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**Artisan HOA**

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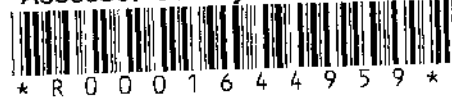
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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**OF**

**ARTISAN**

**SECTION 15.4 OF THIS DECLARATION CONTAINS A BINDING ARBITRATION PROVISION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT. YOU SHOULD CONSULT LEGAL COUNSEL WITH ANY QUESTIONS ON THESE OR OTHER PROVISIONS OF THIS DECLARATION.**

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
ARTISAN**

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF ARTISAN (“**Declaration**”) is made as of March 28th, 2013 by D.R. Horton BAY, Inc., a Delaware corporation (“**Declarant**”), with reference to the facts set forth below.

**RECITALS**

All initially capitalized terms used but not defined in the Recitals are defined in **Article 1**.

**A. Property Owned by Declarant.** Declarant is the owner of the real property situated in the City of Menlo Park, County of San Mateo, State of California, more particularly described on **Exhibit “A”** (“**Property**”).

**B. Nature of Community.** Declarant intends to establish a plan of condominium ownership and to develop the Property as a condominium project within the meaning of California Business and Professions Code Section 11004.5(c) and California Civil Code Section 1351(f), to conform with the provisions of California Business and Professions Code Section 11000, *et seq.* and to subject the Property to certain limitations, restrictions, conditions and covenants as hereinafter set forth in accordance with the provisions of California Civil Code Sections 1350 *et seq.* To that objective, Declarant desires and intends to impose on the Property certain mutually beneficial restrictions, limitations, easements, assessments and liens under a comprehensive plan of improvement and development for the benefit of all of the Owners, the Condominiums, Common Area and Association Property and the future Owners of said Condominiums, Common Area and Association Property.

**C. Description of Community.** Declarant intends to develop the Community in two Phases, the first Phase of which is planned to consist of thirteen (13) Condominiums within the portion of the Property designated on **Exhibit “A”** as the “first Phase.” If developed as planned, the Community may ultimately contain up to twenty-six (26) Condominiums; however, Declarant makes no guarantee that the Community will be constructed as presently proposed. Each Owner will receive (i) fee title to a Residential Unit, (ii) an undivided fractional interest as tenant in common in the Common Area within the Module in which the Owner’s Residential Unit is located (as shown on a Condominium Plan), (iii) the exclusive right of use and occupancy of those portions of the Association Property (if any) designated as an appurtenant Exclusive Use Easement on the Condominium Plan that covers the Owner’s Residential Unit, and (iv) subject to the terms of the Governing Documents, an easement for ingress, egress and use over the Association Property. A membership in Artisan Homeowners Association, a California nonprofit mutual benefit corporation (“**Association**”), is appurtenant to each Condominium.

**DECLARATION**

NOW, THEREFORE, Declarant declares that the Property is, and shall be, held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to

## DECLARATION

NOW, THEREFORE, Declarant declares that the Property is, and shall be, held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following limitations, covenants, conditions, restrictions, easements, liens and charges, all of which are declared and agreed to be in furtherance of a plan of condominium and planned development ownership as described in California Civil Code Section 1350, et seq. for the subdivision, improvement, protection, maintenance, and sale of Condominiums within the Property, and all of which are declared and agreed to be for the purpose of enhancing, maintaining and protecting the value and attractiveness of the Property. All of the limitations, covenants, conditions, restrictions, easements, liens and charges shall run with the land, shall be binding on and inure to the benefit of all Persons having or acquiring any right, title or interest in the Property, shall be enforceable equitable servitudes and shall be binding on and inure to the benefit of the successors in interest of such parties. Declarant further declares that it is the express intent that this Declaration satisfy the requirements of California Civil Code Section 1354.

### ARTICLE 1 DEFINITIONS

Unless the context otherwise specifies or requires, the terms defined in this Article shall, for all purposes of this Declaration, have the meanings herein specified.

**1.1** “Additional Charges” means costs, fees, charges and expenditures, including without limitation attorneys’ fees and costs, administrative fees, late charges, interest and recording and filing fees, actually incurred by the Association in collecting and/or enforcing payment of Assessments, and other amounts levied under this Declaration. Additional Charges include without limitation the following:

**1.1.1** Reasonable attorneys' fees and costs incurred in the event an attorney is employed to collect any Assessment or sum due, whether by suit or otherwise;

**1.1.2** A late charge in an amount to be fixed by the Association in accordance with California Civil Code Section 1366 to compensate the Association for additional collection costs incurred in the event any Assessment or other sum is not paid when due or within any "grace" period established by Applicable Laws;

**1.1.3** Costs of suit and court costs incurred as are allowed by the court;

**1.1.4** Interest at the Applicable Rate; and

**1.1.5** Any such other additional costs that the Association may incur in the process of collecting delinquent Assessments.

**1.2** “Applicable Laws” means the Governmental Entitlements and/or any law, regulation, rule, order or ordinance of any Governmental Agencies which is applicable to the Community or any portion thereof now in effect or as hereafter promulgated.

1.3 “**Applicable Rate**” means the rate of interest chargeable under this Declaration equal to the rate established by the Association from time to time, but not to exceed the maximum rate allowed by Applicable Laws.

1.4 “**Architectural Committee**” means the committee that may be appointed by the Board pursuant to **Article 9**.

1.5 “**Architectural Guidelines**” means the design criteria adopted by the Board pursuant to **Article 9**.

1.6 “**Articles**” means the Articles of Incorporation of the Association that are or shall be filed in the Office of the Secretary of State for the State of California, as they may from time to time be amended.

1.7 “**Assessments**” means the assessments levied to cover the Common Expenses under **Article 5** and other assessments permitted to be levied by the Association under this Declaration and the other Governing Documents.

1.8 “**Association**” means Artisan Homeowners Association, a California mutual benefit corporation, its successors and assigns.

1.9 “**Association Maintenance Manual**” means the manual specifying obligations for maintenance of the Association Property and other areas to be maintained by the Association that may be prepared by Declarant or its consultants and provided to the Association, as updated and amended from time to time.

1.10 “**Association Property**” means all real property owned from time to time in fee title by the Association. Upon conveyance to the Association, the Association Property in the first Phase of the Community will consist of the real property identified on **Exhibit “A”** as Association Property within the first Phase. The Association Property in the second Phase shall consist of the real property identified on **Exhibit “A”** as Association Property within the second Phase.

1.11 “**Association Rules**” means the rules and regulations adopted by the Board from time to time.

1.12 “**Board**” means the board of directors of the Association.

1.13 “**Budget**” means the budget for the Association, which sets forth all the Common Expenses to be allocated among all the Owners.

1.14 “**Bylaws**” means the bylaws of the Association adopted by the Board, as they may be amended from time to time.

1.15 “**Capital Improvement Assessments**” means the assessments described in **Section 5.5** as Capital Improvement Assessments that are levied pursuant to the provisions of **Article 5**.

**1.16** “City” means the City of Menlo Park, California.

**1.17** “Common Area” means that portion of a Module that is designated and described in the Condominium Plan as Common Area within the Module, which Common Area is owned in equal undivided interests by the Owners of the Residential Units situated in the Module, as defined in this Declaration and as described on the Condominium Plan. The Common Area consists solely of airspace in a Module above the highest vertical Improvement in the Module. The boundaries of the Common Area are designated on the Condominium Plan.

**1.18** “Common Expenses” means the actual and estimated costs and expenses incurred or to be incurred by the Association, including without limitation the following:

**1.18.1** expenses for maintenance, management, operation, repair and replacement of the Association Property and any Improvements located thereon that are required to be maintained by the Association pursuant to this Declaration or the other Governing Documents;

**1.18.2** expenses incurred in performing the duties and obligations of the Association set forth in this Declaration and the other Governing Documents;

**1.18.3** expenses incurred in complying with the Governmental Entitlements and Applicable Laws;

**1.18.4** expenses incurred to cover due but unpaid Assessments;

**1.18.5** expenses incurred in administering any committees formed by the Association;

**1.18.6** expenses for management and administration of the Association, including without limitation compensation paid by the Association to managers, accountants, attorneys and architects and consultants;

**1.18.7** expenses incurred in maintaining the legal status and qualifications of the Association as an entity in good standing and entitled to do business in the State of California;

**1.18.8** expenses of any inspections required or deemed appropriate by the Association;

**1.18.9** expenses, if any, required for the maintenance of any areas that a Governmental Agency requires be maintained by the Association;

**1.18.10** the cost of any utilities, trash pickup and disposal, landscaping and other services benefiting the Owners and their Residential Units to the extent such services are paid for by the Association;

**1.18.11** expenses of insurance and/or fidelity bonds required to be maintained by the Association;

**1.18.12** reasonable reserves as deemed appropriate by the Board or otherwise required pursuant to the Governing Documents or Applicable Laws;

**1.18.13** taxes and assessments paid by the Association;

**1.18.14** amounts paid by the Association for the discharge of any lien or encumbrance levied against the Association Property, Common Area or portions thereof;

**1.18.15** expenses incurred by the Association in connection with implementing and performing the maintenance, inspections and other obligations of the Association set forth in the Association Maintenance Manual;

**1.18.16** expenses incurred in administering any committees formed by the Association; and

**1.18.17** any other expenses incurred by the Association in connection with the operation and/or maintenance of the Association Property as required under the Governing Documents or in furtherance of the purposes or the discharge of any obligations imposed on the Association by the Governing Documents.

**1.19** “Community” means the Property together with all Improvements situated thereon.

**1.20** “Condominium” means an estate in real property as defined in California Civil Code Section 1351(f) consisting of an undivided interest as a tenant-in-common in all or any portion of the Common Area, together with a separate fee interest in a Residential Unit and any other separate interests in the Property as are described in this Declaration, the applicable Condominium Plan and/or in the deed conveying the Condominium.

**1.21** “Condominium Plan” means each of the following: (a) a condominium plan encumbering all or any portion of the Condominium Property that is recorded pursuant to California Civil Code Section 1351, and any amendments to that plan, (b) any recorded condominium plan or plans, including amendments thereto, affecting any Phase within the Property; and (c) each Supplementary Condominium Plan, if any, recorded pursuant to the provisions of this Declaration.

**1.22** “County” means the County of San Mateo, California.

**1.23** “Cross-Yard Drainage Facilities” means those certain subterranean drainage facilities and surface area drainage facilities installed by Declarant within certain Exclusive Use Yard Areas to provide for drainage between certain Exclusive Use Yard Areas, which are to be maintained by the Owners as set forth in **Article 7** and the Maintenance Responsibility Chart. The approximate locations of the Cross Yard Drainage Facilities are within the areas shown on the Condominium Plan as “CYDF” or “2’ WIDE CROSS YARD DRAINAGE FACILITY.”

**1.24** “Customer Care Program” means the Customer Care Program described in the Owner Maintenance Manual, which provides certain services with respect to the Condominiums

during the first year after the conveyance of such Condominiums by Declarant under authority of a Public Report.

**1.25** “Declarant” means D.R. Horton BAY, Inc., a Delaware corporation (“Horton”), and shall include those successors and assigns of Horton that acquire or hold title to any part or all of the Property for purposes of development and are expressly named as a successor Declarant to all or a portion of Declarant’s rights in an Assignment of Declarant’s Rights executed by Declarant or a successor Declarant and recorded in the Official Records, pursuant to which the rights and duties of Declarant are assigned to such successor Declarant and such successor Declarant accepts and assumes the assignment of such rights and duties. A successor Declarant shall also be deemed to include the beneficiary under any deed of trust securing an obligation from a then existing Declarant and encumbering all or any portion of the Property, which beneficiary has acquired any such property by foreclosure power of sale or deed in lieu of such foreclosure or sale.

**1.26** “Declaration” means this Declaration of Covenants, Conditions and Restrictions of Artisan, as it may from time to time be amended or supplemented.

**1.27** “DRE” means the California Department of Real Estate.

**1.28** “Eligible Holder” means each First Mortgagee who has given written notice to the Association specifying its name, the name of the Owner and address of the Condominium encumbered by the First Mortgage and requesting written notice of any or all of the events to which such Eligible Holder is entitled as specified in this Declaration.

**1.29** “Emergency” means any situation, condition or event, which threatens imminent damage or injury to persons or property.

**1.30** “Exclusive Use Easement” or “Exclusive Use Easement Area” means those portions of the Association Property over which exclusive easements are reserved and granted for the benefit of certain Owners in accordance with California Civil Code Section 1351(i), as described in this Declaration and shown on a Condominium Plan. Exclusive Use Easements, if any, are granted to an Owner in such Owner’s grant deed and are appurtenant to such Owner’s Condominium. It is currently anticipated that the Community will contain the following types of Exclusive Use Easement Areas:

**1.30.1** “Exclusive Use Deck Areas,” each of which is a portion of the Association Property designated on the Condominium Plan as “D” followed by the number of a Residential Unit, over which exclusive use easements for deck purposes are reserved for the benefit of the Owner of the designated Residential Unit.

**1.30.2** “Exclusive Use Porch Areas,” each of which is a portion of the Association Property designated on the Condominium Plan as “P” followed by the number of a Residential Unit, over which exclusive use easements for porch purposes are reserved for the benefit of the Owner of the designated Residential Unit.

**1.30.3** “Exclusive Use Yard Areas,” each of which is a portion of the Association Property designated on a Condominium Plan as “EUYA” followed by the number of

a Residential Unit, over which exclusive use easements for yard purposes are reserved for the benefit of the Owner of the designated Residential Unit.

**1.31** “Federal Agencies” means, collectively, one or more of the following agencies and the following letter designations for such agencies shall mean, respectively, the agency specified in the parentheses following such letter designation and any successors to such agencies: FHA (Federal Housing Administration), FHLMC (Federal Home Loan Mortgage Corporation), FNMA (Federal National Mortgage Association), GNMA (Government National Mortgage Association), and VA (United States Department of Veterans' Affairs).

**1.32** “Final Map” means each final subdivision or parcel map covering all or any portion of the Property and any corrections, amendments and/or modifications (including lot line adjustments) to such Final Map(s).

**1.33** “First Mortgage” means a Mortgage that has priority under the recording statutes of the State of California over all other Mortgages encumbering a specific Condominium in the Project.

**1.34** “First Mortgagee” means the Mortgagee of a First Mortgage.

**1.35** “First Purchaser” means the Owner who acquired the Condominium from Declarant under authority of a Public Report.

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

**1.37** “Governing Documents” means, collectively, this Declaration, the Articles, Bylaws, Architectural Guidelines, the Association Rules, Supplementary Declarations and all amendments or supplements to each of the foregoing.

**1.38** “Governmental Agency” means each federal, state, county, city, local or municipal governmental entity or quasi-governmental entity or body (or any departmental agency thereof) exercising jurisdiction over a particular subject matter for any portion of the Property.

**1.39** “Governmental Entitlements” means any entitlements, permits and authorizations relating to the Property and any conditions imposed in connection with such entitlements, permits and authorizations issued or imposed by any Governmental Agencies.

