's purchase agreement permits, any Owner may lease such Owner's Unit subject to the following:

3.3.1 No Owner shall be permitted to lease such Owner's Unit to any individual who is not a Qualifying Resident, Qualified Permanent Resident or Permitted Health Care Resident as defined in Section 2.4 above.

3.3.2 No Owner shall be permitted to lease such Owner's Unit for transient or hotel purposes.

3.3.3 No Owner may lease less than the entire Unit.

3.3.4 Any lease agreement is required to provide that the terms of said lease shall be subject in all respects to the provisions of the Declaration and the Bylaws and that any failure by the lessee to comply with terms of such documents shall be a default under the lease.

3.3.5 All leases are required to be in writing.

Section 3.4. Right to Sell, Partition, Encroach and Support. The Declarant, its successors and assigns, and all future Owners of Condominiums, by their acceptance of their respective deeds, covenant and agree as follows:

3.4.1 No Owner may sell, assign, lease or convey such Owner's interest in the Common Area separate and apart from such Owner's Unit.

3.4.2 Each of the Owners of a Condominium, whether such ownership is in fee simple or as a tenant in common, is hereby prohibited from partitioning or in any other way severing or separating such ownership from any of the other ownerships in the Condominium Property

except upon the showing that: (i) more than three (3) years before the filing of the action, the Project was damaged or destroyed so that a material part thereof was unfit for its use and the Project has not been rebuilt or that Owners holding in aggregate more than a fifty percent (50%) interest in the Common Area are opposed to repair or restoration of the Project, or (ii) that the Project has been in existence in excess of fifty (50) years, that it is obsolete and uneconomic, and that Owners holding in aggregate more than a fifty percent (50%) interest in the Common Area are opposed to repair or restoration of the Project.

3.4.3 In the event a Unit or any part thereof is partially or totally destroyed, and then rebuilt, all Owners agree that minor encroachments of parts of the Common Property due to construction shall be permitted and that valid easements for said encroachment and the maintenance thereof shall exist.

3.4.4 A nonexclusive easement for ingress, egress and support through the Common Property shall be appurtenant to each Unit.

Section 3.5. Right of Owner to Improve and Modify Unit. Subject to the provisions of this Declaration and other applicable provisions of law, the Owner of a Unit shall have the right to do the following:

(1) Make any improvements or alternations within the boundaries of his or her Unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Project.

(2) Modify the Unit, at the Owner's expense, to facilitate access for persons who are blind, visually handicapped, deaf, or physically disabled, or to alter conditions, which could be hazardous. These modifications may also include modifications of the route from the public way to the door of the Unit. The right granted by this Section is subject to the following conditions:

(i) The modifications shall be consistent with applicable building code requirements.

(ii) The modifications shall be consistent with the intent of otherwise applicable provisions of this Declaration pertaining to safety or aesthetics.

(iii) Modifications external to the Unit shall not prevent reasonable passage by other residents and shall be removed by the Owner when the Unit is no longer occupied by persons requiring those modifications who are blind, visually handicapped, deaf, or physically disabled.

(iv) Any Owner who intends to modify a Unit pursuant to this Article shall submit his or her plans and specifications to the Architectural Control Committee for review to determine whether the modifications will comply with the provisions of this Section. The Committee shall not deny approval of the proposed modifications under this Section without good cause.



(3) Any change in the exterior appearances of a Unit shall be in accordance with this Declaration and applicable provisions of law.

Section 3.6. Liens Against Other Property. No labor performed or services or materials furnished with the consent of, or at the request of, an Owner or his or her agent or his or her contractor shall be the basis for the filing of a lien against any other property of any Owner in the Project unless that other Owner has expressly consented to or requested the performance of the labor or furnishing of the materials or services. However, express consent shall be deemed to have been given by the Owner of any Condominium in the case of emergency repairs thereto. Labor performed or services or materials furnished for the Common Property, if duly authorized by the Association, shall be deemed to be performed or furnished with the express consent of each Owner. The Owner of any Condominium may remove his or her Condominium from a lien against two or more Condominiums or any part thereof by payment to the holder of the lien of the fraction of the total sum secured by the lien, which is attributable to his or her Condominium.

Section 3.7. Owner's Duty to Maintain. Each Owner is responsible for maintaining his or her separate Unit.

#### **ARTICLE 4** **HOMEOWNERS' ASSOCIATION** **A CALIFORNIA NONPROFIT CORPORATION**

Section 4.1. Formation, Membership and Voting Rights. Declarant has, at its cost and expense formed an incorporated association known as "Bella Vista at Promontory Pointe Condominium Homeowners' Association", a California nonprofit mutual benefit corporation, which has the powers, rights and duties hereinafter set forth:

4.1.1 There shall be one membership in the Association for each Unit owned in the Project, which membership shall be appurtenant to the Condominium.

4.1.2 All of such memberships shall initially be the property of Declarant or its successors in interest, and shall pass automatically to the respective purchasers of Condominiums in the Project.

4.1.3 Each Member shall be obligated promptly, fully and faithfully to comply with the provisions of this Declaration, and the Bylaws of the Association, and any Rules and Regulations from time to time which may be prescribed by its officers or directors.

4.1.4 The Association shall have two (2) classes of voting membership as follows:

Class A. Class A Members shall be all Owners, with the exception of the Declarant, and shall be entitled to one (1) vote for each Condominium owned. When more than one person holds an interest in any Condominium, all such persons shall be Members. The vote for such

Condominium shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Condominium.

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

(a) Two (2) years from the date of the first conveyance of a subdivision interest in the most recent Phase of the overall development; or

(b) Four (4) years from the date of the first conveyance of a subdivision interest in the first Phase of the overall development.

4.1.5 Any provision in this Declaration, the Articles, Bylaws and Rules and Regulations of the Association calling for membership approval of action to be taken by the Association, except provisions with respect to the action to enforce the obligations of the Declarant under any completion bond as set forth in Section 11.4, shall expressly require the vote or written assent of the prescribed percentage of each class of membership during the time that there are two outstanding classes of membership. With the exception of Section 11.4 with respect to the action to enforce the obligations of the Declarant or under any completion bond, any requirement elsewhere in the Articles of Incorporation and Bylaws of the Association, and Declaration, that the vote of the Declarant shall be excluded in any determination, shall be applicable only if there has been a conversion of Class B Members to Class A Members, and the same shall be read as requiring the vote of the prescribed percentage of the Class A Members and the vote of the prescribed percentage of the Class A Members other than the Declarant.

4.1.6 The voting rights attributed to any given Condominium in the Project as provided for herein, shall not vest until the assessments provided for hereinbelow have been levied by the Association as against said Condominium.

4.1.7 The Association membership held by any Owner shall not be transferred, pledged, or alienated in any way, except upon the sale or encumbrance of such Condominium. In the event of such sale or encumbrance, the Association membership may only be transferred, pledged or alienated to a bona fide purchaser of the Condominium, or to the Mortgagee (or third-party purchaser) of such Condominium upon a foreclosure sale. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association.

4.1.8 Membership is not intended to apply to those persons or entities who hold an encumbrance or an interest as security for the performance of an obligation to pay money, including, without limitation, any Mortgagee.

4.1.9 The purpose of the Association is to further and promote the common interest and welfare of its Members, and to operate, preserve and maintain the Project.

**ARTICLE 5**  
**POWERS OF THE ASSOCIATION**

**Section 5.1. Powers of the Association.** The management and control of the Association's affairs and the Project itself will be the responsibility of the Board of Directors, which is to consist of Members of the Association who will be elected by the total Membership. The Association, in its sole and absolute discretion, and as more fully set forth in its Bylaws, shall have the power to perform the following acts:

5.1.1 The Association shall have the sole and exclusive right and duty to manage, operate, control, repair, replace, or restore all the improvements, trees, shrubbery, plants and grass within the Common Property of the Project.

5.1.2 The Association shall have the sole and exclusive right and duty to maintain the trash storage bins within the Project in good repair at all times, shall not allow stormwater to discharge from trash enclosures, compactors and/or recycling areas at any time and shall ensure that all waste materials are kept in leak proof containers at all times, as required by the Conditions of Approval for the Project.

5.1.3 The Association shall have the sole and exclusive right and duty to maintain, in a manner acceptable to the City's Fire and Police Departments, the directory maps and resident location information panels throughout the Project, as required by the Conditions of Approval for the Project.

5.1.4 The Association shall have the right to grant permits, licenses and easements over, under and across the Association Property for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Project.

5.1.5 The Association shall have the right and power to levy and collect assessments.

5.1.6 The Association shall pay the taxes and assessments, if any, which may be levied by any governmental authority on the Project or any part thereof.

5.1.7 The Association shall maintain a bank account or accounts for funds coming under the control of the Association.

5.1.8 The Association shall have the right and power to adopt and enforce architectural guidelines ("Architectural Guidelines") for the Project.

5.1.9 The Association shall adopt Rules and Regulations not inconsistent with the provisions of this Declaration, including, but not limited to, Rules and Regulations relating to the use of the Common Property of the Project.

5.1.10 The Association shall have the right and power to enforce the provisions of this Declaration; nothing, however, contained in this Section shall be construed to prohibit enforcement of this Declaration by any Owner.

5.1.11 The Association has the right and power to contract for and maintain fire, casualty, liability, workers' compensation, medical, hospital, and other insurance insuring Owners, members of the Board, and other persons.

5.1.12 The Association has the right and power to contract, provide and pay for (i) maintenance, utility, gardening and other services benefiting the Project; (ii) payment of persons necessary to accomplish the obligations of the Association; and (iii) legal and accounting services.

5.1.13 The Association has the right and power to contract, provide and pay for any commonly metered utilities, such as trash collection, for the common use and benefit of all Owners. In such event, each Owner shall pay a proportionate share of the costs thereof as a part of the annual assessments.

5.1.14 The Association has the right and power to contract, provide and pay for private water and sewer service for the common use and benefit of all Owners. In such event, each Owner shall pay a proportionate share of the costs thereof as a part of the annual assessments.

5.1.15 Notwithstanding any of the foregoing, the Association, acting through its Board, may not enter into any contract binding for a term longer than one (1) year from the effective date thereof without the vote or written consent of a majority of a quorum consisting of more than fifty percent (50%) of the voting power of the Members of the Association other than the Declarant, except as specifically authorized herein.

5.1.16 The Association has the right and power to contract for the purchase of tools, equipment, supplies and other personal property and services for the maintenance and repair of the facilities and improvements of the Project.

5.1.17 The Association has the right and power to contract for and pay for reconstruction of any portion or portions of the Association Property damaged or destroyed.

5.1.18 The Association has the right, power and obligation to cause a yearly inspection to be made by a private engineer of all slope areas and drainage devices in the Association Property. The Association shall undertake any reasonable maintenance or corrective measures recommended by the engineer.

5.1.19 The Association has the right and power to delegate its powers to others where such delegation is proper.

5.1.20 The Association has the right and power to prosecute or defend, and to perform any act reasonably necessary to resolve by alternative dispute resolution proceedings, under the

name of the Association, any action affecting or relating to the Project or the personal property thereon, or any action in which all of the Owners have an interest in the subject of the action.

5.1.21 Subject to the vote or written consent therefor from a majority of the voting power of the membership, excluding the vote of the Declarant, the Association may borrow money, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

5.1.22 The Association may do any and all things that a nonprofit mutual benefit corporation organized under the laws of the State of California may lawfully do, and generally may do and perform any and all other acts which may be either necessary for, or incidental to, the exercise of any of the foregoing powers, and any other such powers as are granted by the provisions of the laws of the State of California to such a corporation.

5.1.23 The Association may acquire by gift, purchase or otherwise, own, hold, enjoy, lease, operate, maintain, convey, sell, transfer, mortgage, or otherwise encumber, dedicate for public use, or otherwise dispose of real and/or personal property in connection with the business of the Association; provided, however, that the Association shall not acquire or sell any real property by purchase or lease without first obtaining the vote or written consent therefor from a majority of the voting power of the membership, excluding the vote of the Declarant.

5.1.24 The Association shall have the right and power to suspend a Member's voting rights and the right to use the Association Property recreational facilities, if any, for any period during which any assessment against such Member's Condominium remains unpaid and delinquent; and for a period not to exceed thirty (30) days for any single infraction of the Rules and Regulations of the Association, provided that any suspension of such voting rights or right to use the recreational facilities, if any, except for failure to pay assessments, shall be made only by the Association or a duly appointed committee thereof, after notice and hearing given and held in accordance with the Bylaws of the Association.

5.1.25 The Association may not cause a forfeiture of an Owner's right to use and enjoy such Owner's Condominium for failure of a Member to comply with the provisions of this Declaration, or the Bylaws or Rules and Regulations of the Association, except (1) by judgment of a court or decision arising out of arbitration, or (2) on account of a foreclosure or sale under a power of sale for failure of the Owner to pay assessments duly levied by the Association, as set forth in Article 7 hereof.

5.1.26 The Association may take any and all lawful action which may be advisable, proper, authorized or permitted by the Association under and by virtue of any condition, covenant, restriction, reservation, charge or assessment affecting the Project, or any portion thereof, and to do and perform any and all acts which may be either necessary for or incidental to the exercise of any of the foregoing powers, or for the peace, health, comfort, safety or general welfare of its Members.

5.1.27 The Association, through its duly authorized agents or employees, shall have the right after reasonable notice to the Owner to enter into any Unit in the Project for the purpose of maintaining and repairing the Common Property, as authorized herein.

5.1.28 The Association, through its duly authorized agents or employees, shall also have the right to enter into any Unit to effect emergency or other necessary repairs which the Unit Owner has failed to perform.

5.1.29 The Association may impose monetary penalties upon Owners as a disciplinary measure (1) for failure of an Owner to comply with the Bylaws, the Rules and Regulations of the Association or the Declaration, or (2) as a means of reimbursing the Association for costs by the Association in the repair of damages to Common Property and recreational facilities, if any, for which the Owner is allegedly responsible, or (3) to bring an Owner or its Condominium into compliance with the Declaration, Bylaws or the Rules and Regulations of the Association.

Section 5.2. Fidelity Bond. The Association shall maintain a fidelity bond or insurance in an amount at least equal to the sum of three months' assessments on all Units in the Project, which names the Association as obligee and insures against loss by reason of acts of members of the Board of Directors, officers and employees of the Association and any management agent and its employees, whether or not such persons are compensated for their services.

Section 5.3. Title to the Association Property.

5.3.1 Declarant hereby covenants for itself, its successors and assigns, that it will convey title to the Association Property to the Association, free and clear of all encumbrances and liens, except easements, covenants, conditions and reservations then of record, including those set forth in this Declaration. Said conveyance for each Phase shall be made to the Association prior to the conveyance of the first Condominium Unit in such Phase to an Owner.

5.3.2 The Association's responsibility to maintain the Association Property conveyed to the Association shall commence concurrently with the recordation of the Grant Deed conveying the Association Property to be maintained. Notwithstanding the foregoing, if the contractors or subcontractors of Declarant are contractually obligated to maintain or warrant the landscaping or other improvements on the Association Property for a specified period in which said contractors or subcontractors shall perform such maintenance, the Association shall not interfere with the performance of such warranty or other contractual maintenance obligations. Maintenance performed by such contractors or subcontractors shall not serve to postpone the commencement of assessments pursuant to this Declaration, nor entitle an Owner to claim any offset or reduction in the amount of such assessments.

5.3.3 The nature, design, quality and quantity of all improvements in the Association Property shall be determined by Declarant in its sole discretion. The Association shall be obligated to accept title to the Association Property, and shall assume and undertake all maintenance responsibilities for the Association Property when title is conveyed and/or maintenance responsibilities are tendered by Declarant pursuant to subparagraphs 5.3.1 and 5.3.2 above. In the event that a dispute arises between Declarant and the Association with respect to

the nature, design, quality or quantity of the improvements in the Association Property, or the acceptance of maintenance responsibilities therefor, the Association shall be obligated to accept title to the Association Property and to assume and undertake maintenance responsibilities pending resolution of the dispute, in accordance with the provisions set forth in the Article herein entitled "Dispute Mechanisms."

#### Section 5.4. Membership Meetings.

5.4.1 Meetings of the membership of the Association shall be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the Association may adopt. Notwithstanding any other provision of law, notice of meetings of the Members shall specify those matters the Board intends to present for action by the Members but, except as otherwise provided by Law, any proper matter may be presented at the meeting for action. Members of the Association shall have access to Association records in accordance with Article 3 (commencing with Section 8330) of Chapter 13 of Part 3 of Division 2 of Title 1 of the Corporations Code. Any Member of the Association may attend meetings of the Board of Directors of the Association, except when the Board adjourns to executive session to consider litigation, matters that relate to the formation of contracts with third parties, Member discipline, or personnel matters. Any matter discussed in executive session shall be generally noted in the minutes of the Board of Directors. In any matter relating to the discipline of a Member, the Board of Directors shall meet in executive session if requested by that Member, and the Member shall be entitled to attend the executive session. For a period of ten (10) years after the close of escrow for the sale of the last Unit in the Project covered by a Final Subdivision Public Report, in addition to Declarant's rights as an Owner and a Member, Declarant shall be entitled to access to the Association books and records, including maintenance records, and to attend and speak at meetings of the Board of Directors and meetings of the Members. Any comments made by Declarant at any meeting shall be accurately noted in the minutes prepared for such meetings.

5.4.2 The minutes, minutes proposed for adoption that are marked to indicate draft status or a summary of the minutes, of any meeting of the Board of Directors of the Association, other than an executive session, shall be available to Members within thirty (30) days of the meeting. The minutes, proposed minutes, or summary minutes shall be distributed to any Member of the Association upon request and upon reimbursement of the Association's costs in making that distribution. For a period of ten (10) years after the close of escrow for the sale of the last Unit in the Project covered by a Final Subdivision Public Report, Declarant shall have the right to receive all distributions of minutes, proposed minutes or summary minutes upon request and reimbursement of the Association's actual copying and mailing costs for making the distribution to Declarant.

5.4.3 Members of the Association shall be notified in writing at the time that the Budget required in Section 18.2 below is distributed or at the time of any general mailing to the entire membership of the Association of their right to have copies of the minutes of meetings of the Board of Directors and how and where those minutes may be obtained, and the cost of obtaining such copies. For a period of ten (10) years after the close of escrow for the sale of the last Unit in the Project covered by a Final Subdivision Public Report, Declarant shall have the right to receive all distributions of minutes, proposed minutes or summary minutes upon request and

reimbursement of the Association's actual copying and mailing costs for making the distribution to Declarant.

## **ARTICLE 6**

### **MANAGEMENT OF THE PROJECT**

Section 6.1. Management Responsibility. The management and complete control of the Association's affairs and the Project itself will be the direct responsibility of the Board of Directors (hereinafter the "Board"), which is to consist of Members of the Association who will be elected by the total membership of the Association, and any interim Board appointed by the Declarant prior to the election referred to hereinabove.

Section 6.2. Interim Board. Declarant shall appoint an interim Board of Directors to govern the Project, which Board shall have the same rights, privileges, duties and characteristics as detailed in the Declaration and the Articles and Bylaws of the Association, and which interim Board shall serve at the pleasure of the Declarant until the first annual meeting of the Association when the Members shall elect directors as provided in the Bylaws of the Association. Said Declarant and appointed interim directors are not required to be Owners.

Section 6.3. Powers of Board. The Board shall have all the rights and powers of the Association as they are delineated in Article 5 of this Declaration and as are further provided in the Bylaws of the Association.

Section 6.4. Manager. The Board may delegate its responsibility for the everyday management of the Project to a manager or management company, if it so chooses. Notwithstanding any of the foregoing, if a manager or management company is chosen to manage the Project, it will be responsive to the dictates of the Board.

Section 6.5. Extent of Declarant's Management and Control. Declarant will manage and control the Project until such time that the Board has its first meeting.

## **ARTICLE 7**

### **ASSESSMENTS**

Section 7.1. Creation of Lien and Personal Obligation to Pay Assessments. The Declarant, for each Condominium owned within the Project, hereby covenants, and each Owner of any Condominium by acceptance of a grant deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, with such assessments to be established and collected as so directed by the Board of Directors. The annual and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the Condominium and shall be a continuing lien upon the Condominium against which each such assessment is made, the lien to be effective upon recordation of a Notice of Delinquent Assessment. Each such assessment, together with interest, costs and reasonable attorneys' fees,



shall also be the personal obligation of the person who was the Owner of such Condominium at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them.

Section 7.2. Purpose of Assessments. The annual assessments levied by the Association through the Board shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Project and for the maintenance of the Common Property and the facilities therein. The Association shall maintain an adequate reserve fund for maintenance, repairs and replacement of those common elements that must be replaced on a periodic basis, and such reserve shall be funded by annual assessments.

Section 7.3. Uniform Rate of Assessment. Both annual and special assessments, except as may otherwise be provided in Sections 7.5 and 16.3 of this Declaration, shall be fixed at a uniform rate for all Condominiums and shall be collected on a monthly basis or as otherwise determined by the Board.

Section 7.4. Maximum Annual Assessment. The Board of Directors shall abide by the hereinafter provisions for establishing the maximum annual assessments.

7.4.1 Until the first day of the fiscal year immediately following the conveyance of the first Condominium in a Phase to an Owner, or until the first day of the month following an earlier sale of the first Condominium in a new Phase of the Project, the maximum annual assessment for each Condominium in the Project shall be as provided for in the budget approved by the California Department of Real Estate and disclosed in the Final Subdivision Public Report, for the particular Phase of the Project in which such sale occurred, and any amendments thereto. Thus, notwithstanding the limitation on increases in the maximum annual assessments and related time periods contained in this Article, whenever a new Phase is annexed to the Properties, upon the first closing of a sale in such new Phase the amount of the maximum annual assessment for all Condominiums in the Properties will increase or decrease to the amount stated in the budget approved by the California Department of Real Estate for such new Phase.

7.4.2 From and after the first day of the fiscal year immediately following the conveyance of the first Condominium in a Phase to an Owner, the maximum annual assessment may be increased effective the first day of each fiscal year by the Board of the Association without a vote of the membership, provided that (i) any such increase shall not be more than twenty (20%) of the previous year's most recent assessment level (including any increase in such assessment resulting from new Phases being annexed to the Properties during such year), and (ii) the Board of Directors has complied with Section 18.2 with respect to that fiscal year, including, but not limited to, the preparation and distribution of a pro forma operating budget to all Members of the Association as provided in Section 18.2 below, or the Board of Directors has obtained the approval of Owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code. For the purposes of this Article 7 "quorum" shall mean more than fifty percent (50%) of the Owners of the Association. Such annual assessment shall continue in

effect for the following twelve (12) calendar months, which period shall be deemed to be the assessment period.

7.4.3 From and after the first day of the fiscal year immediately following the conveyance of the first Condominium in a Phase to an Owner, the maximum annual assessment may be increased by the Board in an amount greater than that provided for in Section 7.4.2 hereof for the next succeeding twelve (12) months and at the end of each such period for each succeeding period of twelve (12) months, provided that (i) any such change shall be approved by the vote or written consent of at least a majority of the voting power of the Members constituting a quorum, and (ii) provided that the Board of Directors has prepared and distributed a pro forma operating budget to all Members of the Association as provided in Section 18.2. The Association shall provide notice by first-class mail to each Owner of any increase in the regular assessments of the Association, not less than thirty (30) nor more than sixty (60) days prior to the increased assessment becoming due.

7.4.4 Said maximum assessment may be reduced by maintenance or subsidy agreements approved by the California Department of Real Estate as reflected in the Final Subdivision Public Report.

7.4.5 After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessment at a lesser amount than provided for above.

Section 7.5. Special Assessments. In any fiscal year, the Board of Directors may not, without the vote or written consent of a majority of the voting power of the Association residing in Members constituting a quorum, levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Property, including fixtures and personal property related thereto, which individually or in the aggregate exceeds five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. The above provisions with respect to special assessments do not apply in the case where a monetary penalty is imposed against a Member as a disciplinary measure imposed by the Association for the following reasons: (1) for failure of an Owner to comply with the Bylaws, the Rules and Regulations of the Association, or the Declaration, or (2) as a means of reimbursing the Association for costs incurred by the Association to mitigation, remediation and/or repair damages to Common Property and facilities for which the Owner is allegedly responsible, or (3) to bring an Owner, its Condominium into compliance with provisions of this Declaration, the Bylaws and/or the Rules and Regulations of the Association. The Association shall provide notice by first-class mail to each Owner of any increase in the special assessments of the Association, not less than thirty (30) nor more than sixty (60) days prior to the increased assessment becoming due.

Section 7.6. Notice and Quorum for Actions Regarding Assessments. Any action authorized under Sections 7.4.3 and 7.5 shall be taken at a meeting duly called for that purpose, written notice of which shall be sent to all Members not less than ten (10) days nor more than ninety (90) days in advance of the meeting. If the proposed action is favored by a majority of the votes cast at such meeting, but such vote is less than the requisite percent for passage, Members who were

not present in person or by proxy may give their assent in writing, provided the same is obtained by the Board of Directors not later than thirty (30) days from the date of such meeting. There shall be no votes attributable to the Declarant in any Phase until Declarant begins paying assessments on Condominiums in such Phase.

Section 7.7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Condominiums in a Phase covered by this Declaration on the first day of the month following the conveyance of the first Condominium in such Phase by Declarant to an individual Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Condominium at least thirty (30) days in advance of each annual assessment period, and such amount is subject to change upon closing of the sale of the first Condominium within any newly annexed Phase in accordance with the approved budget for such Phase. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Condominium have been paid.

Notwithstanding any other provision of this Declaration, conveyance of a Unit which is being used by Declarant for model home, sales office, design center, construction office or similar purposes (any of which uses are referred to herein as "Model Home") shall not commence the annual assessments against such Unit or the other Units within the same Phase of development until discontinuance of such use of such Unit as a Model Home, or conveyance of any other Unit in such Phase not being used as a Model Home to a member of the general public, whichever occurs first. During the period of time commencing on the first day of the calendar month following the sale of a Unit being used by Declarant as a Model Home, and ending on the date annual assessments commence against such Unit, Declarant shall be responsible for the maintenance of all portions of such Phase of development in which such Model Home Unit is located.

Section 7.8. Assessment Limitation Not Applicable. The limitation on percentage increases of annual assessments shall not limit assessment increases by the Board for the following emergency situations:

- (a) An extraordinary expense required by an order of court
- (b) An extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible where a threat to personal safety on the property is discovered.
- (c) An extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro-forma operating budget pursuant to Article 18 hereof. However, prior to the imposition or collection of an assessment under this subparagraph (c), the Board shall pass a resolution containing written findings as to the necessity of the

extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolutions shall be distributed to the Members with the notice of assessment.

Section 7.9. Association Statement at Transfer of Title. At the request of any Owner transferring title to such Owner's Condominium, the Association shall provide (i) a true statement in writing from an authorized representative of the Association as to the amount of the Association's current regular and special assessments and fees, as well as any assessments levied upon the Owner's Condominium which are unpaid on the date of the statement, and (ii) any change in the Association's current regular and special assessments and fees which have been approved by the Association's Board of Directors, but have not become due and payable as of the date disclosure is provided pursuant to this Section.

Section 7.10. Exemption From Assessments For Association Property. Notwithstanding any other provisions of this Declaration, Declarant or any other Owner shall not be obligated to pay any portion of any assessments, which is for the purpose of defraying expenses and establishing reserves directly attributable to the existence and use of a Association Property improvement that is not complete at the time assessments commence. Any such exemption for the payment of assessments shall be in effect only until a Notice of Completion of the Association improvement has been recorded or the Association Property improvement has been placed into use, whichever shall first occur.

## **ARTICLE 8**

### **EFFECT OF NON-PAYMENT OF ASSESSMENTS - REMEDIES OF THE ASSOCIATION**

Section 8.1. Assessment As Debt; Late Charges. Any assessment made in accordance with this Declaration shall be a debt of the Owner of a Condominium from the time the assessment is levied. With respect to each assessment not received by the Association within fifteen (15) days after its due date, the Board may, at its election, require the Owner to pay a late charge in a sum to be determined by the Board, but not to exceed ten percent (10%) or Ten Dollars (\$10.00), whichever is greater. A late charge may not be imposed more than once on any delinquent assessment, but it shall not eliminate or supersede any charges imposed on prior delinquent assessments. If any such assessment is not paid within thirty (30) days after the date said assessment is due, the assessment shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay same, and in addition thereto, or in lieu thereof, after the expiration of thirty (30) days following recordation thereof, may foreclose the lien provided hereinbelow against the Condominium.

Section 8.2. Delinquent Assessments. Any assessment not received by the Association within fifteen (15) days after the due date shall be delinquent. Before the Association may place a lien upon the Condominium of an Owner as provided herein, the Association shall notify such Owner in writing by certified mail of the fee and penalty procedures of the Association, provide an itemized statement which indicates the principal amount owed, any late charges and the method

of calculation, any attorney's fees, and the collection practices used by the Association, including the right of the Association to the reasonable costs of collection. The amount of any such delinquent assessment or installment, together with any accompanying late charges, interest, costs (including reasonable attorneys' fees), and penalties, as provided for in this Declaration, shall be and become a lien on the Condominium against which the assessment is levied when the Association causes to be recorded a Notice of Delinquent Assessment (herein the "Notice") in the office of the County Recorder of the county in which the Condominium is located. The Notice shall describe the amount of such delinquent assessment or installment and such other charges thereon as may be authorized by this Declaration, a legal description of the Condominium against which the same has been assessed, the name of the Owner, and, if the lien is to be enforced by the power of sale under nonjudicial foreclosure proceedings, the name and address of the trustee authorized by the Association to enforce the lien by sale. Such Notice shall be signed by the president or vice-president, and the secretary or assistant secretary of the Association or any employee or agent of the Association authorized to do so by the Board and shall be mailed in the manner set forth in Civil Code Section 2924b to all record owners of the Owner's interest in the Condominium no later than ten (10) calendar days after recordation. Unless the Board considers the immediate recording of the Notice to be in the best interests of the Association, the Notice shall not be recorded until fifteen (15) calendar days after the Association has delivered the above-described required written notice of default. Any payments received by the Association on account of such a debt shall first be applied to the principal amount owed, and only after the principal amount owed is paid in full shall such payments be applied to interest or collection expenses. If the delinquent assessment or installment and related charges are paid or otherwise satisfied, the Association shall record a notice of satisfaction and release of lien.

Section 8.3. Enforcement of Assessment Lien. The Board may, after the expiration of thirty (30) days following recordation thereof, enforce any assessment lien provided for in Section 8.2 by filing an action for judicial foreclosure or, if the Notice contained the name and address of the trustee authorized by the Association to enforce the lien by nonjudicial foreclosure, by recording a notice of default in the form described in California Civil Code Section 2924c(b)(1) to commence a nonjudicial foreclosure. Any nonjudicial foreclosure shall be conducted in accordance with the requirements of California Civil Code Sections 2924, 2924b, 2924c, 2924f, 2924g, and 2924h that apply to nonjudicial foreclosures of Mortgages or deeds of trust. The sale shall be conducted by the trustee named in the Notice of Delinquent Assessment or by a trustee substituted in accordance with the provisions of California Civil Code Section 2934a. The Association may bid on the Condominium at the sale, and may hold, lease, mortgage, and convey the acquired Condominium. If the default is cured before the sale, or before completing a judicial foreclosure, including payment of all costs and expenses incurred by the Association, the Association shall record a Notice of Satisfaction and Release of Lien, and on receipt of a written request by the Owner, a Notice of Rescission of the Declaration of Default and Demand for Sale. Suit to recover a money judgment for unpaid assessments, rent and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same.

Section 8.4. Monetary Penalty. A monetary penalty imposed by the Association as a disciplinary measure for (a) failure of an Owner to comply with this Declaration, and the Articles, Bylaws or Rules and Regulations of the Association, or (b) as a means of reimbursing

the Association for costs incurred by the Association in the mitigation, remediation and/or repair of damages to the Common Property and facilities for which the Owner or the Owner's guests or tenants is allegedly responsible, or (c) to bring an Owner or its Condominium into compliance with this Declaration, and the Articles, Bylaws or Rules and Regulations of the Association shall not be treated as an assessment which may become a lien against the Owner's Condominium enforceable by a sale of the Condominium in accordance with the provisions of Sections 2924, 2924(b) and 2924(c) of the California Civil Code. This paragraph shall not apply to charges imposed against an Owner, which are reasonable late payment penalties for delinquent assessments, nor charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent assessments.