**1.40** “Improvements” means any of the following: (a) buildings, structures and appurtenances thereto of every type and kind, including without limitation Residential Units and other buildings, outbuildings, walkways, trails, utility installations, recreational facilities, garages, carports, roads, sidewalks, walkways, driveways, parking areas, fences, screening walls, block walls, retaining walls, awnings, patio and balcony covers, stairs, decks, balconies, trellises, landscaping, irrigation systems, hedges, slopes, windbreaks, any change to the exterior surfaces of any visible structure, window tinting, paintings, planted trees and shrubs, antennae, poles, signs, solar or wind powered energy systems or equipment, and water softener, heater or air conditioning and heating fixtures or equipment; (b) the grading, excavation, filling or similar

disturbance to the surface of the land, including without limitation change of grade, change of ground level, change of drainage pattern or change of stream bed; (c) landscaping, planting, clearing or removing of trees, shrubs, grass or plants; and (d) the change or alteration of any previously installed improvement, including any change of exterior appearance color or texture.

**1.41** “**Institutional Mortgagee**” means each of the following: (a) a First Mortgagee which is a bank, savings and loan association, insurance or mortgage company or other entity or institution chartered under state or federal law; (b) an insurer or governmental guarantor of a First Mortgage; (c) a First Mortgagee which is a Federal or State Agency; or (d) any other institution specified by the Board in a recorded instrument that is the Mortgagee of a Mortgage encumbering a Condominium.

**1.42** “**Invitee**” means any person whose presence within the Community is approved by or is at the request of a particular Owner, including without limitation Occupants, agents, contractors and the family, guests, employees or licensees of Owners or Lessees.

**1.43** “**Lease**” means each lease, license or other agreement whereby a Person acquires rights to use or occupy any portion of a Condominium for a specified term.

**1.44** “**Lessee**” means a lessee or tenant under a Lease occupying a Condominium.

**1.45** “**Limited Warranty**” means the D.R. Horton 10-4-1 Limited Warranty provided by Declarant to the Association for the Association Property conveyed by Declarant and to Owners for Condominiums conveyed by Declarant. The Owner Limited Warranty is contained in the Owner Maintenance Manual. The Limited Warranty warrants against certain construction defects, failures or deficiencies as specified therein.

**1.46** “**Living Element**” means that portion of a Residential Unit described on the Condominium Plan as a Living Element. The Condominium Plan describes the following types of Living Elements:

**1.46.1** “**Lower Living Element**,” which is the portion of a Residential Unit described in the Condominium Plan as a Lower Living Element.

**1.46.2** “**Middle Living Element**,” which is the portion of a Residential Unit described in the Condominium Plan as a Middle Living Element.

**1.46.3** “**Upper Living Element**,” which is the portion of a Residential Unit described in the Condominium Plan as an Upper Living Element.

**1.47** “**Maintenance Obligations**” means the obligations of the Association and each Owner to perform (a) all reasonable maintenance consistent with the terms of the Association Maintenance Manual and Owner Maintenance Manual, respectively, any maintenance obligations and schedules in any warranty offered by Declarant or any manufacturer; (b) any commonly accepted maintenance practices intended to prolong the life of the materials and construction of the Association Property and Residential Units, as applicable; and (c) any maintenance obligations imposed by the Governing Documents.

1.48 “Maintenance Responsibility Chart” means the chart attached hereto as Exhibit “B” and incorporated herein, which generally describes the components of the Community to be maintained by the Association and the Owners, respectively. The Maintenance Responsibility Chart may be modified or supplemented in a Supplementary Declaration.

1.49 “Member” means every Person who holds a membership in the Association.

1.50 “Module” means each module designated on the Condominium Plan. Each Module is a three-dimensional portion of the Property and has been created pursuant to California Government Code Section 66427. The lower and upper boundaries of each Module are set forth in the Condominium Plan. The lateral boundaries of each Module are vertical planes which are also described and depicted in the Condominium Plan. Each Module includes all land and Improvements (whether now or hereafter located within its boundaries).

1.51 “Mortgage” means a recorded mortgage or deed of trust encumbering a Condominium.

1.52 “Mortgagee” means a mortgagee under a Mortgage as well as a beneficiary under a deed of trust.

1.53 “Notice and Hearing” means the procedure which gives an Owner notice of an alleged violation of the Governing Documents and the opportunity for a hearing before the Board.

1.54 “Occupant” means each person that is entitled to occupy from time to time all or a portion of a Condominium, whether pursuant to ownership, lease, sublease, license or other similar agreement.

1.55 “Official Records” means the official public records of the County Recorder.

1.56 “Offsite Maintenance Areas” means those areas located outside of the Community that are to be maintained by the Association as provided in this Declaration. The Offsite Maintenance Areas (if any) shall be as designated in one or more Supplementary Declarations.

1.57 “Owner” means the record owner, whether one or more Persons, including Declarant, of any Condominium, excluding those having such interest merely as security for the performance of an obligation.

1.58 “Owner Maintenance Manual” means the manual which may be prepared by Declarant or its consultants and provided to each Owner, specifying obligations for maintenance of the Condominiums by the Owners, as updated and amended from time to time.

1.59 “Person” means a natural individual or any legal entity recognized under California law. When the word “person” is not capitalized, the word refers only to natural persons.

1.60 “Phase” means each portion of the Property identified on Exhibit “A “ as a Phase. There are two Phases in the Property.

1.61 “Pollution Control Devices” means those devices installed within the Community to satisfy storm water pollution requirements.

1.62 “Private Streets” means those streets, roads, drives and adjacent sidewalks within the Association Property and related lighting, private drainage, sewage and water systems, Pollution Control Devices and other utility installations therein that are not maintained by a public agency or franchised utility.

1.63 “Property” means all of the real property described in Exhibit “A” of this Declaration. The term “Property” does not include any real property that has been de-annexed from this Declaration.

1.64 “Public Report” means the final subdivision public report issued by the DRE for a Phase.

1.65 “Regular Assessments” means the assessments described in Section 5.3 as Regular Assessments that are levied pursuant to the provisions of Article 5 of this Declaration.

1.66 “Reimbursement Assessments” means the assessments described in Section 5.6 as Reimbursement Assessments that are levied pursuant to the provisions of Article 5 of this Declaration.

1.67 “Residential Building” means each building containing one or more Residential Units, as shown on a Condominium Plan. It is planned that some Residential Buildings will contain only one Residential Unit and others will contain multiple Residential Units.

1.68 “Residential Unit” means the elements of a Condominium which are not owned in common with the other Owners of Condominiums in the Community, such Residential Units and their respective elements and boundaries being shown and particularly described in a Condominium Plan. The dimensions of a Residential Unit are measured from the unfinished floor, walls and ceiling, except as otherwise noted herein. The Residential Unit includes all Improvements situated within its boundaries, and includes without limitation the following: (a) interior walls (except interior bearing walls); (b) the interior undecorated surfaces of bearing walls and perimeter walls, floors and ceilings; (c) interior and exterior doors and windows; (d) appliances, cabinets, and all electrical, heating, plumbing and other utility fixtures; (e) the openings and outlets of all Utility Facilities that are located partially within the Residential Unit and partially in the Association Property, such as electrical outlets, and that exclusively serve the Residential Unit; (f) all Utility Facilities serving solely that Residential Unit, whether located in the Residential Unit or the Association Property; and (g) the fire box of any fireplace located in the Residential Unit. The following are not part of any Residential Unit: (i) bearing walls, columns, floors, roofs and foundations; and (ii) Utility Facilities that serve two or more Condominiums, wherever located. In interpreting deeds and plans, the then existing physical boundaries of a Residential Unit, whether in its original state or reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the Condominium Plan, deed or in any other recorded

document, regardless of settling or lateral movements of the building and regarding of minor variance between boundaries shown on the Condominium Plan or any other recorded document and those of the building within which the Residential Unit is located and regardless of settling or lateral movement of the building in which the Residential Unit is located.

**1.69** “Special Assessments” means the Assessments described in **Section 5.4** that are levied pursuant to the provisions of **Article 5** of this Declaration.

**1.70** “Supplementary Condominium Plan” means each a Condominium Plan that supplements a previously recorded Condominium Plan. “Supplementary Condominium Plan” also means each of the following, which shall not require the consent of the Owners, their Mortgagees or the Association: (a) a Condominium Plan recorded by Declarant to correct errors in the originally recorded Condominium Plan; and (b) a Condominium Plan recorded by Declarant after the completion of the initial construction of the Community to show the actual “as-built” locations or dimensions of any component of the Community.

**1.71** “Supplementary Declaration” means those certain declarations of covenants, conditions and restrictions, or similar instruments, which may be recorded pursuant to this Declaration, without the consent of any Owner, by Declarant or the Association (with the prior consent of Declarant until Declarant no longer owns any portion of the Property to do any or all of the following: (a) designate Condominiums as a Phase; (b) identify Association Property or other areas referenced in this Declaration to be maintained by the Association and/or modify or supplement any areas designated for maintenance by the Association or any Owner; (c) conform this Declaration or any previously recorded Supplementary Declarations to Applicable Laws or any conditions of approval imposed by any Governmental Agency or Governmental Entitlements; (d) make corrections to the provisions of this Declaration or previously recorded Supplementary Declaration(s); and/or (e) for any of the other purposes for which a Supplementary Declaration may be recorded under this Declaration.

**1.72** “Utility Facilities” means all utility facilities serving the Property, including without limitation intake and exhaust systems, backflow preventers, storm and sanitary sewer systems, drainage systems and pollution control devices, common ducting systems for ventilation and utility services, domestic water systems, natural gas systems, heating and air conditioning systems, electrical systems, fire protection water and sprinkler systems, telephone systems, cable television systems, telecommunications systems, satellite communications systems, water systems, sump pumps, pool equipment, central utility services and all other utility systems and facilities reasonably necessary to service any Improvement situated in, on, over and under the Community.

**1.73** “VA” means the Department of Veterans Affairs of the United States of America and any department or agency of the United States government that succeeds to VA’s function of issuing guarantees of notes secured by Mortgages on residential real estate.

**1.74** “Voting Power” means the voting power of the Association set forth in **Section 4.2**.

**ARTICLE 2**  
**OWNERSHIP AND EASEMENTS**

**2.1 Ownership.** Ownership of each Condominium in the Community includes the following: (a) fee title to a Residential Unit; (b) an undivided interest as tenant in common in the Common Area in the Module in which the Residential Unit is situated, as shown on the Condominium Plan and described in the deed to the Condominium; (c) a membership in the Association; and (d) subject to the terms of the Governing Documents, any exclusive or non-exclusive easement or easements appurtenant to such Condominium over the Association Property as described in this Declaration, the applicable Condominium Plan or the deed to the Condominium.

**2.2 No Separate Conveyance.** The interest of each Owner in the use and benefit of Common Area and/or Association Property shall be appurtenant to the Condominium owned by the Owner. No Condominium shall be conveyed by the Owner separately from the interest in the applicable Common Area, and no Condominium shall be conveyed by the Owner separately from the right to use the portions of the Association Property that are open for access by Owners and their Invitees in accordance with the Governing Documents. Any conveyance of a Condominium shall automatically transfer the interest in the applicable Common Area without the necessity of express reference in the instrument of conveyance. Any conveyance of a Condominium shall, to the extent provided herein, automatically convey the Owner's right to use the Association Property without the necessity of express reference in the instrument of conveyance.

**2.3 Delegation of Use.** Any Owner entitled to the right and easement of use and enjoyment of Association Property may delegate such Owner's rights to the Occupants of the Owner's Condominium, subject to reasonable regulation by the Association and subject to the Governing Documents. An Owner who has made such a delegation of rights shall not be entitled to use the Association Property for so long as such delegation remains in effect, other than such access rights as are directly related to the Owner's rights and duties as landlord.

**2.4 Limitations.** All of the easements and licenses described in this Article 2 are subject to the limitations set forth in Section 2.11 and any other limitations and restrictions set forth in the Governing Documents.

**2.5 Commencement of Easements.** All of the easements set forth in this Article 2 shall commence upon recordation of this Declaration and conveyance by Declarant of the first Condominium to a First Purchaser and shall thereafter be deemed to be covenants running with the land for the use and benefit of the Association, the Declarant, the Owners and the Condominiums to the extent provided below.

**2.6 Easements in Favor of Owners.**

**2.6.1 Non-Exclusive Easements for Use of Association Property.** Declarant hereby grants to each Owner non-exclusive easements for ingress, egress, use and enjoyment by the Owner and the Owner's Invitees, on, over, through and across the Private Streets and any

other portions of the Association Property intended for use by the Owners, except any areas to which access is restricted by the Association.

**2.6.2 Easements for HVAC Equipment.** Declarant hereby grants to each Owner, for the benefit of such Owner's Condominium, an easement for placement and maintenance of such Owner's HVAC condenser within the Association Property in the location provided for such purpose by Declarant.

**2.6.3 Easements for Drainage and Runoff.** Declarant hereby grants to each Owner, for the benefit of the Owner's Condominium, an easement for drainage through the established system of drainage pipes and facilities.

**2.6.4 Right of Access.** Every Owner shall have the right to enjoy free and unobstructed passage between every such Owner's Condominium, through the Association Property to all publicly dedicated streets bordering the Community, subject to any restrictions imposed by any city, county or state and subject to any reservations in the deed, Final Map or Governing Documents.

**2.7 Easements in Favor of Association and Owners.**

**2.7.1 Encroachment.** Declarant hereby reserves and grants to the Owners, for the benefit of their respective Condominiums, and to the Association, for the benefit of the Association Property, non-exclusive easements over, under, across and through the Residential Units, Common Area and Association Property for encroachment, support, maintenance, repair, occupancy and use of such portions of the Residential Units, Common Area and/or Association Property as are encroached upon, used or occupied as a result of any original construction design, accretion, erosion, addition, deterioration, decay, errors in original construction, movement, settlement, shifting or subsidence of any building, structure, or other improvements or any portion thereof, or any other cause. In the event any portion of the Property is partially or totally destroyed, the encroachment easement shall exist for any replacement structure that is rebuilt pursuant to the original construction design. The easement for the maintenance of the encroaching improvement shall exist for as long as the encroachments exists; provided, however, that no valid easement of encroachment shall be created due to the willful misconduct of the Association or any Owner. Any easement of encroachment may, but need not be, cured by repair and restoration of the structure.

**2.7.2 Structural Support.** Declarant hereby reserves and grants to the Owners, for the benefit of their respective Condominiums, and to the Association, for the benefit of the Association Property, non-exclusive easements and rights in and to all supporting components within and upon the Residential Buildings and other portions of the Property for structural support of the Improvements situated therein.

**2.7.3 Utilities.** Declarant hereby reserves and grants to the Owners, for the benefit of their respective Condominiums, and to the Association, for the benefit of the Association Property, reciprocal non-exclusive easements over, under, across and through the Community for the maintenance, repair and replacement of the Utility Facilities which such Owner or the Association is obligated to maintain pursuant to this Declaration; provided,

however, that except in an Emergency, the Person using the maintenance and repair easement granted hereby shall give at least forty-eight (48) hours' prior notice to the Owner of each Condominium over which the easement is being exercised (or the Association if the easement is being exercised over Association Property) and shall, to the extent practicable, not unreasonably interfere with, restrict, disturb or hinder the enjoyment by the Owners of their Condominiums or any Owner's use of Association Property. The Person exercising such easement rights shall repair, at such Person's sole cost and expense, any damage caused by such Person as a result of such entry or use of these easements.

## **2.8 Easements in Favor of Association.**

**2.8.1 General Grant of Easement.** Declarant hereby reserves and grants to the Association a non-exclusive easement for ingress and egress over the Property by the Association and its agents, employees and contractors to the extent reasonably required for the following purposes: (a) to perform its duties and obligations and exercise its powers described in the Governing Documents, including without limitation its enforcement rights; (b) to perform any Maintenance Obligations; and (c) to cure violations of the Governing Documents. Such rights of entry shall be exercised in accordance with the provisions of **Section 3.3.5**.

**2.8.2 Association Right of Entry.** Declarant hereby reserves and grants to the Association an easement for and the Association's agents, contractors and employees to enter the Condominiums as set forth in **Section 3.3.5**.

## **2.9 Easements and Rights in Favor of Declarant.**

**2.9.1 Easements to Exercise Rights.** Declarant hereby reserves to itself, with the right and power to grant and transfer the same, a non-exclusive easement to perform its duties and exercise its rights, powers and obligations under this Declaration, including without limitation the rights, powers and obligations described in **Article 9**.

**2.9.2 Maintenance and Repair.** Declarant hereby reserves to itself, with the right and power to grant and transfer the same, a non-exclusive easement over, upon, through and across the Property for access to perform necessary maintenance of any Improvements constructed by Declarant or its respective agents, employees and contractors. Such right includes the right of Declarant to enter upon the Property to perform any work required to be performed pursuant to any of the Governmental Entitlements, or to cure any failure of the Association to perform any work required as a condition to the release of any bonds or other security posted with a Governmental Agency or any other obligee; provided, however, that nothing contained herein shall be deemed to impose any obligation on Declarant to cure any failure of the Association to perform its maintenance obligations hereunder.

**2.9.3 Installation of Additional Improvements.** Declarant hereby reserves to itself, with the right and power to grant and transfer the same, the right to install and operate within the Association Property such landscaping, sidewalks, walkways, drainage areas, lighting, signage, monumentation, Utility Facilities, and other facilities and Improvements as may be deemed appropriate by Declarant and/or required by the Governmental Entitlements or in connection with the issuance of any permits or approvals for the benefit of Declarant. In

addition, Declarant hereby reserves to itself a non-exclusive easement over, upon and across all Association Property for purposes of such access as may be reasonably required in connection with such activities.

**2.9.4 Drainage Easements.** Declarant hereby reserves to itself, with the right and power to grant and transfer the same, nonexclusive easements for drainage of storm water over, across and on the Property.

**2.9.5 Utility Facilities.** Declarant hereby reserves to itself, with the right and power to grant and transfer the same, easements on, over, under, through and across the Property for the purpose of constructing, erecting, operating and maintaining facilities and improvements, including without limitation easements for the installation and maintenance of electric, telephone, cable television, water, gas, sanitary sewer lines, and drainage facilities, as may be shown on any Final Map, as are required by any Governmental Agency or as may be required in connection with the development of the Property.

**2.9.6 Temporary Construction, Marketing and Repair Easements.** Declarant hereby reserves to itself, with the right and power to grant and transfer the same, non-exclusive easements over the Property for access to, and ingress and egress over and across, any portions of the Property as is reasonable and necessary to undertake and complete the work of development, construction, marketing, conveyance and/or repair and replacement of the Improvements and the right to exercise any warranty or rights to repair granted to Declarant under this Declaration, any other warranty or Applicable Laws.

**2.9.7 Easements for Signage.** Declarant hereby reserves to itself, together with the right to grant and transfer the same, easements on, over, under, through and across the Association Property to install, maintain, repair and replace, identification, promotional, and other signage, banners, flags, and other promotional advertising materials required or deemed necessary by Declarant, including without limitation any signage in connection with the exercise of the activities described in **Section 2.9.6** above and **Article 9**.

**2.10 Easement in Favor of Declarant and/or the Association for Enforcement.** Declarant hereby reserves to itself and grants to the Association, for the benefit of Declarant, the Association and their respective agents, employees and contractors, a non-exclusive easement and right of access over, upon, across and through the Association Property and all other portions of the Property (including without limitation the Residential Units in accordance with the terms of **Section 3.3.5**) for the purpose of taking such action as may be reasonably required to exercise the remedies of the Declarant or the Association (as applicable) regarding a violation of the Governing Documents.

**2.11 Limitations on Easements and License Rights.** The easement rights, and the reservations of the right and authority to grant easements, described in the foregoing provisions of this **Article 2** and elsewhere in this Declaration, shall be subject to the limitations set forth below.

**2.11.1 Easements of Record.** The Property and all of the easements granted or reserved in this Declaration are subject to all covenants, conditions, restrictions, encumbrances,

easements, dedications, and rights of way as shown on a Final Map and any other matters of record, including, without limitation, the Governmental Entitlements and any agreements recorded by Declarant to memorialize the easement and other rights reserved to Declarant under this Declaration.

**2.11.2 Governing Documents.** All of the easements and other rights granted or reserved in this Declaration are subject to the limitations, restrictions and easements set forth in the Governing Documents. Without limiting the foregoing, all of such easements and rights shall be subject to the easements and other rights granted or reserved to the Declarant, the Association and their respective Invitees, as specified above.

**2.11.3 Restricted Access.** All of the easements and other rights granted or reserved in this Declaration, are subject to the right of Declarant or the Association to restrict access to certain areas as may be necessary to comply with Governmental Entitlements, to perform maintenance and repair obligations under this Declaration or any warranty or other agreements entered into by Declarant or the Association, in the event of an Emergency, or to exercise any other rights reserved by Declarant or granted to the Association hereunder or the other Governing Documents. The Declarant or the Association shall also have the right to restrict access to certain areas of the Association Property, including without limitation utility rooms and other areas deemed unsafe for entry.

**2.11.4 Suspend Rights of Members.** All of the easements are subject to the right of the Association, after Notice and Hearing, to temporarily suspend an Owner's rights as a Member pursuant to the terms of this Declaration, including the right to use any recreational facilities within the Association Property for a period not to exceed sixty (60) days, unless such rights are suspended for failure to pay Assessments.

**2.11.5 Easements and Dedication.** The Association shall have the right to dedicate, transfer or grant easements over all or any part of the Common Area, Association Property or any interest therein to the City or other Person, which dedication, transfer or grant shall be subject to the provisions of this Declaration and such other conditions as the Association deems proper.

**2.11.6 Control Parking.** Subject to the provisions of this Declaration and the rights of Declarant hereunder, the Association shall have the right to control parking within the Community and to promulgate rules and regulations to control parking in a manner consistent with this Declaration.

**2.11.7 Limit Guests.** The Association shall have the right to (a) limit, on a reasonable basis, the number of guests and tenants of the Owners using any recreational or other facilities situated within the Association Property, (b) charge reasonable fees for special or extraordinary use of such facilities, and/or (c) allow portions of the facilities to be reserved for special events.

**2.11.8 Duration of Easement Rights.** Except for the rights of Declarant, which expire as provided in **Article 9**, the easement rights granted in this Declaration shall be for a term and duration coextensive with the Owner's title or interest in and to any Condominium. Upon

conveyance of a Condominium, such rights shall pass to the successor Owner(s) of the Condominium conveyed.

**2.11.9 Rights of Invitees.** Notwithstanding any other provisions of this Declaration or the Governing Documents, nothing contained in this Article is intended to grant any third party beneficiary rights or any other rights to an Invitee. No Invitee shall have any rights under this Article independent of the rights granted to an Owner.

**2.12 Light, Air and View.** No Owner shall have an easement for light, air or view over the Residential Unit of another Owner and no diminution of light, air or view by any Improvement now existing or hereafter erected shall entitle the Owner or any Invitee to claim any easement for light, air or view within the Property.

**2.13 Amendment to Eliminate Easements.** So long as Declarant owns any portion of the Property, this Declaration cannot be amended to modify or eliminate the easements reserved to Declarant without prior written approval of Declarant and any attempt to do so shall have no effect.

### ARTICLE 3 THE ASSOCIATION

**3.1 The Organization.** The Association is a nonprofit mutual benefit corporation formed under the Nonprofit Mutual Benefit Law of the State of California. On the conveyance of the first Condominium to a First Purchaser, the Association shall be charged with the duties and invested with the powers set forth in the Governing Documents.

**3.2 Association Action; Board of Directors and Officers; Members' Approval.** Except as to matters requiring the approval of Members as set forth in the Governing Documents, the affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Governing Documents. Except as otherwise provided in the Governing Documents, all matters requiring the approval of Members entitled to vote shall be deemed approved if (a) Members holding a majority of the total Voting Power consent to them in writing as provided in the Bylaws, (b) such matters are approved by a majority vote of a quorum of Members at any regular or special meeting held in accordance with the Bylaws, or (c) in certain situations set forth in **Section 3.4** of this Declaration, such matters as are approved in accordance with the procedures set forth in **Section 3.4**.

**3.3 Powers of the Association.** Subject to the limitations expressly set forth in the Governing Documents, the Association shall have all the powers of a non-profit mutual benefit corporation organized under the Nonprofit Mutual Benefit Corporation Law of the State of California subject only to such limitations on the exercise of such powers as are set forth in the Governing Documents. It shall have the power to do any lawful thing that may be authorized, required, or permitted to be done by the Association under the Governing Documents, and to do and perform any act that may be necessary or proper for or incidental to, the exercise of any of the express powers of the Association, including without limitation the powers set forth below.

**3.3.1 Performance of Duties; Commencement of Association's Duties and Powers.** The Association shall have the power to undertake all of the express duties required

under **Article 3** to be performed by the Association. Unless otherwise specified in a Supplementary Declaration, the duties, rights and powers of the Association as described in this Declaration shall commence upon conveyance of fee ownership of any portion of the Property from the Declarant to a First Purchaser, or such earlier date that the Declarant may elect, and the Association shall thereupon assume all such duties and such rights and powers.

**3.3.2 Assessments.** The Association shall have the power to establish, fix, and levy Assessments against the Owners and to enforce payment of such Assessments, in accordance with the provisions of the Governing Documents.

**3.3.3 Right of Enforcement.** The Association, in its own name and on its own behalf, and on behalf of any Owner who consents, shall have the power to (a) take disciplinary action and/or assess monetary fines against an Owner for violation of the Governing Documents by such Owner or their Invitees, (b) commence and maintain actions for damages or to restrain and enjoin any actual or threatened breach of any provision of the Governing Documents, and (c) after Notice and Hearing, suspend (i) the rights to use any portion of the Association Property, or (ii) membership rights or privileges, and/or (d) enforce by mandatory injunction, or otherwise, all of the restrictions in the Governing Documents.

**3.3.4 Delegation of Powers; Professional Management.** The Association may delegate its powers, duties, and responsibilities to committees, officers or employees, including a professional managing agent, subject to the requirements of **Section 3.5.2**.

**3.3.5 Right of Entry.** Except in the case of an Emergency, in which case no prior notice need be given, the Association or any authorized representative thereof shall have the right, upon forty-eight (48) hours' prior notice and during reasonable hours, to enter into or onto any Residential Unit for any of the following purposes: (a) construction, maintenance or repair; (b) enforcing the provisions of the Governing Documents or to perform its obligations under the Governing Documents to cure any default by an Owner; or (c) inspecting, maintaining and repairing the Improvements, if any, located within the Residential Unit which are required to be maintained by the Association as provided in this Declaration. Such persons shall not be deemed guilty of trespass by reason of such entry. If any such repair or maintenance is due to the failure of an Owner to perform his or her obligations hereunder, the cost of such maintenance or repair shall be assessed against the Owner as a Reimbursement Assessment in accordance with the provisions of **Article 6**.

**3.3.6 Easements and Rights of Way.** The Association shall have the power to exercise any of the easements and other rights granted to the Association under **Article 2**. Declarant or the Association may grant and convey to any third party non-exclusive easements and licenses for use and rights of way in, on, over or under any Association Property or Common Area in accordance with the provisions of this Declaration so long as such easements do not materially and adversely interfere with the Owners' rights set forth in this Declaration. The affirmative vote of Members entitled to vote under this Declaration owning at least a majority of the Condominiums shall be required before the Board may grant exclusive use of any portion of the Association Property to any Member unless the grant of exclusive use is one of the exceptions to the Member approval requirement listed in California Civil Code Section 1363.07. A vote on a proposed grant of exclusive use shall be by secret ballot in accordance with the

procedures set forth in California Civil Code Section 1363.03 and the rules adopted by the Board pursuant thereto.

**3.3.7 Dedication.** The Association may dedicate any of the Association Property to an appropriate public authority for public use as provided for in this Declaration.

**3.3.8 Capital Improvements.** Subject to the terms of this Declaration, the Association may approve the construction, installation or acquisition of a particular capital Improvement to the Association Property.

**3.3.9 Acquire Property.** The Association shall have the power to acquire and hold real and personal property as may be necessary or convenient for the management or operation of the Association Property or other areas the Association is obligated to maintain, the administration of the affairs of the Association, or for the benefit of the Owners, and may dispose of the same by sale or otherwise.

**3.3.10 Enter into Agreements with Neighboring Owners or Owners Associations.** The Association shall have the power to enter into maintenance, cost sharing and/or easement agreements with owners of property adjacent or in the vicinity of the Property (including without limitation Governmental Agencies) or any owners associations. Unless otherwise specified in the agreement or a Supplementary Declaration, any agreements entered into by Declarant with any Governmental Agency relating to the Property shall be binding on the Association.

**3.3.11 Enter Into Maintenance and Subsidy Agreements.** Notwithstanding any other provisions of this Declaration or the other Governing Documents regarding the term of contracts with Declarant for providing services to the Association, Declarant may enter into one or more written maintenance, subsidy, use or similar agreements with the Association.

**3.3.12 Contract for Goods and Services.** The Association shall have the power to contract for goods and services for the benefit of the Association Property and the Community that are necessary for the Association to perform its duties and obligations hereunder, subject to the limitations set forth in **Section 3.5** below.

**3.3.13 Architectural Committee.** Subject to the provisions of **Article 9**, the Association shall have the right to form an Architectural Committee and appoint and remove the members thereof.

**3.3.14 Election of Officers.** The Association shall have the power to elect officers of the Association and to fill any vacancy on the Board except for vacancies created by the removal of a Board member and as otherwise set forth in the Bylaws.

**3.3.15 Borrow Funds.** The Association shall have the right to borrow money to improve, repair or maintain the Association Property and to hypothecate any or all real or personal property owned by the Association, including pledging as collateral the assessment liens levied thereon provided that, the borrowing of any money or hypothecation of any real or personal property in excess of five percent (5%) of the budgeted gross expenses of the

Association shall require the approval by written ballot of at least sixty-seven percent (67%) of each class of Members entitled to vote under this Declaration.

**3.3.16 Rights Regarding Title Policies.** If any title claims regarding the Association Property are made by any third party, the Association shall have the power to pursue such claims on any title insurance policy held by the Owners or the Association and each Owner hereby delegates, on a non-exclusive basis, and assigns to the Association any rights it may have under its title insurance policies to the extent that the title claim relates to the Association Property.

**3.3.17 Provide Services.** The Association shall have the power to engage Persons necessary for the effective operation and maintenance of the Association, including legal, management and accounting services.