Section 8.5. Power to Bring Actions; Arbitration. In addition to the lien power described hereinabove, each Owner vests in the Association or its assigns, the right and power to bring all actions at law against such Owner or other Owners for the collection of delinquent assessments. In lieu of bringing an action at law to collect delinquent assessments, the Association may submit the matter to arbitration pursuant to the Rules of the American Arbitration Association. The decision of the arbitrator on such delinquent assessment shall be binding on both the Association and the delinquent Owner and may be enforced in any court of competent jurisdiction. The fee to initiate such arbitration shall be paid by the Association and shall be recoverable as part of the arbitration award, in addition to the late charges and interest on the delinquent assessment as provided above.

## **ARTICLE 9**

### **OWNER MAINTENANCE RESPONSIBILITIES**

Section 9.1. Owner Maintenance of Unit. Each Owner shall have the responsibility of maintaining and repairing all elements of the Unit. In the event the need for repair of the Common Property is caused through the intentional or negligent acts of an Owner or such Owner's guests or invitees, the liability of the Member for the cost of such repair shall be determined according to the laws of the State of California.

## **ARTICLE 10**

### **ARCHITECTURAL CONTROL COMMITTEE**

Section 10.1. Appointment of Committee. An Architectural Control Committee shall be established, having responsibility for the control of the structural and landscaping architecture and design in the Project. Said Architectural Control Committee shall consist of three (3) to five (5) members. Declarant may appoint the members of the original Architectural Control Committee and all replacements for the appointees until the first anniversary of the issuance of the original Final Subdivision Public Report for the Project. Thereafter, Declarant may appoint three (3) of the members of the Architectural Control Committee until ninety percent (90%) of the Units in the Project have been sold or until the fifth anniversary of the original issuance of the Final Subdivision Public Report for the first Phase of the Project, whichever first occurs. After one year from the date of issuance of the original Final Subdivision Public Report for the

Project, the Board of Directors of the Association shall have the power to appoint two (2) members to the Architectural Control Committee until ninety percent (90%) of the Units in the Project have been sold or until the fifth (5th) anniversary of the original issuance of the Final Subdivision Public Report for the Project, whichever first occurs. Thereafter, the Board of Directors of the Association shall have the power to appoint all of the members of the Architectural Control Committee. Members appointed to the Architectural Control Committee need not be Members of the Association. In the event a member of the Architectural Control Committee appointed by Declarant is no longer employed by Declarant, Declarant may appoint a successor member by posting a Notice of Change of Membership at the Project.

Section 10.2. Submissions and Approvals Required. No building, fence, wall, landscaping or other structure shall be commenced, erected or maintained upon the Project, nor shall any exterior addition, change or alteration therein, and no improvements which are visible from any other Unit or Common Property, including landscaping as described in Section 10.3 hereinbelow, be made until full, complete and legible plans and specifications, in form acceptable to the Board or the Architectural Control Committee, showing the nature, kind, shape, height, color, materials and location of same shall have been submitted either by personal delivery or by certified mail, return receipt requested, to and approved in writing by the Architectural Control Committee provided for in Section 10.1 hereof. In the event said Committee or its designated representatives, fail to approve or disapprove such design and location within sixty (60) days after said complete plans and specifications with all required documents in acceptable form have been submitted to it, approval will not be required, and this Article will be deemed to have been fully complied with. Each Owner shall be responsible for obtaining all necessary approvals or permits from applicable governmental entities or agencies and shall comply with all laws, codes and regulations concerning the construction of any such Improvement.

Section 10.3. Initial Construction By Declarant. The provisions of this Article shall not apply to the initial construction by Declarant and neither the Board nor any committee appointed by the Board shall have any right to approve or disapprove such initial construction by Declarant.

Section 10.4. Non-Liability of Committee Members. Neither Declarant, the Association, the Board or the Committee, or the members or designated representatives thereof, shall be liable for damages to any Owner submitting plans or specifications to them for approval, or to any Owner in the Project affected by this Declaration by reason of mistake in judgment, negligence or nonfeasance, unless due to willful misconduct or bad faith of the Committee. The Committee's approval or disapproval of a submission shall be based solely on the considerations set forth in this Article, and in such rules and regulations as may be promulgated by the Committee, and the Committee shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plans or design from the standpoint of structural safety and conformance with building or other codes.

Section 10.5. Retirement by Declarant. At any time, Declarant and those members of the Architectural Control Committee appointed by Declarant, may withdraw from the Architectural Control Committee and the Owners of Units in the Project shall assume the management and operation of the Architectural Control Committee. In order to withdraw, all members of the

Architectural Control Committee appointed by Declarant, shall mail to all the Owners of the Units at the addresses of the Units a notice stating that Declarant, and those members of the Architectural Control Committee appointed by Declarant, have determined that they shall withdraw from the Architectural Control Committee as of a certain effective date specified in such Notice, such effective date being not more than sixty (60) and not less than thirty (30) days following the date of the Notice. The Notice shall state that all Owners who wish to become members of the Architectural Control Committee must submit their names to Declarant at the address of the Architectural Control Committee within two (2) weeks of the date of such Notice. Following Declarant's receipt of such names of Owners, Declarant shall publish the list of such persons to all Owners. All Owners shall thereupon have one (1) week to vote for no more than five (5) of such persons to serve on the Architectural Control Committee and return such votes to the Declarant. Those five (5) Owners receiving the most votes shall constitute the new membership of the Architectural Control Committee as of the effective date of Declarant's withdrawal. If five (5) or fewer than five (5) Owners respond, those Owners who responded shall automatically constitute the members of the Architectural Control Committee and no vote of the Owners shall be required and such members shall have the authority to fill any vacancy in the members of the Architectural Control Committee following the effective date of Declarant's withdrawal.

Section 10.6. Dormant Architectural Control Committee. If no Owners or fewer than three (3) Owners respond to the Notice of the Declarant and advise that they desire to serve on the Architectural Control Committee, the Declarant shall have no further obligation to seek Owners to serve on the Architectural Control Committee. In the event that no Owners respond to the Notice, the Architectural Control Committee shall not be disbanded, but the Architectural Control Committee shall only become inactive until, upon the written Notice of any Owner (the "Activating Owner") to all other Owners in the Project, the Activating Owner calls for volunteers to become members of the Architectural Control Committee. Thereupon the Activating Owner shall follow the same procedures set forth above used by Declarant as if the Activating Owner were the Declarant in order to obtain the names of Owners who wish to serve on the Architectural Control Committee and thereafter, if necessary, vote among such Owners to determine which of the responding Owners shall serve as members of the Architectural Control Committee. The Activating Owner may, but is not required to, include his own name as one of the responding Owners who wishes to be a member of the Architectural Control Committee and may disclose its desire to be a member of the Architectural Control Committee in Notices to the Owners. The Activating Owner may designate any date as an effective date for the Owners to commence to function as the Architectural Control Committee so long as such date is not less than thirty (30) days and not more than sixty (60) days from the date of the Activating Owner's first Notice to the Owners. The members of the activated Architectural Control Committee shall immediately record an instrument in the official records of Ventura County setting forth the official address of the Architectural Control Committee for Notice purposes.

Section 10.7. Term of Office. Those members of the Architectural Control Committee appointed by Declarant shall serve for so long as the Declarant has the right to appoint the members of the Architectural Control Committee. Any Owners becoming members of the Architectural Control Committee following the retirement of Declarant's nominees shall serve for a one (1) year term, except that any person who becomes a member after the annual election



of members in ~~the manner described in this Paragraph shall serve only until the next annual election if his or her term is longer than nine (9) months. If his or her term is shorter than nine (9) months, the member shall serve until the next annual election of members.~~ The members shall be elected annually, the first annual election occurring on the anniversary date of the effective date of the retirement of the Declarant's nominees or from the effective date of the activation of a dormant Architectural Control Committee in the manner provided for in this Declaration. The names of persons consenting to be members of the Architectural Control Committee shall be Notice to all Owners at ~~the addresses of the Lots or at the addresses shown~~ on the records of the Architectural Control Committee. The Owners shall have fifteen (15) days to cast five (5) votes for any person or persons shown on such list and those five (5) Owners receiving the highest total votes shall thereafter constitute the Architectural Control Committee until their successors are elected and accept such positions. Incumbent members of the Architectural Control Committee shall be responsible for organizing and supervising and counting the votes in an election. The Architectural Control Committee shall submit to the Owners the name of every Owner who desires to be a member of the Architectural Control Committee.

Section 10.8. Inspection Access Rights. Each member of the Architectural Control Committee, Declarant and any agent or employee of the Committee or Declarant shall at all reasonable hours have the right of ingress and egress on, over and across all Units upon which Improvements are being or have been constructed for the purpose of inspection relative to compliance with this Declaration.

Section 10.9. Views. There are no express or implied easements whatsoever appurtenant to any Lot for view purposes, or for the passage of light and air across any other Lot, or any property not within the Project, regardless of whether such Lot is owned by Declarant. In addition, no Owner shall have any right to the protection of any view that may exist at any time from such Owner's Lot across any other Lot or Association Property. Each Owner, by accepting a deed to a Lot, hereby expressly acknowledges and agrees that any view, which his Lot may enjoy as of the date of purchase may be impaired or obstructed by the installation of trees, other landscaping or other types of barriers (both natural and artificial), the growth of landscaping, the construction or installation of Improvements in the Project and/or any adjoining property, and each Owner hereby expressly consents to any such obstruction. Declarant makes no assurance whatsoever concerning the impact on views of any construction of Improvements by anyone after completion of Declarant's original construction, whether such construction is approved by the Architectural Control Committee or constructed on property contiguous to the Properties.

## **ARTICLE 11**

### **RESPONSIBILITIES OF THE ASSOCIATION**

### **WITH SPECIFIC REFERENCE TO THE COMMON PROPERTY**

Section 11.1. Association Maintenance. The Association shall be responsible for the maintenance, repair, irrigation, brush clearance and preservation of the appearance of the Association Property, including, but not limited to, all improvements, recreational facilities, pool

area, gate entrances and all associated improvements, streets, open space areas, slope areas, lighting, landscaping, fences, walls, buildings and other related features.

Section 11.2. Owner's Failure to Maintain. Notwithstanding anything to the contrary, if an Owner should fail to maintain or make the necessary repairs or replacements which are the responsibility of such Owner, the Association shall have the right, but not the obligation, upon a vote of a majority of the Board of Directors, after not less than thirty (30) days' notice to the Owner, to enter the Unit and provide such maintenance or make such repairs or replacements as are necessary, the cost thereof to be added to the assessments chargeable to that Condominium.

Section 11.3. Responsibility for Unannexed Property. The Declarant shall be solely and exclusively responsible for the maintenance and security of all of the real property and improvements thereon of the subsequent Phase portions of the Project during construction until the sale of the first Unit in such Phase as set forth in Section 7.7 "Date of Commencement of Annual Assessments". Upon Commencement of Annual Assessments for any Phase, the Association shall automatically assume the sole and exclusive right and duty to manage, maintain and control all of the Common Property in such Phase as set forth above. While Phase 2 and 3 are under the control of the Declarant, the Association shall be named as an additional insured under Declarant's public liability insurance policy.

Section 11.4. Non-Completion of Improvements. In the event that improvements to the Association Property have not been completed prior to the issuance of the Final Subdivision Public Report for the Project, and the Association shall be an obligee under a bond or other security (hereinafter "Bond") to secure performance of the commitment of the Declarant to complete such improvements, the following provisions shall apply:

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

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

11.4.3 The only Members entitled to a vote at such meeting of Members shall be the Owners other than Declarant whose performance is secured by the bond at issue. A vote at such meeting of a majority of the voting power of such Members other than Declarant to take action

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

11.4.4 The Association shall act in a reasonably prompt manner to exonerate Declarant and its surety under any Bond in favor of the Association upon completion of the improvements.

11.4.5 Maintenance Manual Compliance. The Association has the duty and obligation, along with the attendant rights and power to carry out the Declarant's and its consultant(s)' required maintenance of the Common Area, as set forth in the Maintenance Manual. The Board shall regularly determine whether the recommended inspections and maintenance activities have been followed, and, if any such recommendations have not been followed, what corrective steps need to be taken to assure proper inspections and maintenance of the Common Area. The Board shall keep a record of such determinations in the Board's minutes. The Board shall review the Maintenance Manual for any needed appropriate revisions at appropriate intervals, but in no event less frequently than annually, and shall make appropriate recommendations to Declarant and Declarant's consultant(s) for revisions to the Maintenance Manual within thirty (30) days of its determination that revisions to the Maintenance Manual should be recommended to Declarant.

11.4.6 Association Inspections. If in any year Declarant elects not to perform an annual maintenance inspection as provided for in Section 11.4.5 above, the Board shall have the duty and obligation to cause an inspection and report to be made in accordance with the provisions hereof. The Board's annual inspections shall (i) determine whether the Common Area is being maintained adequately in accordance with the standards of maintenance established herein and by the Maintenance Manual, (ii) identify the condition of the Common Area, including the existence of any hazards or defects, and the need for performing additional maintenance, repair, refurbishing or replacement, and (iii) recommend preventative actions, which may be taken to reduce potential maintenance costs to be incurred in the future. The Association may employ such experts and consultants as necessary to perform such inspections. Within thirty (30) after the Board's annual inspection, the Board shall have a report of the results of the inspection prepared, and such report shall include the following: (i) a description of the condition of the Common Area, including a list of items inspected and the status of maintenance, repair and need for replacement of all such items; (ii) a description of all maintenance, repair and replacement planned for the ensuing fiscal year and; (iii) if any maintenance, repair or replacement is to be deferred, an explanation must be given for such deferral; (iv) a summary of all reports of inspections performed by any expert or consultant employed by the Association to perform inspections; (v) a report of the status of compliance with the maintenance, replacement and repair needs set forth in all inspection reports from Declarant's consultant(s) and of its own inspection, for preceding years; and (vi) such other matters as the Board deems appropriate. The Board shall promptly cause a copy of each inspection report prepared in accordance with this Section to be delivered to Declarant. The Association's obligations under this Section shall continue until the expiration of the (10) year period following the close of escrow for the sale of the last Unit in the Project covered by a Final Subdivision Public Report. The requirements of this Section are in addition to the Board's obligations to perform ongoing reserve studies as

required by Section 18.2.4. The provisions of this Section shall not be amended without the prior written consent of Declarant.

## **ARTICLE 12**

### **USE RESTRICTIONS**

**Section 12.1. Use Restrictions.** In addition to all other covenants contained herein, the use and enjoyment of the Project and each Condominium therein shall be subject to the following:

12.1.1 No Condominium or Common Property shall be occupied and used except for residential purposes by the Owners, their tenants, and social guests, and no trade or business shall be conducted therein, except that Declarant, its successors or assigns, may use any Unit or Units in the Project owned by Declarant for a model home site or sites and display and sales office until the last Unit is sold by Declarant. No tent, shack, trailer, garage, outbuilding or structure of a temporary character shall be used at any time as a residence, either temporarily or permanently.

12.1.2 No part of the Project shall be used or caused to be used directly, or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other such non-residential purposes. The provisions of this Section 12.1.2. shall not preclude professional and administrative occupations within the Project which have no external evidence thereof, for so long as such occupations are in conformance with all applicable governmental ordinances and are merely incidental to the use of the Unit as a residential home.

12.1.3 No sign or billboard of any kind shall be displayed by any Owner on any portion of the Project, Condominium, or Association Property except one sign of reasonable size, advertising that the particular Condominium is for sale or rent, or except by Declarant. No provision herein shall be read or construed to prohibit the posting or displaying of noncommercial signs, posters, flags, or banners on or in an Owner's separate Unit (not Association Property), except as required for the protection of public health or safety, or if the posting or display would violate a local, state, or federal law. However, no such sign or poster shall exceed nine (9) square feet in size and no such flags or banners shall exceed fifteen (15) square feet in size. Such signs, posters, flags, or banners may be made of paper, cardboard, cloth, plastic, or fabric, and may be posted or displayed from the yard, window, door, balcony, or outside wall of the separate Unit, but may not be made of lights, roofing, siding, paving materials, flora, or balloons, or any other similar building, landscaping, or decorative material or component, or include the painting of architectural surfaces. All such signs, posters, flags, or banners shall be permitted only so long as they are in good presentable condition. The Association shall have the right and power to impose reasonable restrictions on the duration of the posting or displaying of such signs, posters, flags or banners. Owners are advised to refer to the Rules and Regulations promulgated by the Board.

12.1.4 No noxious or offensive activity shall be carried on in any Condominium, Association Property or any part of the Project, including, but not limited to, the on-site repair of motor vehicles, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of

each of the Owners of such Owner's respective Unit, or which shall in any way increase the rate of insurance.

12.1.5 No trailer, camper, truck larger than a 3/4 ton capacity pick-up truck, boat, recreational vehicle or similar equipment shall be permitted to be parked or stored either on the streets, drives or in open view in the Project.