**3.3.18 Claims and Actions.** Subject to the provisions of this Declaration, the Association shall have the power, but not the duty, to initiate, defend, settle, release or intervene in mediation, arbitration, judicial or administrative proceedings on behalf of the Association in matters pertaining to (a) the application or enforcement of this Declaration, (b) any and all claims, causes of action, damages and suits for defects relating in any way to the design or construction of the Association Property or any portion thereof, on behalf of all Owners, and (c) Limited Warranty claims that may arise with respect to the Association Property; provided, however, that no representative of Declarant on the Board shall vote on the initiation of any claim under California Civil Code Section 895 *et seq.*, such that from and after the first election of directors in which the Class A Members of the Association participate, Declarant shall have no control over the Association's ability to decide whether to initiate a claim under such statutory provisions and in the event of such a vote, the affirmative vote of the two non-Declarant representatives on the Board shall be binding so long as a quorum of the Board is present at any meeting where such vote is taken. A Owner may only assert Limited Warranty claims pertaining to such Owner's Condominium. The Association and not the individual Members shall have the power to pursue Limited Warranty claims or any claims or other actions using the non-adversarial procedures for construction defects in the Association Property pursuant to California Civil Code Section 895 *et seq.* The Association shall comply with such non-adversarial procedures in bringing any such claims or actions. Each Owner hereby agrees to delegate such authority to the Association and assigns to the Association all power and authority as is necessary for any settlement or release of such claims.

**3.4 Duties of the Association.** In addition to the powers described above, and without limiting their generality, the Association has the power and the obligation to perform each of the duties set forth below subject to and in accordance with the Governing Documents, Governmental Entitlements and Applicable Laws.

**3.4.1 Applicable Laws and Governmental Entitlements.** The Association shall comply with all Applicable Laws and the Governmental Entitlements.

**3.4.2 Obligations Under Other Governing Documents.** The Association shall perform all other duties that may be expressly imposed on the Association in the Governing Documents.

**3.4.3 Acceptance of Association Property.** The nature, design, quality and quantity of all Improvements to the Association Property shall be determined by Declarant, in its sole discretion. The Association shall accept any Association Property and Improvements situated thereon conveyed by Declarant and/or created under this Declaration and shall maintain, repair, replace, operate, and otherwise manage all of the Improvements and facilities required to be maintained by the Association, and all personal property acquired by the Association in accordance with the terms and provisions of the Governing Documents and the Governmental Entitlements. The Board shall periodically review the nature and scope of the operations of the Association to assure such operations are in satisfactory compliance with the requirements of the Governing Documents and the Maintenance Obligations. The Association shall comply with the requirements of any agreements entered into between Declarant and a Governmental Agency pertaining to the Association Property. In the event that a dispute arises between Declarant and the Association with respect to the nature, design, quality or quantity of such Improvements, or the acceptance of maintenance responsibilities therefor, the Association shall be obligated to accept title to the Association Property and undertake maintenance responsibilities therefor, pending resolution of the dispute, in accordance with the provisions for enforcement set forth in **Article 15** of this Declaration.

**3.4.4 Utilities.** The Association shall acquire, provide and pay for water and other utility services for the Association Property to the extent necessary. The Association shall permit utility suppliers and other providers of any telecommunications or other services to use portions of the Association Property reasonably necessary to the ongoing development and operation of the Community.

**3.4.5 Maintenance.** The Association shall perform the maintenance, repair and replacement obligations described in **Article 7**.

**3.4.6 Management.** The Association shall have the duty to retain a professional manager or other Persons and contract with independent contractors or managing agents who have professional experience in the management of similar planned communities to perform any services required for the maintenance, protection, operation and preservation of the Community.

**3.4.7 Assessments.** The Association shall establish, determine, levy, collect and enforce payment of all Assessments and cause to be prepared all budgets and financial statements, and shall establish and maintain a working capital and contingency fund as required by the Governing Documents.

**3.4.8 Assignment of Maintenance Responsibilities.** The Association shall have the right to relinquish or assign its maintenance responsibilities to any Governmental Agency(ies), including without limitation maintenance or assessment districts, utility companies and/or school districts.

**3.4.9 Taxes and Assessments.** The Association shall have the duty to pay all real and personal property taxes levied against the Association Property, Common Area or personal property owned by the Association. Such taxes and assessments may be contested by the Association provided that they are paid or that a bond insuring payment is posted before the sale or the disposition of any property to satisfy the payment of such taxes.

**3.4.10 Liens and Charges.** The Association shall pay any amount necessary to discharge any lien or encumbrance upon the Association Property or any other property or interest of the Association.

**3.4.11 Members' Approval of Certain Actions.** In the event that any claim or other action brought by the Association against Declarant, including without limitation claims brought under California Civil Code Section 895 *et seq.* involving allegations of construction defects relating to the Association Property is not resolved pursuant to the non-adversarial procedures set forth in California Civil Code Sections 910 through 938, the Association shall not initiate a further action or arbitration proceeding under Section 15.4 or otherwise without first obtaining the consent of the Owners other than Declarant constituting a majority of the total Voting Power.

**3.4.12 Association Rules.** The Association shall adopt, amend and repeal the Association Rules as it deems reasonable. The Association Rules shall govern the Community. However, the Association Rules shall not be inconsistent with or materially alter any provisions of the Governing Documents. A copy of the Association Rules, as adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner. In case of any conflict between any of the Association Rules and any other provisions of this Declaration, the conflicting Association Rule shall be deemed to be superseded by the provisions of the Governing Documents. Notwithstanding any provision of this Declaration to the contrary and to the extent Civil Code Section 1357.100 *et seq.* is applicable to the Association Rules, any rule which is considered to be an operating rule under California Civil Code Section 1357-100 *et seq.* may not be adopted, changed or amended except by and pursuant to the procedures set forth in California Civil Code Section 1357.100 *et seq.*

**3.4.13 Insurance.** The Association shall obtain from reputable insurance companies licensed to do business in California and maintain the insurance described in Article 10.

**3.4.14 Notice Prior to Litigation.** The Association shall notify all Owners of any litigation filed for or on behalf of the Association. The notice shall include a proposed budget for the litigation and an explanation of the source of the funds for the litigation. Such notice shall provide an explanation of why the litigation is being initiated or defended, and shall include a budget for the litigation (including without limitation experts' fees and costs, consultants' fees and costs and the costs of the proceedings). The notice must state that the Members have a right to review an accounting for the litigation provided in Section 1365.5 of the California Civil Code, which will be available at the Association's office.

**3.4.15 Financial Matters.** The Association shall prepare annual Budgets, reports, balance sheets and operating statements for the Association as required under the Governing Documents.

**3.4.16 Warranties.** The Association shall comply with the terms of each warranty in favor of the Association, if any, for equipment or facilities within the Association Property, which warranties may be impaired or eliminated if the Association fails to maintain in effect certain maintenance contracts. The Association acknowledges that warranties may require

the Association to maintain certain maintenance contracts in effect and, to the extent the Board discontinues such maintenance contracts, the effectiveness of the warranty may be impaired or eliminated.

**3.4.17 Maintenance Manuals.** The Association shall maintain at the offices of the Association a copy of the Maintenance Manual provided by Declarant to the Owners and shall make available to every Owner upon request a copy of the Maintenance Manual for the Owners' Condominiums. The Association shall have the right to charge the requesting Owner a fee for the copying of such Maintenance Manual. The Association shall also comply with provisions of the Association Maintenance Manual provided by Declarant to the Association. The Board may, from time to time, make appropriate revisions to the Maintenance Manual and the Association Maintenance Manual based on the Board's review thereof, to update such manual to provide for maintenance according to current industry practices so long as such changes do not reduce the useful life or functionality of the items being maintained.

**3.4.18 Transportation Demand Management Program.** The Association shall implement and comply with the Transportation Demand Management Program ("TDM Program") requirements for the Community, as the same may be modified from time to time with the approval of the City. As of the date of this Declaration, the TDM Program requirements include maintenance of bicycle racks and a commute assistance kiosk containing information for Community residents on alternative modes of transportation available in the area within the Association Property in the approximate locations depicted on **Exhibit "D"** attached hereto.

**3.4.19 Notification to West Bay Sanitary District.** For so long as West Bay Sanitary District provides wastewater collection and conveyance services to the Community, the Association shall maintain current contact information for the Association on file with the District and provide timely notification to the District of any changes to that information.

**3.4.20 Reporting Obligation of the Association.** The Association shall cooperate and provide information relating to the status of the Community, potential construction defects, substantial disputes or dissatisfaction among Owners regarding the operations of the Community or the Owner's insurance, disputes concerning Owners and disputes over rights, privileges and obligations, including without limitation Association fees, as may be reasonably requested by the Declarant in connection with obtaining any approvals for government financing (including FNMA, FHMLC, FHA and VA financing). The Association acknowledges that such cooperation is a benefit to the Owners so as to ensure the availability of government financing and that failure to so cooperate may result in the inability to have government financing available at the Community. The Association shall promptly provide a certification or other statements as may be reasonably requested by the Declarant, but no later than five (5) business days after any such request is delivered to the Association. Nothing stated in this Section shall obligate Declarant to obtain or maintain any approval for government financing for the Community.

### **3.5 Limitations on Authority of Board.**

**3.5.1 Actions Requiring Member Approval.** The Association shall not take any of the actions listed below except (i) with the vote or written consent of a majority of the Members of each of Class A and Class B during the time the Class B voting structure set forth in

**Section 4.2** is in effect; or (ii) with the vote at a meeting of the Association, or by written ballot without a meeting pursuant to Corporations Code Section 7513, of at least a majority of the Members of the Association, including at least a majority of Association Members other than Declarant, after conversion to a single Class A voting membership.

(a) Incur aggregate expenditures for capital improvements to the Association Property in any Fiscal Year in excess of five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year;

(b) Sell during any Fiscal Year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year;

(c) Pay compensation to Members for services performed in the conduct of the Association's business. However, the Board may cause a member of the Board to be reimbursed for expenses incurred in carrying on the business of the Association; or

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

(i) A management contract, the terms of which have been approved by FHA or VA;

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

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

(iv) An agreement for the sale or lease of burglar alarm and fire alarm equipment, installation and services not to exceed five (5) years duration, provided that the supplier is not an entity in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more;

(v) A prepaid casualty and/or liability insurance policy not to exceed three (3) years' duration; provided that the policy permits short-rate cancellation by the insured;

(vi) A contract for a term not to exceed three (3) years that is terminable by the Association after no longer than one (1) year without cause, penalty or other obligations upon ninety (90) days' written notice of termination to the other party;

(vii) A contract submitted to the DRE in connection with an application for a Public Report; and

(viii) Any maintenance agreement for the maintenance of any portion of the Association Property which is required as a condition to the effectiveness of any warranty in favor of the Association.

**3.5.2 Property Manager.** The Association Manager shall at all times be a professional manager operating as an independent contractor. The Association shall have the right to designate a portion of the Association Property for use as an on-site manager's office.

**3.5.3 Public Access to Open Space Areas.** Pursuant to the Governmental Entitlements, the Community's large open space area within Lot 1 of the Final Map, adjacent to El Camino Real, and the "pocket park" within Lot 2 of the Final Map, adjacent to College Avenue, must be publicly accessible, and limitations to public access such as permanent barrier fencing or gates are prohibited.

**3.6 Contracts.** Any agreement for professional management of the Community, employment contract or lease of recreational or parking areas or facilities, or any agreement providing for services of Declarant or any contract or lease, including franchises and licenses to which Declarant is a party, shall be for a term not to exceed one (1) year without the consent of a majority of each class of Members; provided, however, that in no event shall such an agreement exceed a term of three (3) years. Any such agreement shall provide that the agreement may be terminated by either party without cause and without payment of a termination fee upon not more than ninety (90) days' written notice. In addition to the foregoing, in no event shall the Association enter into a professional management agreement that obligates the Association to pay a transfer or initial set-up fee to the professional management company.

**3.7 Personal Liability.** No volunteer officer or volunteer director of the Board, or of any committee of the Association (each a "**Management Party**"), shall be personally liable to any Owner or to any other Person, including the Association, for any act or omission of any Management Party if such Person has, on the basis of such information as was actually possessed by him or her, acted in good faith without willful, wanton or gross misconduct when performing an act within the scope of the Person's duties (collectively, an "**Official Act**"). The Association has the power and duty to indemnify, defend, protect and hold harmless each Management Party for all damages, and expenses incurred (including, without limitation, reasonable attorneys' fees), and satisfy any judgment or fine levied as a result of any action or threatened action brought because of an act or omission what such Person reasonably believed was an Official Act. Management Parties are deemed to be agents of the Association when they are performing Official Acts for purposes of obtaining indemnification from the Association pursuant to this Section. The entitlement to indemnification under this Declaration inures to the benefit of the estate, executor, administrator and heirs of any Person entitled to such indemnification. The Association has the power, but not the duty, to indemnify any other Person acting as an agent of the Association for damages incurred, pay expenses incurred, and satisfy any judgment or fine levied as a result of any action or threatened action because of an Official Act. The Association also has the power, but not the duty, to contract with any person to provide indemnification in

addition to any indemnification authorized by law on such terms and subject to such conditions as the Association may impose.

**3.8 Additional Provisions.** Notwithstanding the provisions of this Declaration, by accepting a deed to any portion of the Property, the Association and the Owners acknowledge and agree that there may be Applicable Laws for the operation of the Association and the Property by the Association, including without limitation the Davis-Stirling Common Interest Development Act (Section 1350, *et seq.* of the California Civil Code), and the Association and Owners shall comply with such provisions to the extent required by such Applicable Laws.

## **ARTICLE 4 MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION**

### **4.1 Membership.**

**4.1.1 Qualifications.** Each Owner of a Condominium that is subject to Assessment, including Declarant, shall be a Member of the Association. Ownership of a Condominium or interest in a Condominium shall be the sole qualification for membership in the Association. Each Owner shall remain a Member of the Association until such Owner's ownership interest in a Condominium ceases, at which time such Owner's membership in the Association shall automatically cease. Persons who hold an interest in a Condominium merely as security for performance of an obligation are not to be regarded as Members. Wherever in this Declaration there are references to a vote of approval of the Members, only the Owners against whose Condominiums Assessments have commenced shall be entitled to vote unless otherwise specified in the Governing Documents.

**4.1.2 Members' Rights and Duties.** Each Member shall have the rights, duties, and obligations set forth in the Governing Documents.

**4.1.3 Transfer of Membership.** The Association membership of each Owner shall be appurtenant to each Owner's Condominium, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except on a transfer of title to each such Condominium or interest in the Condominium and then only to the transferee. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Condominium or interest in a Condominium shall operate automatically to transfer the appurtenant membership right in the Association to the new Owner.

**4.1.4 Commencement of Voting Rights.** An Owner's right to vote, including Declarant's right to vote, shall not vest until Regular Assessments have been levied upon such Owner's Condominium as provided in this Declaration. All voting rights shall be subject to the restrictions and limitations provided for herein and in the other Governing Documents.

**4.2 Number of Votes.** The Association shall have two (2) classes of voting membership as described below. The voting rights described in **Sections 4.2.1** and **4.2.2** below shall constitute the Voting Power of the Association:

**4.2.1 Class A Members.** The Class A Members shall be all Owners, with the exception of Declarant (until the conversion of Declarant's Class B membership to a Class A

membership as provided in **Section 4.2.2** below), and shall be entitled to one (1) vote for each Condominium owned. When more than one (1) Person holds an interest in any Condominium, all such Persons shall be Members. The vote for such Condominium shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to such Condominium.

**4.2.2 Class B Members.** The Class B Member(s) shall be Declarant, who shall be entitled to three (3) votes for each Condominium owned. The Class B membership shall cease and be converted to Class A membership on the happening of the earliest of the following to occur:

(a) On the second anniversary of the first close of escrow for conveyance of a Condominium in a Phase covered by the most recently issued Public Report for any Phase; or

(b) The fourth anniversary of the first conveyance of a Condominium covered by the original Public Report for the first Phase of the Community.