12.1.6 An Owner may keep and maintain in such Owner's Unit domesticated pets such as dogs, cats, birds, or other usual and ordinary household pets, not to exceed two (2) in number and provided that such pets shall not be allowed in the Association Property except as may be permitted by the Rules and Regulations of the Association which may be promulgated from time to time by the Board. Except as hereinabove provided, no animals, livestock, or poultry shall be brought within the Project or kept in any Unit thereof. Owners keeping pets shall be accountable to the other Owners for the acts of such pets, and should any Owner be unable to control barking or other noise or acts of such Owner's pets which disturb such Owner's neighbors, such Owner shall be required to remove such pet from the Project. It shall be the absolute duty and responsibility of each Owner to clean up after such Owner's pets, which have used any portion of the Condominium Property or Association Property. Each owner of a pet shall forthwith clean up and remove any animal waste such pet may deposit on the Association Property or the property of another Owner. No dog will be allowed on the Association Property without being supervised and on a leash. Any Owner (including such Owner's family, guests and invitees) who maintains any pet, animal, reptile, livestock or other living creature of any kind, within the Project, whether in compliance with this Declaration and the Rules and Regulations or otherwise, shall indemnify, defend and hold the Association harmless from and against any damages, claims, causes of action or losses of any kind or nature, including reasonable attorney's fees and costs, incurred by the Association as a result of any alleged damage or injury caused by such living creature to the Association, to its property, to the Common Property, or to the Members, their family, guests or invitees, or their property.

12.1.7 No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind, shall be permitted within the Project, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted upon the surface of or within five hundred (500) feet below the surface of the Project. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted within the Project.

12.1.8 All rubbish, trash and garbage shall be regularly removed from the Project, and shall not be allowed to accumulate thereon. All clotheslines, refuse containers, woodpiles, storage areas, machinery and equipment shall be prohibited unless obscured from view of adjoining Condominiums and streets.

12.1.9 No alteration to or modification of the underground cable radio and/or television antenna system (or the capability for interior hidden antennas) as developed by Declarant, shall be permitted and no Owner will be permitted to construct and/or use and operate such Owner's own external radio and/or television antenna, including without limitations, satellite dishes. Owners are prohibited from installing any antenna on the exterior of a Unit for any purpose, except for an "Authorized Antenna" which may be installed so long as the proposed location for

such installation is reviewed and approved by the Architectural Control Committee prior to its installation in order to ensure that the visibility of the Authorized Antenna is minimized with respect to other Owners. The Architectural Control Committee may require that the location of the Authorized Antenna be moved, and the Board may impose additional restrictions on installation or use of an Authorized Antenna, so long as such review by the Architectural Control Committee, or such additional restrictions, do not (a) unreasonably delay or prevent installation, maintenance or use of an Authorized Antenna, (b) unreasonably increase the cost of installation, maintenance or use of an Authorized Antenna, or (c) preclude reception of an acceptable quality signal. The Board may prohibit the installation of an Authorized Antenna if the installation, location or maintenance of such Authorized Antenna unreasonably affects the safety of managers, agents or employees of the Association and other Owners, or for any other safety related reason established by the Board. The Board may also prohibit the installation of an Authorized Antenna on property to which an Owner does not hold fee title or is not entitled to exclusively use under this Declaration, or may allow an Owner to install an antenna other than an Authorized Antenna subject to the Architectural Guidelines and review and approval by the Architectural Control Committee. An "Authorized Antenna" means an antenna that is (a) designed to receive direct broadcast satellite service, including direct-to-home satellite service and that is one meter or less in diameter, and (b) that is designed to receive video programming service, including multichannel multipoint distribution service, instructional television fixed service, and local multipoint distribution service, and that is one meter or less in diameter, or (c) an antenna that is designed to receive television broadcast signals. Each Owner may maintain individual radio or television antennae systems if located entirely within such Owner's Unit and if such system is not visible from other Condominiums or the Common Property, and provided that such system does not interfere with radio and television reception of other Owners within the Project.

12.1.10 Use of all recreational facilities in the Project shall be limited to the Owners, tenants (if any), and their guests only.

12.1.11 Conveyance of a substantial number of the Units is essential to the establishment and welfare of said Project as a residential community. In order that all work necessary to complete the Project and to establish a substantially occupied residential community proceed as rapidly as possible, nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarant, its contractor or subcontractors, from doing work on said Project or any part thereof whenever it determines it to be reasonably necessary or advisable in connection with the completion of said work; or

(b) Prevent Declarant, or its representatives from erecting, constructing and maintaining on any part or parts of said real property owned or controlled by Declarant, its contractors, or subcontractors, such structures as may be reasonably necessary to complete said work, establish said property as a residential community and dispose of the same by sale, lease, or otherwise.

12.1.12 Declarant, in exercising its rights hereunder shall not unreasonably interfere with the Members' use of Association Property.

12.1.13 Water Quality Management Requirements. Declarant is developing the Project in accordance with a water quality management plan ("WQM Plan") required by the California State Water Quality Control Board. The WQM Plan imposes requirements for the design, implementation and maintenance of Best Management Practices ("BMPs") in accordance with the Stormwater Quality Urban Impact Mitigation Plan ("SQUIMP") to treat pollutants of concern as identified in the Ventura Countywide Stormwater Quality Management Program ("VCSQMP").

Upon the close of escrow, Owners will be subject to the terms and conditions of the BMPs. All activities undertaken by Owner or Owner's agents, employees, sub-contractors or representatives, with respect to Owner's Unit must comply with the BMPs. The requirements of the BMPs include, but are not limited to, preventing run-off of soil, sand, sediment, oil, gasoline or other hydrocarbons, paint, fertilizers, pool chemicals, and other household chemicals into the storm drains located in the Project. For more specific information and literature, please call the County of Ventura Watershed Protection District at (805) 654-3179 or visit its website at [www.vcstormwater.org](http://www.vcstormwater.org).

### **ARTICLE 13**

#### **SCOPE OF ENFORCEMENT**

**Section 13.1. Enforcement.** The Association or any Owner, shall have the right, but not the obligation, to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration or any amendment thereto; provided, however, that with respect to assessment liens, the Association shall have the exclusive right to the enforcement thereof. Failure, by the Association or any Owner, to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The limitations, restrictions, conditions and covenants set forth in this Declaration constitute a general scheme for (1) the maintenance, protection and enhancement of the value of the Project; and (2) the benefit of all Owners. Said limitations, restrictions, conditions and covenants are and shall be covenants running with the land or equitable servitudes, as the case may be. Each remedy provided for in this Declaration shall be cumulative and not exclusive. The result of or condition caused by any violation of any of the provisions of this Declaration is and shall be a nuisance, and every remedy in law or equity now or hereafter available against public or private nuisance may be exercised by any person affected thereby. Any of the foregoing to the contrary notwithstanding, no action to enforce this Declaration shall be instituted unless and until a written notice of such breach setting forth the facts of such breach has been delivered by certified mail to the Owner of such interest. In the event the Association or any Owner or Owners, should commence litigation to enforce any of the provisions of this Declaration, that party, if such party should prevail, shall be entitled to have judgment against and recover from any defendant in such litigation, such attorneys' fees as the court may adjudge reasonable and proper.

**ARTICLE 14**  
**DISPUTE MECHANISMS**

**Section 14.1. Notice to Members Prior to Filing Civil Action.** Not later than thirty (30) days prior to the filing of any civil action by the Association against the Declarant or other developer of the Project for alleged damage to the Association Property, alleged damage to the Units that the Association is obligated to maintain or repair, or alleged damage to the Units that arises out of, or is integrally related, to damage to the Association Property or Units that the Association is obligated to maintain or repair, the Board shall provide written notice to each Member who appears on the records of the Association at the time notice is given, specifying (a) that a meeting of Members will be held to discuss problems that may lead to the filing of a civil action, (b) the options, including civil actions, that are available to address the problems, and (c) the time and place of the meeting. If the Association has reason to believe that the applicable statute of limitations will expire before the association files the civil action, the Association may give the foregoing notice not later than thirty (30) days after the filing of the action.

**Section 14.2. Dispute Resolution.** Any disputes between all or any of the Association, Owner(s), the Declarant, or any director, officer, partner, employer, contractor, design professional, consultant, subcontractor or agent of the Declarant (collectively "Declarant Parties"), arising under this Declaration or relating to the Properties, shall be subject to the following provisions of this Section 14.2 and the following Sections 14.3, 14.4 and 14.5.

**Section 14.3. Construction Defect Disputes.**

**14.3.1 Notice of Construction Claims Statute.** California Civil Code Section 895 et seq., as hereafter amended ("Construction Claims Statute"), delineates standards for how various components of residential dwelling units should be constructed and function, limits the time frames for bringing various claims against the builder to anywhere from one year to ten years (as listed in the Construction Claims Statute) from the close of escrow for the residential dwelling unit, imposes an obligation on all Owner's and the Association to follow Declarant's maintenance recommendations and schedules, or other applicable maintenance guidelines, and establishes a non-adversarial claims resolution procedure that must be followed by an Owner and the Association before the Owner or the Association can initiate an adversarial claim and proceed to judicial reference or binding arbitration, as described in Section 14.5 below. THE CONSTRUCTION CLAIMS STATUTE AFFECTS EACH OWNER'S AND THE ASSOCIATION'S LEGAL RIGHTS. OWNERS, ON BEHALF OF THEMSELVES, AND AS MEMBERS OF THE ASSOCIATION, ARE ADVISED TO READ THE STATUTE CAREFULLY AND SEEK LEGAL ADVICE IF OWNER HAS ANY QUESTIONS REGARDING ITS AFFECT ON OWNER'S OR THE ASSOCIATION'S LEGAL RIGHTS. PURSUANT TO CALIFORNIA CIVIL CODE SECTION 914, DECLARANT IS PERMITTED TO ELECT TO USE ALTERNATE CONTRACTUAL NON-ADVERSARIAL PROCEDURES INSTEAD OF USING THE STATUTORY PRE-LITIGATION PROCEDURES PROVIDED IN THE CONSTRUCTION CLAIMS STATUTE, AND DECLARANT HAS ELECTED TO USE ITS OWN CONTRACTUAL NON-ADVERSARIAL PROCEDURES AS PROVIDED BELOW.



14.3.1.1 Obligation to Follow Maintenance Recommendations and Schedules. All Owners and the Association are obligated by Section 907 of the Construction Claims Statute to follow Declarant's maintenance recommendations and schedules, including the maintenance recommendations and schedules for manufactured products and appliances provided with such Owner's Unit or the Common Area, or any improvements thereon, as well as all commonly accepted maintenance practices (collectively, "Maintenance Recommendations"). Per Section 945.5 of the Construction Claims Statute, failure to follow the Maintenance Recommendations may reduce or preclude Owner's and the Association's right to recover damages relating to such Unit or Common Area, which could have been prevented or mitigated had the Maintenance Recommendations been followed.

14.3.1.2 Obligation to Retain Documents and Provide Copies to Successors. All Owners, who originally purchased a Unit from Declarant were provided copies of certain documents in conjunction with the purchase of their Unit, including copies of this Declaration, maintenance recommendations from Declarant, maintenance recommendations for manufactured products or appliances included with the Unit, a limited warranty, claim forms, and other documentation relating to the Construction Claims Statute. All Owners are required by the Construction Claims Statute to retain these documents and provide copies of such documents to their successors in interest upon the sale or transfer of such Owner's Unit.

14.3.2 Owners' Construction Defect Claims. Prior to the commencement of any legal proceeding by any Owner against Declarant or any Declarant Party based upon a claim for defects in the design or construction of any Unit, Common Property, or any improvements thereon, the Owner must first comply with the provisions of this paragraph. If at any time during the ten (10) year period following the close of escrow for the original Owner's purchase of such Owner's Unit from Declarant, as such period may be extended by any applicable tolling statute or provision, or any shorter period as provided by applicable law, such Owner believes Declarant has violated any of the standards set forth in the Construction Claims Statute ("Claimed Defect"), which such Owner feels may be the responsibility of Declarant, such Owner shall promptly notify Declarant's agent for notice of construction defect claims on file with the Secretary of State, which is currently: Ms. Susan Blumert, Promontory Properties, 1263 Westwood Blvd., Suite 210, Los Angeles, CA 90024, with a copy to Declarant at Declarant's address as an Owner listed in the records of the Association. Such notice shall be deemed a notice of intention to commence a legal proceeding and shall include: (a) a detailed description of the Claimed Defect, (b) the date upon which the Claimed Defect was first discovered, and (c) dates and times when Owner or Owner's agent will be available during ordinary business hours, so that service calls or inspections by Declarant can be scheduled. Declarant shall, in its sole discretion, be entitled to inspect the applicable property regarding the reported Claimed Defect and, within its sole discretion, shall be entitled to cure such Claimed Defect. Nothing contained in this Article shall obligate Declarant to perform any such inspection or repair, nor shall this Section be deemed to increase Declarant's legal obligations to Owner. Owner's written notice delivered to Declarant shall be a condition precedent to Owner's right to institute any legal proceeding and to proceed to judicial reference or binding arbitration as set forth Section 14.5 below, and Owner shall not pursue any other remedies available to it, at law or otherwise, including without limitation the filing of any legal proceeding or action, until Declarant has had the reasonable opportunity to inspect and cure the Claimed Defect. During the term of any

written Limited Warranty provided to the original Owner of the Unit by Declarant, any conflict between the provisions of this Section and the Limited Warranty shall be resolved in favor of the Limited Warranty. Declarant shall not be liable for any general, special or consequential damage, cost, diminution in value or other loss which Owner may suffer as a result of any Claimed Defect in the Unit, which reasonably might have been avoided had Owner given Declarant the notice and opportunity to cure as described above within a reasonable time of discovering the Claimed Defect. Except as otherwise provided in the written Limited Warranty, if any, provided to Owner, nothing contained herein shall establish any contractual duty or obligation on the part of Declarant to repair, replace or cure any Claimed Defect. If an Owner sells or otherwise transfers ownership of such Owner's Unit to any other person during such ten (10) year period, as such period may be extended by any applicable tolling statute or provision, Owner covenants and agrees to give such other person written notice of these procedures by personal delivery. Owner's continuing obligation under this covenant shall be binding upon Owner and Owner's successors and assigns.

**14.3.3 Association's Construction Defect Claims.** DECLARANT ELECTS TO USE THE ALTERNATE CONTRACTUAL NON-ADVERSARIAL PROCEDURES CONTAINED IN CIVIL CODE SECTION 1375, EXCEPT AS OTHERWISE PROVIDED HEREIN, RATHER THAN THE STATUTORY PRE-LITIGATION PROCEDURES OF THE CONSTRUCTION CLAIMS STATUTE, WITH RESPECT TO CLAIMS BY THE ASSOCIATION. Prior to the commencement of any legal proceeding by the Association against Declarant or any Declarant Party based upon a claim for defects in the design or construction of the Common Property, or any improvements thereon, or any other area within the Project which the Association has standing to make a claim for defects in the design or construction thereof, the Association must first comply with all of the applicable requirements of Civil Code Section 1375, as the same may be amended from time to time, or any successor statute thereto. For purposes of claims under this Section, notice to "builder" under California Civil Code Section 1375 shall mean notice to Declarant's agent for notice of construction defect claims on file with the Secretary of State, with a copy to Declarant, as provided above. In addition to the requirements of said Section 1375, Declarant shall have an absolute right, but not an obligation, to repair any alleged defect or condition claimed by the Association to be in violation of the standards set forth in the Construction Claims Statute, within a reasonable period of time after completion of the inspection and testing provided for in such Section and prior to submission of builder's settlement offer under such Section. If the parties to such dispute are unable to resolve their dispute in accordance with the procedures established under Civil Code Section 1375, as the same may be amended from time to time, or any successor statute, the dispute shall be resolved in accordance with the judicial reference or binding arbitration provisions of Section 14.5 below and the parties to the dispute shall each be responsible for their own attorneys' fees. The Association shall have the power to initiate claims against a Declarant Party for violations of Construction Claims Statute, as soon as the Association has one (1) Class A Member other than Declarant. Upon the written request of any Class A member to the Board of Directors, the Board shall establish a committee consisting exclusively of Class A Member(s) other than Declarant to investigate claimed violations of the standards of the Construction Claims Statute. Upon the committee's determination that cause exists to initiate a claim, the decision of whether to initiate a claim shall be made by a vote of the Class A members other than Declarant. A majority of the votes cast shall be deemed to be the decision of the Association, which the board shall carry out

by submitting the necessary claim to Declarant or the appropriate Declarant Party; provided, however, that the vote is either conducted at a properly convened meeting with the requisite quorum in accordance with the provisions of the Bylaws relating to meetings and voting, or the vote was conducted without a meeting in accordance with California Corporations Code Section 7513, as authorized by the Bylaws.