As long as Class B membership exists, no action by the Association that must have the prior approval of the Association Members shall be deemed approved by the Members unless approved by the appropriate percentage of Class A and Class B Members, except as set forth in **Sections 3.4.11** and **5.21**. Upon conversion to a single Class A voting membership, any action by the Association that must have the prior approval of the Members will require approval by at least a majority of the Members of the Association including at least a majority of Members other than Declarant.

**4.3 Declarant's Right to Designate Director.** In any election of Directors after the Class B membership has been terminated, so long as Declarant owns any Condominium, the Board shall adopt special procedures to ensure that at least one (1) director is designated by Declarant. A representative to the Board designated by Declarant pursuant to the provisions of this Section may be removed prior to the expiration of his or her term of office only with the consent of Declarant.

**4.4 Joint Owner Votes.** The voting rights for a Condominium may not be cast on a fractional basis. If the joint Owners of a Condominium are unable to agree among themselves as to how their voting rights shall be cast, they shall forfeit the vote on the matter in question. If any Owner exercises the voting rights of a particular Condominium, it will be conclusively presumed for all purposes that such Owner was acting with the authority and consent of all other Owners of the same Condominium. If more than one (1) Person exercises the voting rights for a particular Condominium, their votes shall not be counted and shall be deemed void.

## ARTICLE 5 ASSESSMENTS

**5.1 Creation of Lien and Personal Obligation for Assessments.** Declarant, for each Condominium owned within the Property, hereby covenants, and each Owner of a Condominium, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association all Assessments levied pursuant

to the provisions of this Declaration. All Assessments levied hereunder, together with Additional Charges, shall be a charge on the land 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 Assessments. Each such Assessment, together with Additional Charges, shall also be the personal obligation of the Person who was the Owner of such Condominium at the time when the Assessment fell due and shall bind its heirs, devisees, personal representatives and assigns. Unlike the lien for non-delinquent Assessments, the personal obligation for delinquent Assessments shall not pass to successive Owners, unless expressly assumed by such successive Owner. No such assumption of personal liability by a successive Owner (including a contract purchaser under an installment land contract) shall relieve any Owner against whose Condominium the lien was levied from personal liability for delinquent Assessments. If more than one Person was the Owner of a Condominium, the personal obligation to pay such Assessment or installment respecting such Condominium shall be both joint and several.

**5.2 Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively to perform the obligations and duties of the Association, including without limitation the improvement and maintenance of the Association Property, and for any other maintenance responsibilities of the Association, and to reimburse the Association for the costs incurred in bringing an Owner into compliance with the Governing Documents. The Association shall not impose or collect any Assessment, penalty or fee that exceeds the amount necessary for the purpose or purposes for which it is levied. If the Association decides to use or transfer reserve funds to pay for litigation, the Association must notify its Members of the decision at the next available meeting. Such notice shall provide an explanation of why the litigation is being initiated or defended, why operating funds cannot be used, how and when the reserve funds will be replaced, and a proposed budget for the litigation. The notice must state that the Members have a right to review an accounting for the litigation as provided in Section 1365.5 of the California Civil Code which will be available at the Association's office. The accounting shall be updated monthly.

**5.3 Regular Assessments.**

**5.3.1 Payment of Regular Assessments.** Regular Assessments for each Fiscal Year shall be established when the Board approves the Budget for that Fiscal Year, which Budget shall be prepared in accordance with the provisions of the Governing Documents. Regular Assessments shall be levied on a Fiscal Year basis. Unless otherwise specified by the Board, Regular Assessments shall be due and payable in monthly installments on the first day of each month during the term of this Declaration. Declarant's obligation to pay such Regular Assessments may be reduced in accordance with the terms of any maintenance or subsidy agreement executed by Declarant and the Association.

**5.3.2 Budgeting.** Each year the Board shall prepare, approve and make available to each Member a Budget as described in the Bylaws not less than thirty (30) days nor more than ninety (90) days prior to the beginning of the Fiscal Year or as otherwise required by Applicable Laws.

**5.3.3 Restrictions for Tax Exemption.** As long as the Association seeks to qualify and be considered as an organization exempt from federal and state income taxes pursuant to Internal Revenue Code Section 528 and California Revenue and Taxation Code Section 23701t and any amendments thereto, then the Board shall prepare its annual Budget and otherwise conduct the business of the Association in such a manner consistent with federal and state requirements to qualify for such status.

**5.3.4 Assessments After Annexation.**

(a) **Reallocation of Assessments.** After conveyance of the first Condominium in a Phase, the Assessments shall be reallocated among all Condominiums in the Community, including those in the Phase in which such first Condominium was conveyed.

(b) **Revision of Budget.** Notice of the new Regular Assessment to be levied against each Condominium in the Community shall be delivered by the Association to the Owners and Declarant within sixty (60) days after close of escrow for conveyance of the first Condominium in the new Phase.

**5.3.5 Non-Waiver of Assessments.** If the Association fails to fix Regular Assessments for the next Fiscal Year before the expiration of the then-current Fiscal Year, the Regular Assessment established for the preceding year shall continue until a new Regular Assessment is fixed.

**5.4 Special Assessments.** If the Association determines that the estimated total amount of funds necessary to defray the Common Expenses of the Association for a given Fiscal Year is or will become inadequate to meet expenses for any reason, including, without limitation, unanticipated delinquencies, costs of construction, unexpected repairs or replacements of capital improvements on, damage and destruction or condemnation of, the Common Area, Association Property or any other areas which the Association is obligated to maintain, the Board may levy a special assessment (“**Special Assessment**”). Special Assessments shall be subject to the limitations set forth in **Section 5.7** below. The Board may, in its discretion, prorate such Special Assessment over the remaining months of the Fiscal Year or levy the Assessment immediately against each Condominium. Unless exempt from federal or state income taxation, all proceeds from any Special Assessment shall be segregated and deposited into a special account and shall be used solely for the purpose or purposes for which it was levied or it shall be otherwise handled and used in a manner authorized by Applicable Laws of the Internal Revenue Service or the California Franchise Tax Board in order to avoid, if possible, its taxation as income of the Association.

**5.5 Capital Improvement Assessment.** In addition to any other Assessments provided for in this Declaration, the Association may levy an Assessment (“**Capital Improvement Assessment**”) for the purpose of defraying, in whole or in part, the cost of any construction or replacement of a capital Improvement in accordance with the provisions of **Section 3.3.8**. Capital Improvement Assessments shall be due and payable by all Owners in such installments and during such period or periods as the Board shall designate. Increases in Capital Improvement Assessments shall be subject to the limitations set forth in **Section 5.7** below.

**5.6 Reimbursement Assessments.** The Association may levy a Reimbursement Assessment against any Owner for bringing an Owner or its Condominium into compliance with the provisions of the Governing Documents, and/or any other charge designated an Reimbursement Assessment in the Governing Documents, together with any Additional Charges related thereto as provided in this Declaration. If the Association undertakes to provide materials or services which benefit individual Owners, then such Owners, in accepting such materials or services, agree that the costs thereof shall be an Reimbursement Assessment. The Association shall have the authority to adopt a reasonable schedule of Reimbursement Assessments for any violation of the Governing Documents. If, after Notice and Hearing as required by the Governing Documents and which satisfies Section 7341 of the California Corporations Code and Section 1363 of the California Civil Code, the Owner fails to cure or continues such violation, the Association may impose an additional fine each time the violation is repeated, and may assess such Owner and enforce the Reimbursement Assessment as herein provided for nonpayment of an Assessment. A hearing committee may be established by the Association to administer the foregoing. Notwithstanding any other provision in this Declaration to the contrary, except as provided in **Section 5.12.1** of this Declaration, Reimbursement Assessments are Assessments but they may not become a lien against the Owner's Condominium that is enforceable by a power of sale under California Civil Code Sections 2924, 2924b and 2924c. This restriction on enforcement is not applicable to late payment penalties for delinquent assessments or charges imposed to reimburse the Association for loss of interest or for collection costs, including reasonable attorneys' fees, for delinquent assessments.

**5.7 Changes to Assessments.**

**5.7.1 Limitation on Assessments.** From and after January 1st of the year immediately following the conveyance of the first Condominium to an Owner other than Declarant, the maximum annual Regular Assessment may not, except in the case of an emergency (as hereinafter defined), be increased by an amount greater than twenty percent (20%) of the Regular Assessments for the preceding Fiscal Year and Special Assessments and Capital Improvement Assessments shall not be imposed that in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year, without the consent of the Members, constituting a quorum and casting a majority of the votes at a meeting or election of the Association conducted in accordance with the provisions of California Civil Code Section 1363.03 and the rules adopted by the Board pursuant thereto and California Corporations Code Sections 7510 *et seq.* and 7613. The Board may not increase the Regular Assessments for any Fiscal Year unless it has complied with California Civil Code Section 1366. For the purpose of this Section, a quorum shall mean a majority of the Owners of the Association and an Emergency shall mean any one of the following:

- (a) an extraordinary expense required by an order of a court;
- (b) an extraordinary expense necessary to repair or maintain the Association Property or any part of the Community which is the responsibility of the Association to maintain where a threat to personal safety is discovered; or
- (c) an extraordinary expense necessary to repair or maintain the Association Property or any part of the Community for which the Association is responsible to

maintain that could not have been reasonably foreseen by the Board in preparing and distributing the Budget; provided, however, that prior to the imposition or collection of a Regular Assessment under this Section, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense which is involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Members with the notice of Regular Assessment.

**5.7.2 Calculation of Percentage Increase in Regular Assessments.** For the purpose of calculating whether an increase to Regular Assessments exceeds twenty percent (20%) pursuant to **Section 5.7.1**, the term "Regular Assessments" shall be deemed to include the amount assessed against each Condominium by the Association as a Regular Assessment plus any amount paid by the Declarant as a subsidy pursuant to any subsidy agreements, to the extent such subsidy payments offset any amount which would otherwise be paid by Owners as Regular Assessments. Any increases authorized under this Section shall not be imposed unless the Board has complied with the budgetary requirements set forth in the Article of the Bylaws entitled "Association's Accounts" with respect to the Fiscal Year for which an Assessment is being levied.

**5.8 Uniform Rate of Assessment.** Regular and Special Assessments and Capital Improvements Assessments shall be fixed at a uniform rate for all Condominiums and may be collected on a monthly basis and shall be determined by dividing the amount of the assessment by the total number of Condominiums then within the Project and subject to assessment. Reimbursement Assessments shall be levied directly to the individual Condominiums.

**5.9 Date of Commencement of Regular Assessments.** Except as provided in **Section 5.9.1** below, the Regular Assessments provided for in this Declaration shall commence as to all Condominiums in a Phase on the first day of the month following the conveyance of the first Condominium in such Phase to an Owner under authority of a Public Report or such earlier date as may be selected by Declarant for the commencement of Assessments in such Phase. Notwithstanding the foregoing, Declarant may elect to commence paying Regular Assessments on a Phase prior to the conveyance of a Condominium in such Phase to a First Purchaser and, in such case, Declarant shall have the voting rights as to the /or Condominiums in such Phase pursuant to **Section 4.2**.

**5.9.1 Model Homes.** In no event shall any sale or leaseback to Declarant of a Condominium being used as a model home, sales office, design center, construction office or similar purpose and which is not occupied by a homeowner cause the commencement of Regular Assessments against a Phase for which Regular Assessments have not otherwise commenced through a conveyance of a Condominium in such Phase to an Owner who will occupy such Condominium. Declarant shall be responsible to insure and maintain all portions of the Phase in which a Condominium is being used as a model home until the date Regular Assessments commence against such Condominium. The Board shall have the right to inspect such areas maintained by Declarant to ascertain that reasonable standards are maintained.

**5.10 Notice and Assessment Installment Due Dates.** The Association shall provide notice by first-class mail to each Owner of any increase in the Regular Assessment, and notice of any Special Assessment, Capital Improvement Assessment (or increase thereto) not less than

thirty (30) days nor more than sixty (60) days prior to the increased Regular Assessment or the Special Assessment or Capital Improvement Assessment becoming due. The due dates for the payment of Regular Assessments and Special Allocation Assessments normally shall be payable the first day of each month unless some other due date is established by the Association. The due date for Special Assessments or Capital Improvement Assessments shall be specified in the notice provided by the Association and if such Special Assessments or Capital Improvement Assessments are payable in installments, such installments normally shall be the first day of each month unless some other due date is established by the Association. Each installment of Regular Assessments, Special Assessments and Capital Improvement Assessments shall become delinquent if not paid within fifteen (15) days after its due date. There shall accrue with each delinquent installment a late charge, an interest charge at the Applicable Rate and reasonable costs of collection, including attorneys' fees and costs, but which shall not in any event exceed the maximum rates permitted under California Civil Code Section 1366.

**5.11 Estoppel Certificate.** On not less than ten (10) days' prior written request, the Association shall execute, acknowledge and deliver to the party making such request a statement in writing stating both of the following: (a) whether or not, to the knowledge of the Association, a particular Owner is in default in connection with the payment of Assessments as to such Owner's Condominium under the provisions of this Declaration; and (b) the dates to which installments of Assessments have been paid as to such Condominium. Any such statement may be relied on by any prospective purchaser or Mortgagee of the Condominium, but reliance on such statement may not extend to any default not involving the payment of Assessments of which the signer had no actual knowledge.

**5.12 Collection of Assessments, Liens.**

**5.12.1 Right to Enforce.** The right to collect and enforce Assessments is vested in the Board acting for and on behalf of the Association. The Board may enforce the obligations of the Owners to pay Assessments provided for in this Declaration by commencement and maintenance of a suit at law or in equity, or the Board may foreclose by judicial proceedings or through the exercise of the power of sale pursuant to **Section 5.12.5** enforce the lien rights created. Suit to recover a money judgment for unpaid Assessments together with all other Additional Charges shall be maintainable without foreclosing or waiving the lien rights. Notwithstanding anything else to the contrary herein a monetary penalty imposed by the Association as a disciplinary measure for failure of a Member to comply with the Governing Documents or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Association Property and facilities for which the Member was allegedly responsible or in bringing the Member and its Condominium into compliance with the Governing Documents may not be characterized nor treated as an Assessment that may become a lien against the Member's Condominium enforceable by a sale of the interest hereunder. The limitation in the preceding sentence, however, does not apply to any Additional Charges.

**5.12.2 Notice of Assessments and Foreclosure.** The Association shall distribute a written notice regarding Assessments and foreclosure as set forth in California Civil Code Section 1365.1 during the sixty (60) day period immediately preceding the beginning of the Association's Fiscal Year.

**5.12.3 Delinquent Assessments.** In collecting delinquent Assessments, the Association shall comply with the requirements of California law, including without limitation California Civil Code Section 1367.1. As of the date of this Declaration, such laws require, among other things, before the Association records a lien against the Owner's Condominium, that the Association do the following: (a) notify the delinquent Owner of certain matters, and (b) offer and, if requested by the Owner, participate in, dispute resolution procedures pursuant to the Association's "meet and confer" program required by California Civil Code Sections 1363.810 through 1363.850.

**5.12.4 Creation of Lien.** If there is a delinquency in the payment of any Assessment, or installment thereof (other than an Reimbursement Assessment), any amounts that are delinquent, together with any Additional Charges, shall be a lien against the defaulting Owner's Condominium upon recordation in the Official Records of a notice of delinquent Assessment ("Notice of Delinquent Assessment") as provided in, and subject to the requirements of, California Civil Code Section 1367.1. After its recordation, the Notice of Delinquent Assessment shall be mailed to all Owners of record of the applicable Condominium for which the lien is being filed as provided in California Civil Code Section 1367.1.