**Section 14.4. Other Disputes.** Any other disputes arising under this Declaration, or otherwise, between the Association or any Owner and Declarant or any Declarant Party (except for any action taken by the Association against Declarant for delinquent assessments, and any action involving enforcement of any completion bonds) shall be resolved in accordance with the alternate dispute resolution provisions of Section 14.5 below. The dispute resolution procedure in Section 14.5, as it applies solely to disputes under this Section 14.4, shall be deemed to satisfy the alternative dispute requirements of Civil Code Section 1354, or any successor statute, as applicable.

**Section 14.5. Alternate Dispute Resolution Procedures.** The following procedures provide for resolution of disputes through general judicial reference or, in the alternative, binding arbitration. In either event, Declarant, the Association and each Owner of a Unit within the Project, expressly acknowledge and accept that they are waiving their respective rights to a jury trial.

**14.5.1 Judicial Reference.** Subject to compliance with the provisions of Sections 14.2 through 14.4, to the extent applicable, it is the intention of Declarant that, except as otherwise expressly provided herein, any and all disputes, based upon which litigation is filed, shall be resolved by judicial reference under California law. Accordingly, except as otherwise expressly provided in this Declaration (such as the collection of delinquent assessments), any dispute, between the Association or any Owner(s) and the Declarant, or other developer of the Project, or between the Association and any Owner with respect to the interpretation of any of the provisions of this Declaration, or with respect to any alleged breach hereof, or with respect to any other claim related to a Unit or the Common Property, including, without limitation, any alleged latent or patent construction or design defect in the Project, any Unit or any part thereof, any alleged violation of the standards set forth in the Construction Claims Statute, any judicial determination to be made under California Civil Code Section 1375(h), or for alleged damage to the Common Property, alleged damage to the Units that the Association is obligated to maintain or repair, or any alleged damage to Units that arises out of, or is integrally related to the Common Property or Units that the Association is obligated to maintain or repair, shall be heard by a referee pursuant to the provisions of California Code of Civil Procedure Sections 638 through 645.1. Notwithstanding any other provision of this Declaration, this Article shall not be amended without the written consent of Declarant. In the event litigation is filed based upon any such dispute, the following shall apply:

**14.5.1.1** The proceeding shall be brought and held in the County in which the Project is located, unless the parties agree to an alternative venue.

**14.5.1.2** The parties shall use the procedures adopted by Judicial Arbitration and Mediation Services, Inc. ("JAMS") for judicial reference and selection of a referee (or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to

the parties).

14.5.1.3 The referee must be a retired judge or a licensed attorney with substantial experience in relevant real estate matters.

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

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

14.5.1.6 The referee may require one or more pre-hearing conferences.

14.5.1.7 The parties shall be entitled to discovery, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

14.5.1.8 A stenographic record of the trial shall be made.

14.5.1.9 The referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable.

14.5.1.10 The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.

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

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

14.5.1.13 The statement of decision of the referee upon all of the issues considered by the referee shall be binding upon the parties, and upon filing of the statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon. The decision of the referee shall be appealable as if rendered by the court. This provision shall in no way be construed to limit any valid cause of action that may be brought by any of the parties.

14.5.2 Binding Arbitration. If for any reason the judicial reference procedures in Section 14.5.1 are legally unavailable or unenforceable at the time a dispute would otherwise be referred to judicial reference, then such dispute shall be submitted to binding arbitration under the rules and procedures in this Section 14.5.2. Any dispute submitted to binding arbitration shall be administered by the American Arbitration Association ("AAA") in accordance with the AAA's Construction Industry Arbitration Rules and AAA's Supplementary Procedures for Residential Construction Disputes in effect on the date of the submission. If such entity is not then in existence, then the dispute shall be submitted to JAMS, and administered in accordance with either the Streamlined Arbitration Rules and Procedures, or (if applicable) the Comprehensive Arbitration Rules of JAMS. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such dispute. If the claimed amount exceeds \$250,000.00 or includes a demand for punitive damages, the dispute shall be heard and determined by three arbitrators. Otherwise, unless mutually agreed to by the parties, there shall be one arbitrator. Arbitrators shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved. All decisions concerning the arbitrability of any dispute shall be decided by the arbitrator(s). At the request of any party, the award of the arbitrator(s) shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither party nor the arbitrator(s) may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

14.5.3 Applicability of Federal Arbitration Act. The binding arbitration procedures contained in Sections 14.5.2 are implemented for the Project in accordance with the philosophy and intent of the Federal Arbitration Act (9 U.S.C. Section 1 et seq.) ("FAA"), which is designed to encourage the use of alternative methods of dispute resolution and avoid costly and potentially lengthy traditional court proceedings. The binding arbitration procedures in said Section are to be interpreted and enforced as authorized by the FAA. Parties interpreting this Section shall follow the federal court rulings, which provide among other things that: (1) the FAA is a congressional declaration of liberal federal policy favoring alternate dispute resolution notwithstanding substantive or procedural state policies or laws to the contrary, (2) alternate dispute resolution agreements are to be rigorously enforced by state courts; and (3) the scope of issues subject to alternate dispute resolution are to be interpreted in favor of alternate dispute resolution.

Section 14.6. Disputes Relating To Enforcement Of Governing Documents. In the event of a dispute between the Association and an Owner, or between an Owner and another Owner, relating to the enforcement of the governing documents of the Association, the parties shall comply with the provisions of California Civil Code Section 1354(b) through (j), prior to filing of any civil action.

Section 14.7. Civil Codes Sections 1368.4, 1375, 1375.05 and 1375.1. Nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code Sections 1368.4, 1375, 1375.05, or 1375.1.

Section 14.8. Use of Damage Award Funds. Any and all amounts awarded (other than a specific award of attorney's fees and costs) to a claimant on account of a claimed construction or

design defect in the Project, or damage suffered as a result thereof, shall be expended by such claimant for the repair, rehabilitation, or remediation of the claimed defect or damage.

Section 14.9. Miscellaneous. Nothing in this Article shall constitute a waiver of any of the benefits of statute of limitations or equitable defense by any party. Notwithstanding any other provision of this Declaration, this Article may not be amended without the prior written consent of the Declarant.

## **ARTICLE 15** **INSURANCE**

Section 15.1. Liability Insurance. A general public liability and property damage insurance policy covering all Common Property shall be purchased by the Board of Directors as promptly as possible following its election and shall be maintained in force at all times, the premium thereon to be paid out of the monies collected from the assessments. The minimum amount of coverage shall be Two Million Dollars (\$2,000,000) combined single limit liability for bodily injury to any one person, or property damage, for any one occurrence; provided, however, that if the Project consists of more than 100 condominiums, such coverage shall be at least Three Million Dollars (\$3,000,000.00). The policy shall name all Owners as insureds, including Declarant, during such time as Declarant shall remain the Owner of one or more Condominiums. The manager, if any, shall also be a named insured on such policy, during such time as such manager's agency be retained to provide services. The policy shall insure against injury or damage occurring in the Common Property and, if possible, within the individual Units. The insurance shall also contain a cross-liability endorsement to cover negligent injury by one Owner to another, if reasonably available.

The Association shall prepare and distribute to all Members a summary of the Association's property, general liability, and earthquake and flood insurance policies, if any, which shall be distributed within sixty (60) days preceding the beginning of the Association's fiscal year, that includes all of the following information about each policy: (a) the name of the insurer, (b) the type of insurance, (c) the policy limits of the insurance, and (d) the amount of deductibles, if any. The Association shall, as soon as reasonably practical, notify the Members by first-class mail if any of the policies described in this paragraph have lapsed, been canceled, and are not immediately renewed, restored or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible, for any of those policies. If the Association receives any notice of nonrenewal of a policy described in this paragraph, the Association shall immediately notify the Members if replacement coverage will not be in effect by the date the existing coverage will lapse. To the extent that any of the information required to be disclosed pursuant to this paragraph is specified in the insurance policy declaration page, the Association may meet its obligation to disclose that information by making copies of that page and distributing it to all Members. The summary distributed pursuant to this paragraph shall contain in at least 10-point boldface type, the statement required by Civil Code Section 1365(e)(4). For a period of ten (10) years after the close of escrow for the sale of the last Unit in the Project covered by a Final Subdivision Public Report, the Association's obligations under

this Section 15.1 to provide summaries of insurance, notices of significant changes in coverage and notice if a policy is not renewed to its Members shall also extend to Declarant.

Section 15.2. Property Insurance. A "Special Form Causes of Loss" property insurance policy (commonly referred to as all-risk or special perils coverage) shall also be purchased by the Board as promptly as possible following its election and shall, thereafter, be maintained in force at all times; the premium thereon to be paid out of the monies collected from the assessments. Said insurance shall insure for the full insurable value of all improvements within the Association Property, and, if such coverage is unavailable to individual Owners, for all improvements within the Project. Such policy shall contain replacement cost endorsements and may also contain a stipulated amount clause and determinable cash adjustment clause or similar clause to permit cash settlement covering full value of the improvements in the event of partial destruction and decision not to rebuild. The policy shall be in such amounts as shall be determined from time to time by the Board of Directors. The policy shall name as insureds, all Owners and Declarant, so long as Declarant is the Owner of any Condominiums in the Project, and all Mortgagees of record, as their respective interests may appear.

Section 15.3. Individual Coverage. If available, underlying coverage for individual Units may at the discretion of the Board be written as part of, or in conjunction with, said master policy where necessary to protect individual lenders. If such coverage is not available, or the Board determines not to include such coverage in the master policy, each Owner shall purchase, at such Owner's own expense, and maintain fire and hazard insurance coverage as may be required by such Owner's individual lender. Any such underlying coverage shall contain a replacement cost endorsement, and to the extent available, such other endorsements as may be a part of the master policy. Such insurance shall also contain a loss-payable endorsement to the Mortgagees of individual Units, as their interests shall appear.

Section 15.4. Board as Trustee. All insurance proceeds payable under Sections 15.2 and 15.3 of this Article, and subject to the rights of Mortgagees under Section 15.8 hereof, shall be paid to the Board to be held and expended for the benefit of Owners, Mortgagees and others, as their respective interests shall appear, and be paid out in accordance with this Article. In the event repair or reconstruction is authorized, the Board shall have the duty to contract for such work, as provided in Article 16 hereof.

Section 15.5. Other Insurance. The Board may purchase and maintain in force at all times demolition insurance in adequate amounts to cover demolition in the event of destruction and a decision not to rebuild. The premium therefor shall be paid out of the monies collected from the assessments. Such policy, if purchased, shall contain a determinable demolition clause or similar clause, to allow for the coverage of the cost of demolition in the event of destruction and a decision not to rebuild. The Board of Directors shall also purchase and maintain worker's compensation insurance to the extent that the same shall be required by law for employees or Owners. The Board of Directors may also purchase and maintain insurance on commonly owned personal property and such other insurance as it deems necessary, the premium thereof to be paid out of the monies collected from the assessments, including, but not limited to, umbrella or excess liability coverage.

Section 15.6. Fidelity Insurance. The Board of Directors shall maintain the fidelity bond or insurance specified in Section 5.2 hereof. The premium on such bond shall be paid by the Association.

Section 15.7. Owner's Other Insurance. An Owner may carry such additional personal liability and property damage insurance as such Owner may desire respecting such Owner's individual Unit and improvements installed by such Owner in such Owner's Unit.

Section 15.8. Rights of Mortgagees. With respect to insurance coverage under Sections 15.2 and 15.3 hereof, any Mortgagee of record shall have the option to apply insurance proceeds payable to such Mortgagee to reduce the obligation secured by a Mortgage.

Section 15.9. Annual Review. The Board shall review the insurance carried by the Association at least annually, for the purpose of determining the amount of the casualty and fire insurance referred to in Sections 15.1 and 15.2 above. The Board shall obtain a current appraisal of the full replacement value of the improvements in the Project except for foundations and footings, without deduction for depreciation, by a qualified independent insurance appraiser, prior to each such annual review.

## **ARTICLE 16**

### **DESTRUCTION OF IMPROVEMENTS**

Section 16.1. Proceeds Greater Than Eighty-Five Percent (85%) of Cost to Repair. In the event of total or partial destruction of the improvements in the Project, and if the available proceeds of the insurance carried pursuant to Article 15, are sufficient to cover not less than eighty-five percent (85%) of the cost of repair or reconstruction thereof, such damaged areas of the Project shall be promptly repaired and rebuilt, unless, within ninety (90) days from the date of such destruction, seventy-five percent (75%) of each class of membership present and entitled to vote in person or by proxy, at a duly constituted meeting, determine that such reconstruction shall not take place. If reconstruction is to take place, the Board of Directors shall be required to execute, acknowledge, file and record, not later than one hundred twenty (120) days from the date of said destruction, a certificate declaring the intention of the Owners to rebuild.

Section 16.2. Proceeds Less Than Eighty-Five Percent (85%) of Cost to Repair. If the proceeds of such insurance are less than eighty-five percent (85%) of the cost of reconstruction, such reconstruction may, nevertheless, take place, if within ninety (90) days from the date of said destruction, sixty-six and two-thirds percent (66- 2/3%) of each class of membership elect to rebuild.

Section 16.3. Additional Contributions From Owners. If the Owners determine to rebuild, either pursuant to either of Sections 16.1 or 16.2, each Owner shall be obligated to contribute such funds as shall be necessary to pay such Owner's proportionate share of the cost of reconstruction over and above the insurance proceeds, and the proportionate share of each Owner shall be based upon the ratio of each Unit's "fair market value" to the "fair market value" of the entire Project. The "fair market value" in both instances, shall be determined by an independent



appraiser. In the event of failure or refusal by any Owner to pay such Owner's proportionate share, after notice to such Owner, for a period of sixty (60) days from the due date thereof, the Board of Directors may levy a special assessment against such Owner, which may be enforced under the lien provisions contained in Article 8.

Section 16.4. Association To Contract For Rebuilding. If the Owners determine to rebuild, the Board of Directors shall obtain bids from at least two (2) reputable contractors and shall award construction work to the lowest bidder. The Board of Directors shall have the authority to enter into a written contract with said contractor for such reconstruction and the insurance proceeds held by the Board shall be disbursed to said contractor according to the terms of the agreement. It shall be the obligation of the Board to take all steps necessary to insure the commencement and completion of such reconstruction at the earliest possible date.

Section 16.5. Insufficient Vote to Rebuild. If the vote of the Owners shall be insufficient to authorize rebuilding, pursuant to either of Sections 16.1 or 16.2 above:

16.5.1 After available insurance proceeds are first used to restore the damaged portions of the Project to a safe, healthy, level, clean and sightly condition, and subject to the rights of Mortgagees set forth in Section 15.8, any insurance proceeds available for such rebuilding shall be distributed among the Owners and their individual Mortgagees by the Board, as their respective interests may appear. The proportionate interests of each Owner in said proceeds in relation to other Owners shall be based upon a ratio of each Unit's "fair market value," just prior to destruction. "Fair market value" is to be determined by an independent appraiser.

16.5.2 The Board shall have the duty, within one hundred twenty (120) days of the date of such loss, to execute, acknowledge and record a certificate setting forth the determination of the Owners not to rebuild, and shall promptly cause to be prepared and filed such revised maps and other documents as may be necessary to show the conversion of the Project to the status of unimproved land or to show the elimination of one or more of the Units, as a result of such destruction.

Section 16.6. Revival of Right to Partition. Upon recordation of such certificate, referred to in Section 16.5.2 above, the right of any Owner to partition such Owner's Condominium through legal action shall forthwith revive.

Section 16.7. Arbitration. In the event of a dispute among the Owners, with respect to the provisions of this Article, any Owner may cause same to be referred to arbitration in accordance with the then prevailing rules of the American Arbitration Association. In the event of arbitration, notice thereof shall be given to the members of the Board and all Owners as promptly as possible after referral to arbitration is made, giving all Owners an opportunity to appear in such arbitration proceedings. The decision of such arbitrator in this matter shall be final and conclusive upon all Owners. The arbitrator may include in its decision an award for costs and/or attorneys' fees against any one or more of the parties to the arbitration.