**5.12.5 Assignment.** The Association may not voluntarily assign or pledge the Association's right to collect payments or Assessments, or to enforce or foreclose a lien to a third party except where provided under California Civil Code Section 1367.1(g).

**5.12.6 Notice of Default; Foreclosure.** The Association may record a notice of default and, subject to the requirements and limitations of California Civil Code Section 1367.4, cause the Condominium with respect to which a notice of default has been recorded to be sold either in the same manner as a sale is conducted under California Civil Code Sections 2924, 2924b and 2924c or through judicial foreclosure and as provided in California Civil Code Section 1367.1. However, as a condition precedent to the holding of any such sale under Section 2924c, appropriate publication shall be made. In connection with any such sale, the Board is authorized to appoint a trustee for purposes of conducting the sale. If a delinquency is cured before sale of the Condominium or before completing a judicial foreclosure, or if it is determined that a lien previously recorded against a Condominium was recorded in error, the Board shall apply payments and follow the procedures set forth in California Civil Code Section 1367.1. On becoming delinquent in the payment of any Assessment or installment, each delinquent Owner shall be deemed to have absolutely assigned all rent, issues and profits of its Condominium to the Association and shall further be deemed to have consented to the appointment of a receiver (which appointment may, at the election of the Association, be enforced by the Association through specific performance). The Association, acting on behalf of the Owners, shall have the power to bid upon the Condominium at foreclosure sale and to acquire, hold, lease, mortgage and convey the Condominium and vote as the Owner of the Condominium.

**5.12.7 Payment of Assessments.** Any payments of sums due under this Article shall first be applied to Assessments owed, and only after Assessments owed have been paid in full shall the payments be applied to the Additional Charges. If an Owner requests a receipt after payment of a delinquent Assessment, the Association shall provide a receipt which sets forth the date of payment and the individual who received such payment.

**5.13 Additional Charges.** In addition to any other amounts due or any other relief or remedy obtained against an Owner who is delinquent in the payment of any assessments, each Owner agrees to pay Additional Charges incurred or levied by the Association, including such additional costs, fees, charges and expenditures as the Association may incur or levy in the process of collecting from that Owner monies due and delinquent, subject to California Civil Code Section 1366.

**5.14 Waiver of Exemptions.** Each Owner, to the extent permitted by Applicable Law, waives, to the extent of any liens created pursuant to this Article, the benefit of any homestead or exemption laws of California in effect at the time any Assessment, or installment, becomes delinquent or any lien is imposed.

**5.15 Subordination of Lien to First Mortgages.** When a Notice of Delinquent Assessment has been recorded, such Assessment shall constitute a lien on such delinquent Owner's Condominium prior and superior to all other liens, except, (a) all taxes, (b) bonds, Assessments and other levies that, by law, would be superior thereto, and (c) any First Mortgage now or hereafter placed upon the Condominium subject to Assessment. The sale or transfer of any Condominium pursuant to judicial or nonjudicial foreclosure (excluding a transfer by a deed in lieu of foreclosure) of a First Mortgage shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Condominium from any Assessments thereafter becoming due or from the lien of any subsequent Assessment. Where the Mortgagee of a First Mortgage or other purchaser of a Condominium obtains title to the same as a result of foreclosure (excluding a transfer by a deed in lieu of foreclosure), such acquiror of title, and his or her successors and assigns, shall not be liable for the share of the Common Expenses or Assessments by the Association chargeable to such Condominium that became due prior to the acquisition of title to such Condominium by such acquiror, except for a share of such charges or Assessments resulting from a reallocation of such charges or Assessments that are made against all Condominiums.

**5.16 No Offsets.** All Assessments shall be payable in the amounts specified by the particular Assessment and no offsets against such amounts shall be permitted for any reason, including without limitation a claim that the Association is not properly exercising its duties of maintenance, operation or enforcement.

**5.17 Personal Liability of Owner.** No Owner may exempt himself or herself from personal liability for Assessments, nor any part thereof, levied by the Association, nor release the Condominium owned by it from the liens and charges hereof by waiver of the use and enjoyment of the Association Property and facilities thereof, or by abandonment of such Owner's Condominium.

**5.18 Transfer of Property.** After transfer or sale of a Condominium, the selling Owner shall not be liable for any Assessment levied on such Condominium after the date of transfer of ownership and written notice of such transfer is delivered to the Association. The selling Owner shall remain responsible for all Assessments and charges levied on his or her Condominium prior to any such transfer.

**5.19 Failure to Fix Assessments.** The Board's omission to fix the Assessments hereunder before the expiration of any Fiscal Year, for that or the next year, shall not be deemed either a waiver or modification in any respect of the provisions of this Declaration or a release of the Owner from the obligation to pay the Assessments or any installment thereof for that or any subsequent Fiscal Year, but the Assessment fixed for the preceding Fiscal Year shall continue until a new Assessment is fixed.

**5.20 Property Exempt From Assessments.** The Association Property shall be exempt from the Assessments, charges and liens created herein. Although no land or Improvements in the Community devoted to dwelling use shall be exempt from assessment by the Association, Declarant and the Owners shall be exempt from paying any portion of Regular Assessments which is for the purpose of defraying expenses and reserves directly attributable to the existence of any Association Property Improvements which are not complete at the time Assessments commence, which exemption shall be in effect only until the earlier to occur of the following: (a) a notice of completion for the subject Association Property has been recorded, or (b) the Association Property has been placed into use.

**5.21 Association Property Improvements.** In the event that Association Property Improvements to be installed by Declarant in a Phase have not been completed prior to the issuance by the DRE of a Final Subdivision Public Report covering the applicable Phase, and in the further event that the Association is the obligee under a bond to secure performance by the Declarant to complete such Improvements, then if such Improvements have not been completed and a notice of completion filed within sixty (60) days after the completion date specified in the planned construction statement appended to the bond, the Board shall consider and vote upon the question of whether or not to bring action to enforce the obligations under the bond. If the Association has given an extension in writing for the completion of any such Improvement, then the Board shall consider and vote on said question if such Improvements have not been completed and a notice of completion filed within thirty (30) days after the expiration of the extension period. In the event that the Board determines not to take action to enforce the obligations secured by the bond, or does not vote on the question as above provided, then, in either such event, upon petition signed by Members representing five percent (5%) or more of the Voting Power of the Association, excluding the vote of Declarant, the Board shall call a special meeting of the Members of the Association to consider the question of overriding the decision of the Board or of requiring the Board to take action on the question of enforcing the obligations secured by the bond. Said meeting of Members shall be held not less than thirty-five (35) days nor more than forty-five (45) days following receipt of the petition. At said meeting a vote of a majority of the Voting Power of Members of the Association, excluding the vote of Declarant, to take action to enforce the obligations under the bond shall be deemed to be the decision of the Association, and the Board shall thereafter implement the decision by initiating and pursuing appropriate action in the name of the Association.

**5.22 Initial Capital Contributions.** Upon acquisition of record title to a Condominium from Declarant each First Purchaser shall contribute to the capital of the Association an amount equal to two (2) times the amount of the then monthly Regular Assessment for the Condominium. This amount shall be deposited by the purchaser into the purchase and sale escrow for his or her Condominium and disbursed therefrom to the Association or to reimburse Declarant for any capital contributions paid by Declarant to the

Association for such Condominium. The obligation set forth in this Section does not apply to the resale of any Condominium.

## ARTICLE 6 USE RESTRICTIONS

**6.1 Residential Use.** Condominiums shall be used for residential purposes only; provided, however, any Condominium may be used for professional administrative or other business occupations so long as such occupations (a) are operated solely within the Condominium, (b) are conducted in conformance with all applicable governmental ordinances, (c) are merely incidental to the use of the Condominium as a residence, (d) the patrons or clientele of such occupation do not regularly visit or conduct business on the Condominium, (e) the business is operated by the Owner of the Condominium whose principal Residential Unit is the Condominium, by a tenant whose principal Residential Unit is the Condominium or by a member of such Owner's or tenant's family whose principal Residential Unit is the Condominium, and (f) the operation of the business does not result in (i) the violation of any of the other provisions of this Declaration, (ii) any unreasonable increase in the flow of traffic within the Property, (iii) any unreasonable odor, noise, or vibration outside of the Condominium, or (iv) parking problems within the Community. No other use shall be allowed except as specifically permitted by local ordinance; provided, however, Declarant may use any of the Condominiums owned or leased back by Declarant as model homes and sales offices for the Community.

**6.2 Commercial Use.** Except as otherwise provided in this Declaration, including without limitation Section 6.1 above, no part of the Community shall be used or caused, allowed, or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or other such non-residential purpose.

**6.3 Rental of Residential Units.** A Owner shall be entitled to rent his or her Condominium subject to the restrictions contained in the Governing Documents, any contractual agreement between Declarant and each First Purchaser for such Owner's Condominium as to such parties, any other restrictions of record applicable to such Owner's Condominium, and all Applicable Laws. Any rental or lease agreement shall be in writing, shall provide that the lease is subject to the Governing Documents and shall provide that any failure to comply with any provisions of the Governing Documents, shall be a default under the terms of the rental or lease agreement. A copy of the rental or lease agreement shall, upon request, be provided to the Association. The Owners shall, at all times, be responsible for their Lessee's compliance with all of the provisions of this Declaration pursuant to the occupancy and use of the Condominium. A Lessee shall have no obligation to the Association to pay Assessments nor shall any Lessee have any voting rights in the Association. No Owner may lease such Owner's Residential Unit for hotel, motel or transient purposes. Any lease which is either for a period of fewer than thirty (30) days or pursuant to which the lessor provides any services normally associated with a hotel shall be deemed to be for transient or hotel purposes.

**6.4 Time Sharing.** A Condominium may not be divided or conveyed on a time increment basis (commonly referred to as "time sharing") of measurable chronological periods. The term "time sharing" as used herein shall include but not be limited to any agreement, plan,

program or arrangement under which the right to use, occupy or possess the Condominium(s) in the Community, or any portion thereof, rotates among various persons, either corporate, partnership, individual or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like-kind use privileges, according to a fixed or floating interval or period of time sixty (60) consecutive calendar days or less.

**6.5 Animals.** Only domestic animals that are kept as household pets and are not kept, bred or raised for commercial purposes are permitted to be maintained within the Community. No Owner shall keep more than a total of two (2) dogs (other than dogs which in the reasonable determination of the Board are determined to be a threat to the safety of the occupants of the Community, which shall not be allowed under any circumstances in the Community) or two (2) domestic cats, or a combination thereof (but not to exceed two (2) total) within such Owner's Condominium. Domestic reptiles, birds, rodents and fish shall be permitted so long as such animals are kept in the interior of a Residential Unit and (a) are not so excessively noisy as to disturb the quiet enjoyment by each Owner of his or her Condominium, and (b) are not kept in unreasonable numbers as determined by the Board. No animal shall be permitted to be maintained, at any time, within any recreational areas situated within the Community. Notwithstanding the foregoing, the Association Rules may further limit or restrict the keeping of pets and the Board shall specifically have the power to prohibit the keeping or maintenance of any animal, which, in the opinion of the Board, after Notice and Hearing, is deemed by the Board to constitute a nuisance to any other Owner or which constitutes a threat to personal safety in the sole and absolute opinion of the Board. Each person bringing or keeping a pet within the Community shall be absolutely liable to other Owners and their Invitees for any damage to persons or property caused by any pet brought upon or kept upon the Community by such person or any Invitee of such person. Each Owner shall clean up after such animals that have deposited droppings or otherwise used any portion of the Community or public street abutting or visible from the Property. Animals belonging to Owners or Invitees of any Owner must be kept within an enclosure or on a leash held by a person capable of controlling the animal when outside the Condominium. Animals shall not be left unattended in any Exclusive Use Deck Area, Exclusive Use Porch Area or Exclusive Use Yard Area. Nothing contained herein shall constitute a restriction on human assistance animals.

**6.6 Antenna Restrictions.** No Owner shall install any antenna, satellite dish, or other over-the-air receiving device ("**Antenna**") (a) on any real property which such Owner is not entitled to exclusively use or control, as provided in Title 47 U.S.C. §§ 1 *et seq.*, 47 CFR § 1.4000 and any other Applicable Laws, rules and decisions promulgated thereunder (collectively "**Antenna Laws**"), (b) in a particular location if, in the Board's opinion, the installation, location or maintenance of such Antenna unreasonably affects the safety of the Owners or any other Person, or for any other safety-related reason established by the Board, or (c) that is of a size larger than is permitted under the Antenna Laws. If an Owner is entitled to install an Antenna under the foregoing requirements, such Owner shall provide the Board with written notice that such Owner has installed or is about to install the Antenna. If an Owner desires to install an Antenna, other than as described in (a) through (c) above, such Owner may do so only upon the prior approval of the Board pursuant to **Article 8** of this Declaration. The Association shall not impose or enforce any restrictions upon Antennae that are inconsistent with the Antenna Laws. Notwithstanding any provision hereof, this Section shall be interpreted to comply with state and federal laws applicable to antennas in effect at the time of enforcement of

this Section. In that regard, this Section shall not be interpreted or enforced in a manner which would (i) unreasonably delay or prevent installation, maintenance or use of such Authorized Antenna, (ii) unreasonably increase the cost of installation, maintenance or use, or (iii) preclude reception of an acceptable quality signal.

**6.7 Signs and Displays.** No sign, advertising device or other display of any kind shall be displayed in the Community, except for the following:

**6.7.1** entry monuments and community identification signs, subject to compliance with City signage criteria;

**6.7.2** for each Condominium, one (1) nameplate or similar Owner name or address identification which complies with the Architectural Guidelines;

**6.7.3** for each Condominium, one (1) sign of reasonable size advertising the Condominium for sale or lease that complies with the Architectural Guidelines or is otherwise authorized pursuant to **Article 8**, subject to California Civil Code Sections 712 and 713;

**6.7.4** noncommercial signs permitted by California Civil Code Section 1353.6; and

**6.7.5** such other signs or displays authorized pursuant to **Article 9**.

In addition to the foregoing, all signs must comply with all Applicable Laws. Notwithstanding the foregoing, Declarant shall have the right to display signs as set forth in **Article 9**.

**6.8 Parking and Vehicular Restriction.**

**6.8.1 Authorized Vehicles.** The following vehicles are “**Authorized Vehicles**”: standard passenger vehicles, including automobiles, passenger vans designed to accommodate ten (10) or fewer people, motorcycles and pickup trucks having a manufacturer’s rating or payload capacity of one (1) ton or less and vehicles which are the principal source of transportation for an Owner. Authorized Vehicles may be parked in any portion of the Community intended for parking of motorized vehicles subject to this **Section 6.8.1**; provided, however, no Owner may park an Authorized Vehicle in a manner which the Association determines either restricts the passage of pedestrians or vehicles over streets, driveway, or sidewalks in the Community or extends beyond the limits of the space where the Authorized Vehicle is parked. The Association has the power to identify additional vehicles as Authorized Vehicles in the Association Rules to adapt this restriction to other types of vehicles.