## **ARTICLE 17**

### **CONDEMNATION**

Section 17.1. Condemnation of Association Property. If any portion of the Association Property is taken by condemnation, eminent domain or any proceeding in lieu thereof, then the award in condemnation shall be paid to the Association and shall be deposited in its operating fund; provided, however, that should it be determined to repair or rebuild any portion of the Association Property, such proceeds shall be paid to the Association for that purpose in the same manner and subject to the same terms, conditions and limitations as are set forth in Article 16 for repairing damage or destroyed portions of the Association Property. A decision to repair or rebuild shall be made in the same manner and subject to the same conditions and limitations as provided in Article 16 for determining whether to rebuild or repair following damage or destruction.

Section 17.2. Condemnation of Unit. In the event of any taking of a Unit, the Owner and such Owner's Mortgagees, as their interest may appear, of the Unit shall be entitled to receive the award for such taking and after acceptance thereof such Owner and such Owner's Mortgagee shall be divested of any further interests in the Condominium Property if such Owner vacates his such Owner's Unit as the result of such taking. In such event said Owner shall grant said Owner's remaining interests in the Common Area Phase appurtenant to the Unit so taken, if any, to the other Owners owning a fractional interest in the same Common Area Phase, such grant to be in proportion to the fractional interest in the Common Area Phase then owned by each.

Section 17.3. Restoration and Repair. Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with original plans and specifications, unless other action is approved by Eligible Mortgage Holders of First Mortgages on Condominiums which have at least fifty-one percent (51%) of the votes of condominium subject to eligible Mortgage Holders' Mortgages.

## **ARTICLE 18**

### **ACCOUNTINGS**

Section 18.1. Books, Records and Minutes. The Association shall maintain books of account of all its receipts and expenditures and minutes of its proceedings. The Association shall maintain books of account of all its receipts and expenditures and minutes of its proceedings. The Association shall make the accounting books and records and the minutes of proceedings of the Association available for inspection and copying by a Member, or the Member's designated representative, at the Association's business office within the Project or a place agreed upon by the Association and the Member. If the Association and the Member cannot agree upon a place for inspection, or if the Member so requests in writing, the Association may provide copies of the books, records, and minutes by first-class mail within ten (10) days of receiving the Member's request. The Association may bill the Member for the actual cost of copying and mailing, provided the Association notifies the Member of the costs before sending the copies. The Association may withhold or redact information from the books, records, and minutes for any of the following reasons:

(a) The release of the information is likely to lead to the unauthorized use of another person's personal identifying information to obtain credit, goods, services, money, or property; or

(b) The release of the information is likely to lead to fraud in connection with the Association; or

(c) The information is privileged under law.

Except as provided by attorney-client privilege, the Association may not withhold or redact information concerning the compensation paid to employees, vendors, or contractors. Compensation information for individual employees shall be set forth by job classification or title, not by any personal information of the employee. The accounting books, records, and minutes, and any information from them may not be sold, used for commercial purposes, or used for any other purpose not reasonably related to a Member's interest as a Member.

In addition to the foregoing, for a period of ten (10) years after the close of escrow for the sale of the last Unit in the Project covered by a Final Subdivision Public Report, Declarant shall have the same rights as Owners under this Section 18.1 to inspect, examine and audit the books of the Association.

18.1.1 Commencing not later than ninety (90) days after the close of escrow for the sale of the first Unit, copies of the documents listed below, as soon as readily obtainable, shall be delivered by Declarant to the Board at the office of the Association, or at such other place as the Board shall prescribe. The obligation to deliver the listed documents shall apply to any documents obtained by Declarant no matter when obtained, provided, however, that such obligation shall terminate upon the earlier of (a) the conveyance of the last Unit covered by a subdivision public report or (b) three years after the expiration of the most recent public report, on the Project:

- (1) The recorded subdivision map or maps for the Project.
- (2) The recorded Condominium Plan, if any, and all amendments thereto.
- (3) The ~~deeds and easements~~ executed by Declarant conveying the Association Property or other interest to the Association, to the extent applicable.
- (4) The recorded Declaration, including all amendments and annexations thereto.
- (5) The Association's bylaws and all amendments thereto.
- (6) The Association's filed Articles of Incorporation, if any, and all amendments thereto.

(7) All Architectural Guidelines and all other rules regulating the use of an Owner's interest in the Project or use of the Association Property, which have been promulgated by the Association.

(8) The plans approved by the local agency or county where the Project is located for the construction or improvement of facilities that the Association is obligated to maintain or repair; provided, however, that the plans need not be as-built plans and that the plans may bear appropriate restrictions on their commercial exploitation or use and may contain appropriate disclaimers regarding their accuracy.

(9) All notice of completion certificates issued for Association Property improvements (other than residential structures).

(10) Any bond or other security device in which the Association is the beneficiary.

(11) Any written warranty being transferred to the Association for Association Property equipment, fixtures or improvements.

(12) Any insurance policy procured for the benefit of the Association, the Board or the Association Property.

(13) Any lease or contract to which the Association is a party.

(14) The membership register, including mailing addresses and telephone numbers, books of account and minutes of meetings of the Members, of the Board, and of committees of the Board.

(15) Any instrument referred to in Business and Professions Code Section 11018.6(d) but not described above which establishes or defines common, mutual or reciprocal rights or responsibilities of Members.

18.1.2 Commencing not later than ninety (90) days after the annexation of additional Phases to the Project, copies of those documents listed above, which are applicable to that Phase, shall, as soon as readily obtainable, be delivered by Declarant to the Board at the office of the Association, or at such other place as the Board shall prescribe. The obligation to deliver the listed documents shall apply to any documents obtained by Declarant no matter when obtained, provided, however, that such obligation shall terminate upon the earlier of (a) the conveyance of the last Unit covered by a subdivision public report or (b) three years after the expiration of the most recent public report, on the Project.

#### Section 18.2. Budget.

18.2.1 Except as provided in Section 18.2.2, a pro forma operating statement ("Budget") for each fiscal year shall be distributed to each Owner not less than forty-five (45) days nor more

than sixty (60) days before the beginning of the fiscal year. The Budget shall contain the following information:

(a) Estimated revenue and expenses of the Association for the upcoming fiscal year on an accrual basis.

(b) A summary of the Association's reserves based upon the most recent review or study conducted pursuant to Section 18.2.4 below, which shall be printed in bold type and include all of the following:

(i) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component within the Association Property;

(ii) As of the end of the fiscal year for which the study is prepared:

A. The current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain the major components within the Association Property;

B. The current amount of accumulated cash reserves actually set aside to repair, replace, restore or maintain major components within the Association Property;

(iii) The percentage that the amount determined for purposes of clause B. of subparagraph (ii) above is of the amount determined for purposes of clause A. of subparagraph (ii) above;

(c) A statement as to whether the Board of Directors of the Association has determined or anticipates that the levy of one or more special assessments will be required to repair, replace, or restore any major component within the Association Property or to provide adequate reserves therefor;

(d) A general statement setting forth the procedures used by the Board of Directors in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the Association Property and improvements thereon for which the Association is responsible.

18.2.2 In its sole discretion and in lieu of the procedure set forth in Section 18.2, the Board of Directors, may elect to distribute a written summary of the Budget ("Summary") to all Owners not less than forty-five (45) days nor more than sixty (60) days before the beginning of the fiscal year. In addition to the Summary, the Board of Directors shall include a written notice, in at least 10-point bold type on the front page of the Summary, stating that: a) the Budget is available for review at a location within the Project or at the office of the management company for the Association; and b) upon the written request of an Owner, the Association shall mail one copy of the Budget to an Owner. Such Budget shall be mailed at the Association's expense by pre-paid first class mail and shall be delivered within five (5) days from the date of the receipt of such Owner's written request.

18.2.3 The summary of the Association's reserves disclosed pursuant to paragraph 18.2.1 shall not be admissible in evidence to show improper financial management of the Association, provided that other relevant and competent evidence of the financial condition of the Association is not made inadmissible by this provision.

18.2.4 At least once every three (3) years the Board of Directors shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the major components which the Association is obligated to repair, replace, restore, or maintain as part of a study of the reserve account requirements of the Project if the current replacement value of the major components within the Association Property which the Association is obligated to repair, replace, restore or maintain is equal to or greater than one-half ( $\frac{1}{2}$ ) of the gross Budget of the Association which excludes the Association's reserve account for that period. The Board shall review this study annually and shall consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review. The study required hereunder shall at a minimum include:

(a) Identification of the major components within the Association Property which the Association is obligated to repair, replace, restore, or maintain which, as of the date of the study, have a remaining useful life of less than thirty (30) years;

(b) Identification of the probable remaining useful life of the components identified in Section 18.2.4(a) as of the date of the study;

(c) An estimate of the cost of repair, replacement, restoration, or maintenance of each major component identified in Section 18.2.4(a) during and at the end of its useful life;

(d) An estimate of the total contribution necessary to defray the cost to repair, replace, restore, or maintain each major component during and at the end of its useful life, after subtracting total reserve funds as of the date of the study.

18.2.5 As used in this Article, "reserve accounts" means moneys that the Association's Board of Directors has identified for use to defray the future repair or replacement of, or additions to, those major components, which the Association is obligated to maintain.

18.2.6 As used in this Article, "reserve account requirements" means the estimated funds which the Association's Board of Directors has determined are required to be available at a specified point in time to repair, replace, or restore those major components which the Association is obligated to maintain.

Section 18.3. Initial Financial Report. A balance sheet, as of the accounting date which is the last day of the month closest in time to six (6) months from the date of the closing of the first Condominium in the Project, and an operating statement for the period from the date of the first closing to said accounting date, shall be distributed to each Owner within sixty (60) days after the accounting date. The operating statement shall include a schedule of assessments received and receivable, identified by Condominium number and the name of the record Owner assessed.

Section 18.4. Annual Report. An annual report consisting of the following shall be distributed to each Owner within one hundred twenty (120) days after the close of the fiscal year.

- (a) A balance sheet as of the end of the fiscal year.
- (b) An operating (income) statement for the fiscal year.
- (c) A statement of changes in financial position for the fiscal year.
- (d) Any information required to be reported under Section 8322 of the California Corporations Code.
- (e) A review of the annual report for the Association prepared in accordance with generally accepted accounting principles by an independent accountant licensed by the California State Board of Accountancy (hereinafter "Independent Accountant") for any fiscal year in which the gross income to the Association exceeds Seventy-Five Thousand Dollars (\$75,000.00).
- (f) A statement of policies and procedures employed by the Board of Directors to enforce the collection of delinquent assessments.

Section 18.5. Independent Preparation. Ordinarily the annual report referred to in Section 18.4 above shall be prepared by an Independent Accountant for any fiscal year in which the gross income to the Association exceeds Seventy-Five Thousand Dollars (\$75,000).

Section 18.6. Copy of Financial Statement. Within ten (10) days of receipt of any written request therefor, the Board of Directors shall furnish any Owner or prospective Owner with a copy of this Declaration, and the Articles, Bylaws and Rules and Regulations of the Association, as amended to date, together with a copy of the Association's most recent annual financial report as described in Section 18.4 hereof, and a true statement of any delinquent assessments, penalties, late charges, attorneys' fees or other charges under this Declaration on such Owner's Condominium as of the date the statement is issued. The Board of Directors may charge a reasonable fee for providing such documents and reports not to exceed the reasonable cost to prepare and reproduce same.

Section 18.7. Association Statement. If the report referred to in Section 18.4. above is not prepared by a Independent Accountant, it must be accompanied by the certificate of an authorized officer of the Association stating that the statements were prepared without audit from the books and records of the Association.

Section 18.8. Association's Policies Statement. A statement describing the Association's policies and practices in enforcing lien rights or other legal remedies for default in payment of its assessments against its Members shall be annually delivered to the Members during the sixty (60) day period immediately preceding the beginning of the Association's fiscal year.

Section 18.9. Reconciliation of Accounts. The Board of Directors shall do the following not less frequently than quarterly:

(a) Cause a current reconciliation of the Association's operating accounts to be made and review the same;

(b) Cause a current reconciliation of the Association's reserve accounts to be made and review the same.

(c) Review the current year's actual reserve revenues and expenses compared to the current year's budget.

(d) Review the most current account statements prepared by the financial institution where the Association has its operating and reserve accounts.

(e) Review an income and expense statement for the Association's operating and reserve accounts.

Section 18.10. Reserve Account.

18.10.1 Withdrawal of funds from the Association's reserve account shall require the signatures of either: (1) two members of the Board of Directors, or (2) one member of the Board of Directors and an officer of the Association who is not also a member of the Board of Directors.

18.10.2 The Board of Directors shall not expend funds designated as reserve funds for any purpose other than:

(a) The repair, restoration, replacement, or maintenance of major components which the Association is obligated to repair, restore, replace or maintain and for which the reserve fund was established, or

(b) Litigation involving the purposes set forth in (a) above.

18.10.3 Notwithstanding Section 18.10.2 above, the Board:

(a) May authorize the temporary transfer of money from the reserve account to the Association's operating account to meet short term cash flow requirements or other expenses, provided that the Board has made a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed, and describing when and how the money will be repaid to the reserve account.

(b) Shall cause the transferred funds to be restored to the reserve account within one (1) year of the date of initial transfer; however, the governing body may, upon making a documented finding that a temporary delay of restoration of the funds to the reserve account



would be in the best interests of the development, temporarily delay the restoration until such time it reasonably determines to be necessary.

(c) Shall exercise prudent fiscal management in maintaining the integrity of the reserve account, and shall, if necessary, levy a special assessment to recover the full amount of the expended funds within the time limits specified in (b) above. Any such special assessments shall be subject to the five percent (5%) limitation specified in Section 7.5 above. The Board may, at its discretion, extend the date the payment of the special assessment is due. Any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of an unpaid special assessment.

When the decision is made to use reserve funds or to temporarily transfer money from the reserve account to pay for litigation, the Board shall notify the Members of that decision in the next available mailing to all Members pursuant to Section 5016 of the Corporations Code, and of the availability of an accounting of the expenses related to litigation on at least a quarterly basis. The accounting shall be made available for inspection by Members at the Association's office.

Section 18.11. Transfer of Title. The Board of Directors shall not impose or collect any assessment, penalty or fee in connection with the transfer of title or any other interest except the Board of Directors' actual costs to change its records and the fee for providing documents pursuant to Section 18.6.

## **ARTICLE 19**

### **MORTGAGEE PROTECTION**

Section 19.1. Mortgagee Protection. Notwithstanding any other provisions in this Declaration to the contrary, in order to induce lenders and investors to participate in the financing of the sale of Condominiums in the Project, the following provisions are added hereto (and to the extent these added provisions conflict with any other provisions in this Declaration, these added provisions shall control):

19.1.1 No breach of any of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provisions herein, shall defeat or render invalid the lien of any first Mortgage (meaning a Mortgage with first priority over any other Mortgage) on any Condominium made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise.

19.1.2 Each holder of a first Mortgage encumbering any Condominium is entitled upon request to timely written notification from the Association of any default by the Mortgagor of such Condominium in the performance of such Mortgagor's obligations under this Declaration, the Bylaws, or Rules and Regulations of the Association, which is not cured within sixty (60) days.

19.1.3 Each holder of a first Mortgage encumbering any Condominium which obtains title to such Condominium pursuant to: (1) remedies provided in such Mortgage, or (2) by accepting a deed (or assignment) in lieu of foreclosure in the event of default by a Mortgagor, shall be exempt from any "right of first refusal," if any, contained in the Declaration, or the Bylaws of the Association. Further, any such "right of first refusal" shall not impair the rights of a first Mortgagee or interfere with a subsequent sale or lease of a Unit so acquired by the first Mortgagee.

19.1.4 Each holder of a first Mortgage or third party foreclosure purchaser which obtains title to a Condominium pursuant to the remedies provided in the Mortgage or foreclosure of the first Mortgage, shall take the Condominium free of any claim for unpaid dues, assessments or charges against the mortgaged Condominium which accrue prior to the time such holder obtains title to such Condominium (except for claims for a share of such assessments or charges resulting from a reallocation of such dues, assessments or charges to all Condominiums, including the mortgaged Condominium). The assessment lien provided for herein shall be subordinate to the lien of any first Mortgage now or hereafter placed upon the Condominiums subject to assessment; provided, however, that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such condominium pursuant to a decree of foreclosure or trustee sale. Such sale or transfer shall not release such condominium from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

19.1.5 Unless at least sixty-seven percent (67%) of the Institutional Lenders holding first Mortgages on Condominiums within this Project, based upon one vote for each first Mortgage owned, and sixty-seven percent (67%) of the Owners, other than the Declarant, have given their prior written approval, the Association and its Members shall not be entitled to:

(a) By act or omission, seek to abandon or terminate the Project, except as otherwise provided herein in the event of substantial destruction by fire or other casualty or in the event of a taking by condemnation or eminent domain;

(b) Change the pro rata interest or obligations of any Condominium for purposes of: (1) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (2) determining the pro rata share in ownership of each Condominium in the Common Property, unless the change is due to the annexation of additional Phases as authorized in this Declaration;

(c) Partition or subdivide any Condominium;

(d) By act or omission, seek to abandon, subdivide, encumber, sell or transfer the Common Property or partition the Common Property except as provided for herein, unless due to annexation of additional Phases as authorized in this Declaration. The granting of easements for public utilities or for other public purposes consistent with the intended uses of the Common Property and the Project shall not be deemed a transfer within the meaning of this clause;

(e) Use hazard insurance proceeds from losses to the Project (whether to Units or Common Property) for other than repair, replacement or reconstruction of the Project, except as provided by statute in case of substantial damage to the Units and/or Common Property of the Project;

(f) Effectuate any decision of the association to terminate professional management, if any, and assume self management of the Project; and

(g) Amend any part of this Article.

19.1.6 First Mortgagees shall have the right to examine the books and records of the Association during normal business hours.

19.1.7 The assessments shall include an adequate reserve fund for maintenance repairs and replacement of the Common Property and those portions thereof that must be replaced on a periodic basis, and shall be payable through annual assessments rather than by special assessments.

19.1.8 All taxes, assessments and charges, which may become liens prior to the first Mortgage under local law shall relate only to individual Condominiums, and not to the Project as a whole.

19.1.9 In the event of substantial damage to or destruction of any Unit, or any element of the Common Property or possible condemnation or eminent domain procedure, the Institutional Lender under any first Mortgage on a Condominium is entitled to timely written notice of any such damage, destruction or proposed acquisition and no provision in the Bylaws, or in this Declaration shall be interpreted to entitle any Owner or any other party to priority over any first Mortgagee with respect to the distribution to such Owner of any insurance proceeds or condemnation awards for losses to or a taking of Units and/or Common Property.

19.1.10 Any agreement for professional management of the Project, or any other contract providing for services by the Declarant shall provide for termination by either party without cause or payment of a termination fee upon thirty (30) days written notice, and that the term of any such contract shall not exceed one (1) year, renewable by agreement of the parties for successive one (1) year periods. However, lease agreements for laundry room fixtures and equipment, if any, may have terms of up to five (5) years, provided the Declarant is not the lessor thereunder.

19.1.11 The Association shall, upon the request of any Institutional Lender under a first Mortgage on a Condominium: (1) give written notice of all meetings of the Association and permit the Institutional Lender to designate a representative to attend all such meetings, and (2) transmit to such Institutional Lender an annual audited financial statement of the Project within ninety (90) days following the end of any fiscal year of the Project; (3) give written notice of any condemnation or casualty loss that affects either a material portion of the Project or the Unit securing its Mortgage; (4) give written notice of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and (5) give written notice

of any proposed action that requires the consent of a specified percentage of Institutional Lenders.

19.1.12 No breach of any of the foregoing covenants shall cause any forfeiture of title or reversion or bestow any right of re-entry whatsoever, but in the event that any one or more of these covenants shall be violated, the Declarant, , their successors and assigns, the Association, or any Owner may commence a legal action in any court of competent jurisdiction to enjoin or abate said violation, and/or to recover damages; provided, that any such violation shall not defeat or render invalid the lien of any Mortgage made in good faith and for value as to said Condominium or any part thereof. Said covenants shall be binding upon and effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

## **ARTICLE 20** **AMENDMENT**

Section 20.1. Amendments. This Declaration may be amended only by an affirmative vote of not less than seventy-five percent (75%) of each class of Members, and further, this amendment provision shall not be amended to allow amendments by vote of less than seventy-five percent (75%) of each class of Members. At such time when the Class B membership shall cease and be converted to Class A membership, any and all amendments to this Declaration shall be enacted by requiring the vote or written assent of Members representing both: (1) at least seventy-five percent (75%) of the total voting power of the Association; and (2) at least seventy-five percent (75%) of the votes of Members other than the Declarant, provided, however that the percentage of the voting power necessary to amend a specific provision shall not be less than the percentage of affirmative votes prescribed for action to be taken under said provision. An Amendment hereto shall be effective after (a) the approval of the percentage of Owners required in this Section has been given, (b) that fact has been certified in a writing executed and acknowledged by the officer designated by the Association for that purpose, or if no one is designated, by the president of the Association and (c) that writing has been recorded in the county in which the Project is located.

No amendment material to a Mortgagee may be made to this Declaration without the prior written consent of Eligible Mortgage Holders whose Mortgages encumber fifty-one percent (51%) or more of the Condominiums within the Properties which are subject to Eligible Mortgage Holder Mortgages. For these purposes, any amendments to provisions of this Declaration governing any of the following subjects, shall be deemed "material to a Mortgagee":

- (a) Voting;
- (b) Assessments, assessment liens or subordination of such liens;
- (c) Reserves for maintenance, repair and replacement for the Association Property;
- (d) Casualty insurance, liability insurance or fidelity bonds;

- (e) Rights to use of the Association Property;
- (f) Responsibility for maintenance and repair of the several portions of the Project;
- (g) Expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project;
- (h) Boundaries of any Unit;
- (i) The interests in the Common Property;
- (j) Convertibility of Units into Common Property or of Common Property into Units;
- (k) Leasing of Condominiums;
- (l) Imposition of any right of first refusal or similar restriction, or other restriction, on the right of an Owner to sell, transfer, or otherwise convey his or her Condominium;
- (m) Any provisions which are for the express benefit of Mortgage holders, Mortgage Holders, Eligible Insurers or Guarantors.

An addition or amendment to the Declaration or Bylaws shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. An Eligible Mortgage Holder who receives a written request to approve additions or amendments who does not deliver or mail to the requesting party a negative response within thirty (30) days shall be deemed to have approved request, provided that the request was delivered by certified mail or registered mail, with a "return receipt" requested.

Notwithstanding any other provision of this Section, for so long as Declarant owns any portion of the Properties or the Annexable Property, Declarant may unilaterally amend this Declaration by recording an instrument in writing, signed by Declarant, without the consent of the Association or any other Owner, provided that such amendment is made in order to conform this Declaration to the requirements of the DRE, the United States Department of Veterans Affairs, FHA, FNMA, GNMA, FHLMC, or any other governmental entity.

Section 20.2. Effective Date of Amendment. Each amendment made pursuant to this Article 20 shall, from and after its effective date, be as effective as this instrument as to all of the Project and the Owners/Members and their successors in interest.

Section 20.3. Petition to Superior Court. Nothing in this Declaration shall restrict the ability of any Owner at any time to petition the Superior Court in the County in which the Project is located to amend this Declaration as provided for under California Civil Code Section 1356.

**ARTICLE 21**  
**ANNEXATION**

**Section 21.1. Annexation of Annexable Property Without Approval.**

21.1.1 If Declarant chooses to develop additional lands within any of the Annexable Property described in Exhibit "A" hereto, such additional real property or any portion thereof may be added to the Condominium Project, subjected to this Declaration, and included within the jurisdiction of the Association by action of Declarant, owning such real property, without the assent of Members of the Association; provided, however, that the development of the Annexable Property shall be in substantial conformance with a detailed plan of phased development submitted to the Department of Real Estate with the application for a Final Subdivision Public Report for the first phase of the Project. Said annexation may be accomplished by the recording of a Notice of Annexation which requires Owners of Condominiums therein to become Members of the Association and which includes appropriate Exhibits supplementing the Exhibits hereto as may be applicable to such annexed Property. The obligation of Owners to pay dues to the Association and the right of such Owners to exercise voting rights in the Association in such annexed Property shall not commence until the first day of the month following close of the first sale of a Condominium by Declarant in that particular Phase of development.

21.1.2 Subject to annexation of additional Property as set forth in Section 21.1.1:

(a) Declarant hereby reserves, for the benefit of and appurtenant to the Condominiums hereinafter annexed and their respective Owners, nonexclusive easements to use the Association Property in the Project pursuant to and in the manner set forth in this Declaration, to the same extent and with the same effect as if each of the Owners of a Condominium in the annexed Property owned an undivided interest in the Association Property in the Project.

(b) Declarant hereby grants, for the benefit of and appurtenant to each Condominium in the Project, and their Owners, a nonexclusive easement to use the Association Property in the annexed Property, pursuant to the provisions of and in the manner prescribed by this Declaration, to the same extent and with the same effect as if each of the Owners of Condominium in the Project owned an undivided interest in the Association Property of the Property so annexed.

These reciprocal cross-easements shall be effective as to each annexed Property, and as to the Project, only at such time as each annexed Property has been annexed by the recordation of a Notice of Annexation or a separate Declaration of Conditions, Covenants and Restrictions by Declarant. Prior to such action neither the Project nor any Annexable Property shall be affected by these reciprocal cross-easements nor shall the Owners in any Annexable Property have such rights in and to the Association Property within the Property.

**Section 21.2. Annexation Requiring Approval.** Upon approval in writing of the Association, pursuant to two-thirds (2/3) of the voting power of each class of Members of the Association, the

Owner of any real property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file of record a Notice of Annexation which shall extend the scheme of this Declaration to such real property, including appropriate Exhibits as described in Section 21.1 above. After conversion of the Class B membership to Class A membership, this action shall require the vote or written consent of (i) two-thirds (2/3) of the voting power of Members of the Association, and (ii) two-thirds (2/3) or more of the voting power of Members of the Association other than Declarant.

Section 21.3. De-Annexation. Declarant hereby reserves the right to de-annex any portion or all of any Phase or Phases within the Project and to delete said Phase or Phases from the scheme of this Declaration and from the jurisdiction of the Association, provided and on condition that the de-annexation shall be made prior to the closing date of the sale of the first Unit in the Phase, or portion thereof, to be de-annexed.

## **ARTICLE 22**

### **RIGHT OF DECLARANT TO REDESIGN PROJECT**

Section 22.1. Right of Declarant to Redesign Project. Subject to the restrictions and limitations set forth in this Article, Declarant and its successors or assigns, reserves the right, in its sole discretion, from time to time, within a period of four (4) years from the date of recording of this Declaration, or at any time or at different times within such four (4) year period, to redesign the Project or any portion or aspect thereof, including but not limited to any Module, Unit, structure, recreational facility, fixture or improvement located within the Project (herein collectively "Improvement") constructed or proposed to be constructed on the Property and in connection with such redesign, to effect the following changes in the Project:

- (a) To alter the vertical or horizontal boundaries, or both, of any Improvement;
- (b) To alter the shape, configuration, floor plan and/or location of any Module, Unit;
- (c) To alter the number, size, shape, and configuration of any Phases, Modules, Units, Common Area, and Association Property;
- (d) To adjust the location or configuration or both, of any Module and Common Property boundary lines;
- (e) To alter the size, shape, configuration, floor plan, and/or location of any and all of the parking spaces;
- (f) To effect nominal deviations from the Condominium Plan which result during the actual construction; and
- (g) To change the configuration of any Improvement.

Section 22.2. General Restrictions on Redesign. The rights of Declarant set forth in Section 22.1 above shall and are hereby made subject to the following additional restriction and limitation that the redesign of any portion of the Project authorized by Section 22.1 shall in no event physically modify, affect or change any Unit which as of the date of such redesign, are the subject of an agreement of sale, or are owned by an Owner other than Declarant, unless the purchaser or Owner of such Unit shall consent to such redesign in writing, and in no event shall the recreational facilities constructed or to be constructed in the Association Property be redesigned to contain less than what is currently described in the Condominium Plan.

Section 22.3. Amendment of Condominium Plan. In the event a redesign of all or any portion of the Project affects any Modules or Units so as to necessitate the preparation of an amendment to the Condominium Plan, including any amendment necessary to cause the Condominium Plan to comply with the Improvements as actually built, Declarant shall prepare or cause to be prepared, execute, acknowledge, file or cause to be filed for approval and record or cause to be recorded an amendment to the Condominium Plan. The amendment to the Condominium Plan shall, when recorded, have the effect of (a) relocating the Common Property and each Module and/or Unit to the extent set forth on the amendment to the Condominium Plan, (b) vesting in each Owner (including Declarant, with respect to any unsold Units) of an undivided fractional fee interest in the Common Area as depicted on the amendment to the Condominium Plan, (c) divesting each Owner (except Declarant) of all right, title and interest to any Unit, other than each Owner's Unit, depicted on the amendment to the Condominium Plan, (d) vesting in each holder of a Mortgage or other encumbrance an undivided fractional fee interest (to the extent of the percentage interest in the Common Area of the Owner of that Unit which is subject to such Mortgage or other encumbrance) in the Common Area as depicted on the Condominium Plan and (e) divesting each holder of a Mortgage or other encumbrance of all right, title and interest to each Condominium (other than the Owner's Condominium which is the subject of such Mortgage or other encumbrance) depicted on the amendment to the Condominium Plan. The adjustment of any Mortgage or other encumbrance in accordance with the provisions of this Section 22.3 shall not affect the priority of any such Mortgage or other encumbrance with respect to any other matters affecting title to the Unit, which is the subject thereof.

Section 22.4. Power of Attorney. Each Owner, by accepting a deed to a Condominium, shall be deemed to have constituted and irrevocably appointed for such Owner and each of such Owner's mortgagees, optionees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, for a period of four (4) years from the date of the recording of this Declaration, Declarant, as to Declarant's property, , as such Owner's Attorney-in-Fact and thereby to have conveyed a Power-of-Attorney coupled with an interest to Declarant as such Owner's Attorney-in-Fact to effect the redesign of all or any portion of the Project in accordance with the limitations and requirements set forth in this Article, and further:

(a) To prepare or cause to be prepared, execute, acknowledge, file or cause to be filed for approval and file or record or cause to be filed or recorded any map or record of survey required or permitted by the provisions of the Subdivision Map Act of the State of California in effect on the date of recordation of this Declaration and as thereafter amended and any ordinances, rules and regulations of the City and any other governmental entities and authorities



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

(b) To prepare or cause to be prepared, execute, acknowledge and file or cause to be filed for approval and record or cause to be recorded any amendment to the Condominium Plan, including any amendment necessary to cause the Condominium Plan to comply with the Improvements as actually built, or any Module(s) and/or Unit(s) as redesigned, which may be required or permitted by the laws of the State of California as in effect on the date of recordation of this Declaration and as thereafter enacted or amended and any ordinances, rules and regulations of the City and any other governmental entities and authorities having jurisdiction over the Project in effect on the date of recordation of this Declaration and as thereafter enacted or amended, or which may be required or permitted by any title insurer, and in connection therewith to perform all conditions, undertake any obligations, and execute all agreements and documentation required or permitted by any federal, state, and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute and deliver any improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations;

(c) To prepare or cause to be prepared, execute, acknowledge and file or cause to be filed for approval, any application for zoning or setback changes or variance or special use permits or any other permits and/or reports required or permitted by the laws of the State of California as in effect on the date of recordation of this Declaration and as thereafter enacted or amended and any ordinances, rules and regulation of any governmental entities and authorities having jurisdiction over the Project as in effect on the date of recordation of this Declaration and thereafter enacted or amended and, in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute and deliver any improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations;

(d) To make application for any property reports or public reports or amendments thereto or exceptions from the requirements therefor required or permitted in order to comply with federal and state statutes, rules and regulations relating to the sale, lease, transfer or other disposition of subdivided lands to the general public and, in connection therewith, to perform all conditions, undertake any obligations, and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; and to execute and deliver any agreements and bonds securing the performance of the obligations contained therein;

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

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

(g) To prepare or cause to be prepared, execute, acknowledge and record or cause to be recorded any deed, waivers, releases, reconveyance, or documentation which may be permitted or required to clear title to any Units, whether constructed or to be constructed in the project; and

(h) To do any and all things necessary or desirable under the circumstances to effect and accomplish the purposes of this Article.

Section 22.5. Indemnification of Owners on Exercise of Power of Attorney. Declarant shall indemnify and hold each Owner harmless from all liabilities, including attorneys' fees, which are incurred as a direct result of the execution by Declarant of any Improvement agreements or bonds, or both, in connection with the exercise by Declarant of the Power of Attorney and right to redesign hereinbefore set forth.