**6.8.2 Prohibited Vehicles.** The following vehicles are “**Prohibited Vehicles**”:  
(a) recreational vehicles (e.g., motorhomes, travel trailers, camper vans and boats)  
(b) commercial-type vehicles (e.g., stakebed trucks, tank trucks, dump trucks, step vans, concrete trucks and limousines), (c) buses or vans designed to accommodate more than ten (10) people,  
(d) vehicles having more than two (2) axles, (e) trailers, (f) inoperable vehicles or parts of vehicles, (g) aircraft, (h) boats, (i) any vehicles or vehicular equipment deemed a nuisance by the Board, and (j) any other vehicles not classified as an Authorized Vehicle. Prohibited Vehicles may not be parked, stored or kept within the Property or any Private Street within the

Community except for brief periods for loading, unloading, making deliveries or emergency repairs. If a vehicle qualifies as both an Authorized Vehicle and a Prohibited Vehicle, then the vehicle is presumed to be a Prohibited Vehicle unless the vehicle is expressly classified as an Authorized Vehicle in writing by the Association.

**6.8.3 General Restrictions.** Subject to the restriction on Prohibited Vehicles, all vehicles owned or operated by or under the control of an Owner or an Occupant and kept within the Community shall be parked in that Owner's garage. There shall be no parking in the Community that obstructs free traffic flow, constitutes a nuisance, violates the Association Rules, or otherwise creates a safety hazard. The parking areas in the Property shall be used for parking Authorized Vehicles only and shall not be used for storage, living, recreational or business purposes. No maintenance, repair, restoration, or construction of any vehicle shall be conducted on the Property.

**6.8.4 Outside Parking.** No Owner shall park in an outside (guest) parking space unless the Board allows otherwise. The Board shall have the right, but not the obligation, to assign to one or more Owners for such periods and on such terms as the Board deems appropriate the right to use parking spaces (including motorcycle parking spaces) within the Association Property which are not required by Governmental Entitlements to be available for visitor parking and are not within an Exclusive Use Easement Area. Should the Association Board decide to make such assignments, it shall generally do so on a first-come, first-served basis, but the Board may consider such factors as the Board deems relevant. The Association may charge a fee for assigning the right to use an outside parking space which is not an Exclusive Use Easement Area. As of the date of recordation of this Declaration, overnight parking on the public streets adjacent to the Community is prohibited and daytime parking on some or all such streets is by permit only.

**6.8.5 Garage Use.** Garages shall be used for parking vehicles only and shall not be converted for living, recreational activities, business or storage that would prevent the ability of an Owner or Occupant to park the number of vehicles in the garage that the garage was designed for. Doors to garages shall be kept closed except during the removal or entry of vehicles therefrom or thereto. Each Owner shall ensure that any such garage accommodates at least the number of Authorized Vehicles for which it was originally constructed by Declarant.

## **6.9 Installations.**

**6.9.1 Generally.** This Section does not apply to Improvements installed by Declarant.

**6.9.2 Outside Installations.** The following items are prohibited unless installed by Declarant or approved by the Board: (a) outside installations, including deck covers, wiring, air conditioning equipment, water softeners, other machines and other Improvements; and (b) other exterior additions or alterations to any Residential Unit or Exclusive Use Easement Area.

**6.9.3 Inside Installations.** Nothing may be done in any Condominium or in, on or to the Association Property that may impair the structural integrity of any building in the

Community or which structurally alters any such building except as otherwise expressly provided in this Declaration. Portions of floors in upper level Residential Units may be constructed with sound control matting or other noise mitigation measures. Owners desiring to replace floor coverings in upper level Residential Units must obtain the prior written consent of the Board in order to ensure that the replacement flooring and its installation is compatible with the noise mitigation materials installed by Declarant.

**6.9.4 Outside Drying and Laundering.** No exterior clothesline shall be erected or maintained within the Community and there shall be no exterior drying or laundering of clothes or any other items in any Exclusive Use Easement Area or Association Property.

**6.9.5 Storage and Other Restrictions for Decks and Porches.** No Owner shall use any Exclusive Use Deck Area or Exclusive Use Porch Area for storage purposes, including, without limitation, the storage of bicycles. Unless installed by Declarant, all plants kept in any Exclusive Use Deck Area or Exclusive Use Porch Area shall be kept in pots or planters which do not allow water to drain outside of such pot or planter, and no vegetation shall be permitted to extend beyond the railings, walls and/or other boundaries of the Exclusive Use Deck Area or Exclusive Use Porch Area except as approved by the Board. The Board may require approval of any potted plants. No Owner shall change or alter the surface of any Exclusive Use Deck Area or Exclusive Use Porch Area without the consent of the Board.

**6.9.6 Basketball Standards.** No basketball standards or fixed sports apparatus shall be attached to any Residential Building or placed anywhere within the Association Property. The Association Rules may limit the use or placement of portable basketball apparatus.

**6.9.7 Exterior Lighting.** Any exterior electrical, gas or other artificial lighting installed on any Residential Building shall be positioned, screened or otherwise directed or situated and of such controlled focus and intensity so as not unreasonably to disturb the residents of any other Residential Units. Some of the exterior lighting on Residential Buildings provides light to certain exterior portions of the Community and contains a photocell which will automatically control their operation. Such exterior lighting shall not be manually turned off and the photocell shall not be altered in any way by the Owners. As provided in Section 7.4 below, the Association shall maintain these fixtures and light bulbs, but the electricity supplied to them shall be metered and paid for by individual Owners. Further rules regarding exterior lighting may be promulgated by the Board.

**6.9.8 Vibrations.** No Owner shall install or use in a Residential Unit any fixtures or equipment which will cause unreasonable vibrations, noise or annoyance to the Owners of other Residential Units.

**6.9.9 Fire Prevention and Fire Sprinkler Systems.** No Owner shall remove, alter or impair or tamper or interfere with the proper operation of any fire prevention or fire sprinkler equipment installed by Declarant in the Owner's Residential Unit.

**6.9.11 Window Coverings.** Temporary window coverings in a design and color that does not conflict with the surrounding Improvements (but excluding aluminum foil,

newspapers, or any other contrasting material) shall be permitted for a maximum period of sixty (60) days from the date that a Condominium is conveyed to an Owner by Declarant. Except as specifically provided above, no temporary window coverings shall be used to cover any door or window of any Residential Unit. All window coverings (including temporary window coverings) shall be of a neutral color harmonious with and not in conflict with the color scheme of the exterior wall surface of the Residential Unit.

**6.10 Trash Disposal, Pickup and Recycling.** Trash, garbage or other waste shall be kept only in sanitary containers. No Owner shall permit or cause any trash or refuse to be kept on any portion of the Community other than in the receptacles customarily used for it, which shall be stored within the Owner's garage except on the scheduled day for trash pickup. Certain portions of the Association Property may be designated as trash container drop off locations by the Board. The residents within the Community are required to place their trash containers at such locations during designated time periods. The Association may adopt rules and regulations regarding the trash container drop off and pick-up policies. Each Owner shall comply with the City's trash plan for the Community, if any.

**6.11 View Impairment.** There is no representation that any view exists from any Condominium. Each Owner, by accepting a deed to a Condominium, acknowledges that grading of, construction on or installation of Improvements, including landscaping, on other Condominiums within the Property and on surrounding real property may impair whatever view may exist from the Owner's Residential Unit and/or may allow other persons to have a line of sight into an Owner's Residential Unit or Exclusive Use Yard Area, which may affect the Owner's use or enjoyment of the Owner's Condominium, including the Owner's privacy. Each Owner, by acceptance of a deed to a Condominium, consents to such view impairment and/or loss of privacy and waives any and all claims for impairment and/or loss of privacy. Each Owner and the Association, on behalf of its Members, hereby consent to such view impairment and/or loss of privacy. By accepting a deed to a Condominium, each Owner acknowledges that: (a) there are no protected views, and no Condominium is assured of the existence, quality or unobstructed continuation of any particular view and Declarant makes no representation or warranty that there are now, or will be in the future, any such views or that any view will impact the view or desirability of any Condominium, (b) any view from the Condominium is not intended as part of the value of the Condominium and is not guaranteed; and (c) any future development, construction, landscaping, growth of trees, or other installation of Improvements by Declarant or other Owners in the Community or of properties surrounding the Community may impair the view from any Condominium and/or may allow other persons to have a line of sight into an Owner's Residential Unit, which may affect the Owner's use and enjoyment of his or her Condominium and the Owner's privacy. There are no express or implied easements appurtenant to any Condominium for view purposes or for the passage of light and air over another Condominium, or any other property whatsoever.

**6.12 Offensive Conduct, Nuisances.** No noxious or offensive activities, including without limitation repair of automobiles or other motorized vehicles, shall be conducted within the Community. Nothing shall be done on or within the Community that may be or may become a nuisance to the residents of the Community. The front door to each Residential Unit shall remain closed except for ingress to and egress from the Residential Unit.

**6.13 Mineral Exploration.** No portion of the Property shall be used in any manner to explore for or to remove any oil, minerals, natural gas or other hydrocarbons, geothermal heat or substances, water, gravel, earth or any earth substance or other mineral of any kind (“**Subsurface Resources**”). No well for the production of, or from which there is produced, Subsurface Resources shall be operated within the Community, nor shall any machinery, appliance or structure be placed, operated or maintained thereon for use in connection with any trading, manufacturing or repairing business. Notwithstanding the foregoing, nothing in this section or anywhere else in this Declaration shall be deemed to prohibit, impair or in any way limit the rights of Declarant or any affiliate of Declarant (or a successor or assign to any rights of Declarant or an affiliate of Declarant to Subsurface Resources) to drill for, explore for, mine and/or remove any Subsurface Resources from any Property within the Community, and Declarant, any affiliate of Declarant, and any successors and assigns to any rights of Declarant or an affiliate of Declarant to the Subsurface Resources shall have such rights, including, without limitation, the right to whipstock or directionally drill and mine from lands other than the Community, wells, tunnels and shafts into, through or across the subsurface of the Property, and to bottom such whipstocked or directionally drilled wells, tunnels and shafts within or beyond the exterior limits of the Community.

**6.14 Drainage and Erosion Control.** There shall be no interference with the established drainage pattern over the Property unless an adequate alternative provision is made for proper drainage with the prior written approval of the Board. For purposes hereof, “established” drainage is defined as the drainage that exists at the time of the first close of escrow for the sale of a Condominium, or that which is shown on any plans approved by the Board. Each Owner shall maintain the drainage situated within any subterranean or other drainage pipes and facilities located within the Owner’s Exclusive Use Yard Area free of debris and any other material that may impede the flow of water. Each Owner shall regularly inspect and, if necessary, clean out any drainage facilities located within such Owner’s Exclusive Use Yard Area. If such Owner fails to maintain such drainage and, as a result, imminent danger to person or property may result, then the Association shall have the right of access onto the Condominium for the purpose of clearing debris and other material so as to not impede the flow of water. This right of access shall be exercised only for the purpose of preventing damage to persons and property and the entering party shall use reasonable care so as to not cause any damage to the Condominium. The Owner shall reimburse the Association for any costs and expenses incurred in clearing such debris pursuant to the provisions of this Declaration.

**6.15 Cross-Yard Drainage Facilities.** No Owner shall damage, alter, modify or interfere with any Cross-Yard Drainage Facilities located in the Owner’s Exclusive Use Yard Area, including by erecting, placing or constructing any building, obstruction or other structure, planting any tree, drilling or digging any well, within that portion of the Exclusive Use Yard Area in which Cross-Yard Drainage Facilities are located.

**6.16 Landscaping.** Each Owner shall landscape any portion of the Owner’s Exclusive Use Yard Easement Area that is not landscaped at the time the Condominium is conveyed to the Owner within six (6) months after conveyance of the Condominium to the Owner in accordance with landscaping plans approved pursuant to **Article 8** of this Declaration.

**6.17 Rights of Disabled.** Subject to the provisions of **Article 8** and the Architectural Guidelines, each Owner may modify such Owner's Condominium and the route over the Association Property leading to the front door of the Residential Unit, at such Owner's sole expense, to facilitate access to the Condominium by persons who are blind, visually impaired, deaf or physically disabled, or to alter conditions which could be hazardous to such persons in accordance with California Civil Code Section 1360 or any other Applicable Laws.

**6.18 Compliance with Requirements Regarding Community Storm Water Pollution.** The National Pollutant Discharge Elimination System ("NPDES"), the Federal Clean Water Act, and the policies and ordinances of the City prohibit discharging anything other than natural rain water into storm drainage systems, including gutters and streets which drain into storm drains. Toxic chemicals or hydrocarbon compounds such as gasoline, motor oil, antifreeze, solvents, paints, paint thinners, wood preservatives, fertilizers, lawn clippings, yard waste, detergents, pet waste, paints and other such materials and pollutants shall not be discharged into any street, public or private, gutters, or into storm drains or storm water conveyance systems. The disposal of such pollutants and materials into a storm drain system may result in significant penalties and fines and such Owner may be responsible for any activities by Owner's contractors (e.g., painters, landscapers, etc.) who dispose of such pollutants from an Owner's Residential Unit or Exclusive Use Easement Area into a storm drain system. Use and disposal of pesticides, fungicides, herbicides, insecticides, fertilizers, and other such chemicals shall meet all requirements of any other governmental agencies having jurisdiction over the Property. All Owners and the Association are required to comply with such restrictions. Owners are encouraged to consult with the City and other Governmental Agencies, concerning the proper disposal of any toxic or hazardous materials.

**6.18.1 Storm Water Pollution Prevention Best Management Practices.** To comply with the requirements of the City in connection with the storm water pollution prevention best management practices, each Owner and the Association agrees that it will, at all times, maintain all Improvements located within a Residential Unit, or in the case of the Association, within the Association Property, in a clean, safe and attractive condition, free and clear of any and all debris. All landscaping shall be maintained by an Owner in a manner that will prevent soil erosion and minimize sediment transport. To the extent that Declarant has installed any erosion protection devices (e.g., sand bags), no Owner shall remove such devices unless and until all landscaping has been installed and is sufficiently grown so as to prevent soil erosion and transport of any sediment. All trash receptacles within a Residential Unit shall be closed at all times except when disposing of trash. The Association and the Owners shall comply with all applicable Best Management Practices ("BMP") and perform all maintenance that may be imposed by any water quality management plan that may affect the Property. The costs of the Association's portion of such maintenance, if any, shall be treated as Common Expenses.

**6.18.2 Liability to Declarant.** So long as Declarant owns any portion of the Property or Additional Property, if an Owner or the Association is not in compliance with the provisions of this Section and, as a result, Declarant may incur any liability, Declarant shall have the right, but not the obligation, to enter upon the Residential Unit or an Exclusive Use Easement Area to correct such violation. Any Owner who violates the requirements of this **Section 6.18** and the Association shall indemnify, protect, defend and hold Declarant and Declarant's officers,

directors, members, partners, successors and assigns entirely free and harmless from and against any liabilities, penalties, costs, expenses and actions, including, without limitation, attorneys' fees and costs arising from or attributed to a violation of the provisions of this Section and shall within fifteen (15) days after request from Declarant, reimburse Declarant for any costs and expenses incurred by Declarant in correcting any violation of this **Section 6.18** by an Owner or the Association.