Section 22.6. Mortgagee Interest and Other Encumbrances to Take Subject to Power of Attorney. The acceptance or creation of any Mortgage or other encumbrance, whether voluntary or involuntary, and whether or not created in good faith, and whether or not given for value, shall be deemed to be accepted and/or created subject to each of the terms and conditions of the Power-of-Attorney described in Section 22.4 hereof.

Section 22.7. Owner Concurrence and Consent. Each and every Owner and each of their respective Mortgagees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, shall be deemed to have expressly agreed, assented and consented to each and all the provisions of this Declaration and shall be deemed to have constituted and irrevocably appointed Declarant, as to Declarant's Property, as such Owner's Attorney-in-Fact to carry out the powers described in Section 22.4 hereof, and such Power-of-Attorney shall be deemed to continue to be coupled with an interest.

Section 22.8. Declarant's Right to Alter Plan of Development. Declarant hereby reserves the right to modify, amend, change, or eliminate altogether, the three (3) Phase plan of development hereinabove described. Such rights shall include, without limitation, the right to delete any and all subsequent Phases of development, and to combine and alter the configuration and number of

Phases, and/or divide the subsequent Phases into additional Phases. There is no guarantee by, or obligation of Declarant to complete all three (3) Phases of development or to annex same into the Project. Any change or modification of the general plan of development shall, however, require the prior approval of the Department of Real Estate.

## **ARTICLE 23**

### **PROVISIONS FOR THE BENEFIT OF THE CITY**

Section 23.1. Application of this Article. The provisions of this Article 23 shall apply regardless of any other provisions of this Declaration, and in the event of any inconsistency between any provision of this Article 23 and any other provision of this Declaration, the provisions of this Article 23 shall prevail. No provision of this Article 23 may be amended without the written consent of the City, acting through its City Attorney or other designated officer. The written consent of the City must be recorded with, or as a part of, any such amendment to this Declaration.

Section 23.2. Priority of Governing Documents. The governing documents shall consist of this Declaration, the Articles, the Bylaws, and the Association Rules. In the event of any conflict between the provisions of any of the governing documents, the provisions of this Declaration shall control. In the event of any conflict between the provisions of the Articles and the Bylaws or the Association Rules, the provisions of the Articles shall control. In the event of any conflict between the provisions of the Bylaws and the Association Rules, the provisions of the Bylaws shall control.

Section 23.3. Third Party Beneficiary. Declarant covenants and agrees for itself and on behalf of its successors, assigns and grantees, including each Owner, that the City shall be a third party beneficiary to this Declaration and shall have the powers provided in this Article 23, in addition to those stated elsewhere in this Declaration.

Section 23.4. Right to Act on Behalf of Association. The City, in the name of the Association or the Board, may, but shall not be obligated to, do or perform any action the Association or the Board is empowered to do or perform, if the Association or the Board is in default in performing any act in breach of their obligation to maintain, control and otherwise manage, or cause to be managed the Common Area in a neat, safe, attractive, sanitary, orderly, and first class condition, at all times, or of any other obligation imposed by this Declaration, after the City has given thirty (30) days' prior written notice to the Association of its intent to act, which notice shall state the acts that are contemplated by the City.

23.4.1 If the City does any act in the name of the Association or the Board, the City may fix the amount of reasonable compensation, including fixing the amount of attorneys' fees and other reasonable costs incurred for doing such acts. The Association shall be liable to the City for reimbursement of such reasonable compensation and, should the Association fail to pay such reasonable compensation within thirty (30) days after the date of service on the Association of a written statement of the amount of reasonable compensation due the City, then each Owner shall

become jointly and severally liable to the City, with the Association, in the same proportion as each Owner is responsible for Regular Assessments under this Declaration.

23.4.2 The unpaid balance of reasonable compensation due the City shall bear interest at the rate of 10% per annum beginning thirty (30) days after the date of service on the Association of the City's written statement of the amount due to the City, and continuing until all principle and interest is paid in full.

23.4.3 The remedies set forth in this Section 23.4 are cumulative with the other rights and remedies that the City may have with respect to the enforcement of this Declaration.

23.4.4 No amendment that would tend to defeat the right of the City to enforce the obligations of the Association and the Board to maintain, control and otherwise manage, or cause to be managed, the Common Area in a neat, safe, attractive, sanitary, orderly and first class condition, shall be effective unless and until the amendment has been approved, in writing, by the City Attorney, and consented to in writing by the City, acting through its City Manager, or other designated officer. The written consent of the City must be recorded with or as a part of any such amendment to this Declaration.

Section 23.5. Conditions of Approvals. Declarant, for itself and on behalf of those who obtain any interest in the Project, acknowledges that the Project is and will be subject to certain conditions of development imposed in conjunction with land development approvals granted by the City. The precise terms of the conditions are set forth in the records of the Planning and/or Engineering Divisions of the City and are identified as "Conditions of Approval" to, by way of example, but without limitation, Tentative Tract Map Case No. S-4129, as stated in the City Council resolution approving the tentative map, City Council Ordinance No. 2002-26, adopting a Development Agreement for the Project, and Planning Commission Resolution No. 7917 approving Case Nos. PD-799 and ARB 2808. The provisions of all such Conditions of Approval shall supercede any contrary provisions, which may appear in this Declaration, including any future amendments to this Declaration. The design of the Common Area, the Units and all Condominium elements substantially conform to the terms and conditions of the Conditions of Approval and no material deviations from the terms and conditions of the Conditions of Approval shall be permitted, unless the deviation is permitted pursuant to the terms of a new development approval by the City superceding prior City development approvals, or unless the City determines that the non-conformity is insubstantial or the deviation is immaterial.

Section 23.6. Application of Zoning Laws. Declarant, of itself and on behalf of all those who obtain any interest in all or any portion of the Property, acknowledges that the private Covenants, Conditions and Restrictions contained in this Declaration constitute separate and distinct limitations or restrictions respecting this development, but that the Project is also independently subject to the Conditions of Approval of the land development approvals referred to in Section 23.5 and to all applicable zoning and other laws, and that this Declaration is in no respect a limitation of the separate and independent applicability thereof.

Section 23.7. No City Obligation. No grant to the City in this Declaration of any right over the Common Area, or any Unit, or of any other right of any nature whatsoever, shall be deemed to

impose any obligation upon the City to exercise such right, nor shall it be deemed to impose any other obligation of any kind whatsoever on the City.

Section 23.8. Private Parking Regulations. Notwithstanding anything to the contrary in this Declaration, the City's Police Department will not patrol or enforce State or municipal laws, regulations and rules within the Project pertaining to private parking areas, private streets and driveways (see Sections 23.1 through 23.8 at pages 63-64).

## **ARTICLE 24**

### **GENERAL PROVISIONS**

Section 24.1. Term of Declaration. The provisions of this Declaration shall run with the land and bind the Project, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any interest subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of forty (40) years from the date this Declaration is recorded, after which time the provisions of this Declaration shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed by at least sixty-six and two-thirds percent (66-2/3%) of the then Owners of the Condominiums, has been recorded within six (6) months of the anticipated termination date. The contents of such instrument shall contain the agreement to terminate this Declaration as it may be supplemented in whole or in part.

Section 24.2. Reservation of Rights. Declarant (and its respective sales agents and representatives) hereby reserves, together with the right to grant and transfer the same, the right to the non-exclusive use of the Common Property and the recreational facilities owned by the Association including, without limitation, the annexed Property, for display and exhibit purposes in connection with the sale of Condominiums in the Project and on the real property annexed thereto; provided, however, that such use shall not be for a period of more than three (3) years after the conveyance of the first Condominium in each respective Phase of the Project; and, provided, further, that no such use by Declarant, , or its sales agents or representatives, or assignees, shall otherwise restrict the Members in their use and enjoyment of the Common Property or facilities thereon. Declarant, for and on behalf of itself, hereby further reserves the unrestricted right to display whatever signs Declarant, or its assignees, deem necessary in the Common Property in connection with the sale of Condominiums in the Project. Upon completion of all sales with the Project, Declarant shall remove all such signs.

Section 24.3. Transfer of Ownership Interest. An ownership interest in a Condominium may pass under the estate of a deceased person to more than one person; provided, however, that only one individual living shall be entitled to have membership privileges in the association derived from such ownership.

Section 24.4. Severability. In the event any limitation, restriction, condition, covenant or provision contained in this Declaration is to be held invalid, void or unenforceable by any court of competent jurisdiction, the remaining portions of this Declaration shall, nevertheless, be and remain in full force and effect.

Section 24.5. Invalidation. Invalidation of any one of these covenants, conditions or restrictions, by judgment or court order, shall in no way affect other provisions hereof which shall remain in full force and effect.

Section 24.6. Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a Condominium residential community and for the maintenance of community facilities.

Section 24.7. Encroachment Easement. In the event any portion of the Association Property encroaches upon any Condominium or any Condominium encroaches upon the Association Property, each Condominium within the Project is hereby declared to have an easement for the purpose of accommodating any such encroachment due to engineering errors, errors in original construction, repair, reconstruction, settlement or shifting of the building, or any other cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners.

Section 24.8. Termination of Declarant's Obligations. In the event Declarant shall convey all of its right, title and interest in and to the Project to any partnership, individual or individuals, corporation or corporations, then and in such event, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership, individual or individuals, corporation or corporations, shall be obligated to perform all such duties and obligations of the Declarant.

Section 24.9. Number, Gender. The singular shall include the plural and the plural the singular unless the context requires to the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine or neuter, as the context requires.

Section 24.10. Non-Liability of Declarant. Each Owner, by acceptance of a deed shall be deemed to have agreed that Declarant shall have no liability whatsoever resulting from any term or provision thereof having been held to be unenforceable in whole or in part.

Section 24.11. Grantees Subject to This Declaration. Each grantee of a conveyance or purchaser under a contract or agreement of sale, by accepting the deed or contract of sale or agreement of purchase, accepts the same subject to all of the limitations, restrictions, conditions and covenants, and agreements set forth in this Declaration, and agrees to be bound by the same.

Section 24.12. Declarant's Rights After Sale of all Units in the Project. For a period of ten (10) years after the close of escrow for the sale of the last Unit in the Project covered by a Final

Subdivision Public Report, in addition to Declarant's rights as an Owner and a Member, Declarant shall have the following rights: (1) access to and the right to inspect the Association books and financial records, (2) access to and the right to inspect the Association's maintenance records; (3) access to and the right to inspect the Common Area of the Project; (4) right to receive notice of, attend and speak at all regular and special meetings of the Board of Directors and meetings of the Members; and (5) right to receive copies of the minutes of the meetings of the Board of Directors and meetings of the Members, upon request and payment of the actual costs to copy and distribute such records.

**Section 24.13. Disclosures:**

**24.13.1 Maintenance Assessment District.** The Project will be located within the City of San Buenaventura Maintenance Assessment District No. 12 ("MAD No. 12"), which is currently being formed to maintain, among other things, the street lights, landscaping, storm water treatment, irrigation and hardscape within the Project. The assessment levied by MAD No. 12 will be collected through the real property tax bill issued by the County of Ventura for each Lot (and other properties) within the jurisdiction of MAD No. 12. Currently, the assessment is unknown. The assessment is subject to annual adjustments. You should refer to your title report, real property tax bill or the County of Ventura for further information.

**24.13.2 Parking Violations.** In accordance with the Conditions of Approval for the Project, all Owners are hereby put on notice that the City of San Buenaventura Police Department will not patrol or cite persons for parking violations at the Project.

**24.13.3 Water and Sewer Service.** The water and sewer service contained within the Project is a private system that is owned, maintained and paid for by the Association.

**24.13.4 Clubhouse.** The Association Property clubhouse located in the recreational area shall be available to the general public for community events at reasonable hours.

IN WITNESS WHEREOF, the undersigned, deemed the Declarant herein, has hereunto set its hand and seal this 24 day of May, 2005.

**DECLARANT:**

PROMONTORY PROPERTIES, INC.,  
a California corporation

By: 

JOHN ASHKAR  
Its President

ACKNOWLEDGMENT

STATE OF CALIFORNIA )

COUNTY OF ) ss.

On May 24, 2005 before me, Susan Gifford-Blumert, personally appeared Sam Ashkar, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his authorized capacity, and that by his signatures on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Susan Gifford-Blumert  
NOTARY PUBLIC





## SUBORDINATION AGREEMENT

The undersigned, WFHAI HOUSING FUND, L.P., a California limited partnership, beneficiary under that certain Deed of Trust recorded January 22, 2003, as Instrument No. 2003-0019643, Official Records, Ventura County, California, does hereby consent to each and all of the provisions contained in the within instrument, the Declaration of Establishment of Conditions, Covenants and Restrictions for Bella Vista at Promontory Pointe, and all amendments and annexations thereto and does hereby agree that the lien and charge of said Deed of Trust shall be, and is hereby made, subordinate to, junior to and subject to said within instrument and all amendments and annexations thereto and the entire effect thereof.

Date: May 19, 2005

BENEFICIARY:

**WFHAI HOUSING FUND, L.P.,**  
a California limited partnership

By:

Its:

ASSISTANT SECRETARY

By:

Its:

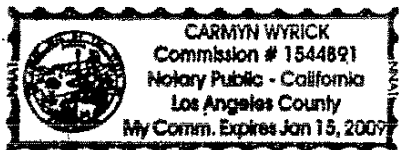
VICE PRESIDENT

## ACKNOWLEDGMENT

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF LOS ANGELES )

On MAY 19, 2005, before me, CARMYN WYPIA, personally appeared SHERMANE SHEPHERD and CATHY NUALIA, 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 signatures 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.



NOTARY PUBLIC

# SUBORDINATION AGREEMENT

The undersigned, WFHAI HOUSING FUND, L.P., a California limited partnership, beneficiary under that certain Deed of Trust recorded January 22, 2003, as Instrument No. 2003-0019644, Official Records, Ventura County, California, does hereby consent to each and all of the provisions contained in the within instrument, the Declaration of Establishment of Conditions, Covenants and Restrictions for Bella Vista at Promontory Pointe, and all amendments and annexations thereto and does hereby agree that the lien and charge of said Deed of Trust shall be, and is hereby made, subordinate to, junior to and subject to said within instrument and all amendments and annexations thereto and the entire effect thereof.

Date: May 19, 2005

**BENEFICIARY:**

WFHAI HOUSING FUND, L.P.,  
a California limited partnership

By:

Its:

By:

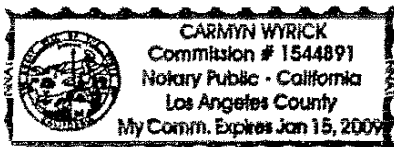
Its:

## ACKNOWLEDGMENT

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF LOS ANGELES )

On MAY 19, 2005, before me, CARMYN WYPLUE, personally appeared SHERMAYNE STEPHERD and CATHY VILLALBA, 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 signatures 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.



G. J.  
NOTARY PUBLIC

## SUBORDINATION AGREEMENT

The undersigned, WFHAI HOUSING FUND, L.P., a California limited partnership, beneficiary under that certain Deed of Trust recorded January 22, 2003, as Instrument No. 2003-0019645, Official Records, Ventura County, California, does hereby consent to each and all of the provisions contained in the within instrument, the Declaration of Establishment of Conditions, Covenants and Restrictions for Bella Vista at Promontory Pointe, and all amendments and annexations thereto and does hereby agree that the lien and charge of said Deed of Trust shall be, and is hereby made, subordinate to, junior to and subject to said within instrument and all amendments and annexations thereto and the entire effect thereof.

Date: May 19, 2005

**BENEFICIARY:**

**WFHAI HOUSING FUND, L.P.,**  
a California limited partnership

By:

Its:

By:

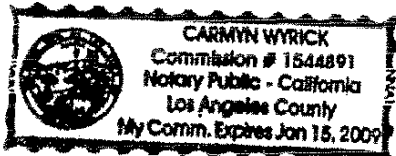
Its:

## ACKNOWLEDGMENT

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF LOS ANGELES )

On MAY 19, 2005, before me, CARMYN WYPLA, personally appeared SHERMAYNE SHEPHERD and CATHY VILLALVA, 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 signatures 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.



NOTARY PUBLIC

**EXHIBIT "A"**

**ANNEXABLE PROPERTY**

Module "C", Lot 121 of Tract No. 4129, in the City of San Buenaventura, County of Ventura, State of California, as per Map recorded in Book 152, Pages 22 through 24, of Maps, in the Office of the County Recorder of said County, as shown and described on that certain Condominium Plan recorded December 30, 2004, as Instrument No. 20041230-0344692, in the Office of the County Recorder of said County