**6.19 Post Tension Slabs.** The concrete slabs for the Residential Buildings are planned to be reinforced with a grid of steel cables installed in the concrete and then tightened to create very high tension. This type of slab is commonly known as a "Post Tension Slab." Cutting into a Post Tension Slab for any reason (e.g. to install a floor safe, to remodel plumbing, etc.) is very hazardous and may result in serious damage to the Residential Unit and/or personal injury. By accepting a grant deed to a Condominium in the Community, each Owner specifically covenants and agrees that: (a) such Owner shall not cut into or otherwise tamper with the Post Tension Slab; (b) such Owner shall not knowingly permit or allow any person to cut into or tamper with the Post Tension Slab so long as such Owner owns any interest in the Condominium; (c) such Owner shall disclose the existence of the Post Tension Slab to any tenant, Lessee or subsequent purchaser of the Condominium; and (d) such Owner shall indemnify, protect, defend and hold Declarant and its respective officers, employees, contractors and agents, free and harmless from and against any and all claims, damages, losses, or other liability (including, without limitation, attorneys' fees) arising from any breach of this Section.

**6.20 Compliance with Laws, Etc.** Nothing shall be done or kept in any Residential Unit, Exclusive Use Easement Area or Association Property that might increase the rate of, or cause the cancellation of, insurance for the Community, or any portion of the Community. No Owner or the Association shall permit anything to be done or kept in its Residential Unit or Exclusive Use Easement Area or the Association Property that violates Applicable Laws, including any Applicable Laws pertaining to the use or storage of any hazardous, contaminated or toxic materials.

**6.21 Exemption of Declarant.** The restrictions set forth in this Article shall not apply to Declarant so long as Declarant, so long as Declarant is exercising any of its rights under **Article 9** or any other rights or powers or easements reserved to Declarant under this Declaration.

## **ARTICLE 7 MAINTENANCE**

**7.1 Maintenance.** Unless the context otherwise requires, as used in this **Article 7**, "maintenance", "maintain" or "maintaining" means the operation, inspection, maintenance, repair, restoration and replacement of the areas and facilities designated for maintenance by the Association or Owner. To the extent repair, restoration and replacement is required as a result of damage or destruction under **Article 12**, then the repair and replacement shall be governed by the provisions of **Article 12**.

**7.2 Maintenance Responsibility Chart.** The Maintenance Responsibility Chart identifies certain maintenance responsibilities of the Association and the Owners. In the event of

a conflict between the maintenance responsibilities set forth in this Article and those set forth on the Maintenance Responsibility Chart, the provisions of this Article shall control.

### 7.3 Maintenance Obligations of Owners.

#### 7.3.1 Maintenance by Owners.

(a) Residential Unit. Each Owner shall be responsible for the maintenance of his or her Residential Unit and all appliances within the Residential Unit, whether "built-in" or freestanding (except for those items of maintenance which the Association is required to perform pursuant to **Section 7.4**).

(b) Utility Facilities. Each Owner shall be responsible for the maintenance of Utility Facilities exclusively servicing the Owner's Condominium and located either within or without the outside perimeter of the exterior walls, floors and ceilings thereof, so long as those systems are used exclusively by such Owner and not in common and are not maintained by the City or a public utility.

(c) Fences and Walls. Each Owner shall be obligated to maintain those fences and walls (or portions thereof) designated in **Section 7.5** for Owner maintenance.

(d) Private Sanitary Sewer. Each Owner shall be responsible for the proper operation and maintenance of any portion of the private sanitary sewer system which lies within such Owner's Residential Unit. Any portion of such system which does not lie within a Residential Unit, up to the point where it connects to the public sewer lateral, will be the responsibility of the Association – not West Bay Sanitary District – to operate and maintain.

(e) Garages. Each Owner shall be responsible for the routine maintenance (for example, sweeping and cleaning) of any garage portion of the Owner's Residential Unit. Each Owner shall also be responsible to maintain, repair and replace when appropriate, any Improvements which the Owner makes to his or her garage.

(f) Exclusive Use Easement Areas. Each Owner shall be responsible for the routine cleaning and maintenance of each Exclusive Use Easement Area (if any) which the Owner has the exclusive right to use. Such routine maintenance includes, without limitation, landscape maintenance, sweeping, cleaning and keeping any drainage facilities (including without limitation Cross-Yard Drainage Facilities) located within such Exclusive Use Easement Area free and clear of debris to insure proper drainage and maintenance of any Improvements the Owner makes to his or her Exclusive Use Easement Area.

(g) Mailbox Locks. Each Owner is responsible to maintain and repair any locks on such Owner's mailbox.

**7.3.2 Quality of Maintenance.** All such maintenance shall be performed in such a manner as shall be deemed necessary in the judgment of the Association to preserve the attractive appearance thereof, protect the value thereof and to maintain the established system of drainage and in compliance with all requirements of the Homeowner Maintenance Manual, the Maintenance Obligations, and the Maintenance Responsibility Chart. Any such maintenance of

any of the foregoing which is visible from outside of a Residential Unit shall be consistent with the existing design, aesthetics and architecture of the Community and shall be approved by the Board, as provided in **Article 8** of this Declaration.

**7.3.3 Compliance with Maintenance Obligations.** By accepting a deed to a Condominium, each Owner acknowledges and agrees that he or she is required to comply with all of the Maintenance Obligations and schedules set forth in the Homeowner Maintenance Manual and each Owner is further obligated to provide a copy of all documents describing Maintenance Obligations to any successor purchaser of such Owner's Condominium.

**7.3.4 Owner's Failure to Maintain.** If an Owner fails to maintain the areas and items as provided above or make repairs thereto required under the Governing Documents, the Association shall give written notice to such Owner, stating with particularity the work or maintenance or repair which the Board finds to be required and requesting that the same be carried out within a period of thirty (30) days from the giving of such notice. In the event the Owner fails to carry out such maintenance or repair within the period specified by the notice, the Association shall cause such work to be completed and shall assess the cost thereof to such Owner as a Reimbursement Assessment in accordance with the procedures set forth in this Declaration.

**7.4 Maintenance by Association.**

**7.4.1 Maintenance Obligations.** The Association shall be responsible for maintaining, repairing, replacing and otherwise caring for all Association Property and any other areas to be maintained by the Association pursuant to this Declaration or the other Governing Documents in a good condition of maintenance and repair in accordance with the Maintenance Obligations, and in accordance with all the requirements of the City and any other Governmental Agencies with jurisdiction. The Association's obligations to perform such maintenance in a Phase shall commence on the date Regular Assessments commence on Condominiums in such Phase. Until commencement of Regular Assessments on Condominiums in any Phase, the Association Property and other areas to be maintained by the Association in such Phase shall be maintained by Declarant. Notwithstanding the foregoing, the contractors or subcontractors of Declarant may be contractually obligated to maintain the landscaping or other Improvements on the Association Property pursuant to warranties or other existing contractual obligations to Declarant. The Association shall not interfere with the performance of such warranty or other contractual maintenance obligations. Maintenance performed by such contractors or subcontractors of Declarant shall not serve to postpone the commencement of Regular Assessments pursuant to this Declaration, nor entitle an Owner to claim any offset or reduction in the amount of such Regular Assessments. The Association's maintenance obligations shall include, without limitation, the following.

(a) **Association Property.** The Association shall maintain in a first class condition of maintenance and repair the Association Property and all Improvements therein, including without limitation recreation facilities (if any) and any other private amenities located therein.

(b) **Private Streets**. The Association shall maintain all Private Streets within the Association Property in a good condition of maintenance and repair, including sealing, restriping and maintaining all asphalt thereon in accordance with the Maintenance Obligations.

(c) **Cluster Mailboxes**. The Association shall maintain the cluster mailboxes, except that the Owners shall maintain the locks as provided in **Section 7.3.1(g)**.

(d) **Offsite Maintenance Areas**. The Association shall maintain any Offsite Maintenance Areas in accordance with the requirements of any matters of record and Applicable Laws.

(e) **Drainage**. The Association shall maintain all drainage systems (if any) located on Association Property. The Association shall take such maintenance actions as are necessary to avoid erosion and to assure proper drainage of all areas it is obligated to maintain.

(f) **Fences and Walls**. The Association shall maintain those fences and walls designated in **Section 7.5** for Association maintenance.

(g) **Pollution Control Devices**. The Association shall maintain all Pollution Control Devices installed in the Community in accordance with all requirements of each Governmental Agency with jurisdiction.

(h) **Lighting**. When required, the Association shall repair any photo cell sensor and replacement of the light bulbs in the photo cell sensor of outside lighting within the Association Property.

(i) **Utility Facilities**. Utility Facilities not owned and maintained by the City or a public utility that serve more than one Condominium, wherever located.

(j) **Fire Sprinklers**. The Association shall comply with any applicable City requirements for regular testing and inspection of fire prevention and fire sprinkler systems within the Association Property, including but not limited to visual inspections within the Residential Units. The Association's maintenance obligations respecting any such systems shall include conducting periodic pressure testing of such systems in accordance with industry standards. Each Owner shall allow the Association to enter his or her Residential Unit upon reasonable notice in order to inspect any sprinkler heads that are located within the Residential Unit.

(k) **Public Areas**. The Association shall maintain any parkways, street medians or other public areas within or adjoining the Community that the City requires be maintained by the Association in accordance with the Governmental Entitlements.

(l) **Additional Items**. The Association shall also be responsible for maintaining any Improvements that a majority of the Voting Power of the Association designates for maintenance by the Association.

**7.4.2 Compliance With Governmental Requirements.** The Association in its maintenance activities shall comply with any City and other applicable governmental requirements that are applicable to the Community. All landscaping within the Association Property shall be kept free from weeds, trash and debris, and shall be maintained at least to the standards set by the City. Notwithstanding the foregoing, the Association shall at all times comply with any applicable City restrictions pertaining to the Association Property.

**7.4.3 Wood Destroying Pests.** If the Association adopts an inspection and preventive program for the prevention and eradication of infestation by wood destroying pests and organisms, the Association, on no less than fifteen (15) nor more than thirty (30) days' notice, may require each Owner and Occupants of the Owner's Condominium to vacate such Condominium to accommodate Association efforts to eradicate such infestation. The notice must state the reason for the temporary relocation, the date and time of the beginning of treatment, the anticipated date and time of termination of treatment, and that the occupants will be responsible for their own accommodations during the temporary relocation. Any damage caused to a Condominium by such entry by the Association or by any person authorized by the Association shall be repaired by the Association as a Common Expense. All costs involved in operating the inspection and preventive program as well as repairing and replacing the Association Property and Improvements thereon when the need for such maintenance, repair or replacement is the result of wood destroying pests or organisms are a Common Expense.

**7.5 Maintenance of Fences and Walls.**

**7.5.1 Association Maintenance Obligations.**

(a) **Fencing.** The Association shall maintain in a good condition of maintenance and repair, and replace if necessary, all green screen fencing and trellises in the Community and those fences in the locations depicted on **Exhibit "C"** attached hereto; provided, however, that the interior surface of any such wood fence that lies at the boundary of an Exclusive Use Yard Area (i.e., the surface facing the Exclusive Use Yard Area) shall be maintained by the Owner of the Residential Unit to which the Exclusive Use Yard Area is appurtenant. The Association's obligation to maintain the wood fences depicted on **Exhibit "C"** shall commence as provided in **Section 7.4.1.**

(b) **Deck and Porch Railings and Walls.** The Association shall maintain in a good condition of maintenance and repair, and replace if necessary, all railings (if any) bordering an Exclusive Use Deck Area or Exclusive Use Porch Area. The Association shall also maintain in a good condition of maintenance and repair, and replace if necessary, all walls bordering an Exclusive Use Porch Area; provided, however, that the interior surface of any such wall (i.e., the surface facing the Exclusive Use Porch Area) other than a Residential Building wall shall be maintained by the Owner of the Residential Unit to which the Exclusive Use Porch Area is appurtenant.

**7.5.2 Owner Maintenance Obligations.**

(a) **Fencing.** Each Owner shall maintain in a good condition of maintenance and repair all fencing that borders the Exclusive Use Yard Area (if any) appurtenant

to the Owner's Residential Unit except those portions that the Association is obligated to maintain pursuant to **Section 7.5.1(a)** above. Any such fencing that separates two Exclusive Use Yard Areas shall be maintained by the Owners of the Residential Units to which the Exclusive Use Yard Areas are appurtenant, with each Owner being obligated to maintain the interior surface (i.e., the surface facing the Owner's Exclusive Use Yard Area) and the Owners being obligated to share, on an equitable basis, the cost of replacing such fencing. The Owner of each Residential Unit that has appurtenant to it an Exclusive Use Yard Area on which a party fence is located shall have a reciprocal non-exclusive easement over, under, upon and across the Property immediately adjacent to the party fence for the limited purpose of maintaining the fence.

(b) **Porch Walls.** Each Owner of a Residential Unit to which an Exclusive Use Porch Area is appurtenant shall maintain the interior surface of any wall (other than a Residential Building wall) that borders the Exclusive Use Porch Area (i.e., the surface facing the Exclusive Use Porch Area).

**7.5.3 Liability for Damage.** Notwithstanding any other provision of this **Section 7.5**, an Owner who by his or her negligent or willful act causes a wall or fence in the Community to be damaged shall bear the whole cost of repairing such damage.

**7.6 City Requirements.** The provisions contained in this Section are included pursuant to the requirements of the City.

**7.6.1 Third Party Beneficiary.** Each Owner recognizes that the use, modification and proper maintenance of the Association Property is for the benefit of all citizens of the City and that the City is an intended third party beneficiary of these covenants, conditions and restrictions and may, upon notice of hearing as set forth below, exercise the same powers of enforcement as the Association.

**7.6.2 Breach of Association Maintenance Obligations.** The City may, by mail or personal delivery, give written notice to the Association of the breach by the Association of any Maintenance Obligation, setting forth with particularity the maintenance which the City finds to be required and a demand that such breach be remedied. A copy of such notice shall be sent by mail to each Owner. If the Association has not remedied such breach within thirty (30) days of the mailing or delivery of such notice, the City shall have standing and the right, but not the obligation, to bring a court action against the Association to enforce such provision. In addition, the City shall be entitled to recover reasonable attorneys' fees and costs incurred in such action. For purposes of this **Section 7.6**, the question of whether there has been a breach of a Maintenance Obligation or adequate maintenance shall be determined by the provisions of this Declaration as first recorded in the Official Records and by any amendment to this Declaration but only to the extent that such Maintenance Obligation or duty of maintenance is increased by such amendment.

**7.6.3 Hearing.** The notice given pursuant to **Section 7.6.2** may also contain a date for a hearing on the matter before a City employee designated by the City, which hearing shall be held no sooner than fifteen (15) days after mailing of such notice. If, after such hearing, the City determines that there has been inadequate maintenance, the City shall have the right, but not the obligation, to undertake the maintenance of the Association Property in question. In the

event the City has performed the necessary maintenance to Association Property, the City shall submit a written invoice to the Association for all costs incurred by the City to perform such maintenance and shall provide a copy of such invoice to each Owner, together with a statement that if the Association fails to pay such invoice in full within the time specified, the City will pursue collection against the Owners. Any and all costs incurred by the City in so maintaining the Association Property that are not paid when due shall be a lien against all of the Property and shall be the personal responsibility of the Owners and the Association.

**7.6.4 Project Approvals; City Approval of Changes.** The Community and all of the Property shall be subject to the conditions and restrictions of all subdivision and other project approvals by the City with respect to the Community. Any changes and/or modifications to the Community and/or any Residential Unit, including without limitation the exterior of any Residential Building, may be subject to review and approval by the City, as may be determined by review of the Community approvals by the City.

**7.6.5 Compliance With City Conditions of Approval.** It shall be the responsibility of each Owner to ensure that any changes or modifications to the Community or the Owner's Condominium are in compliance with the original City approval of the Community.

**7.6.6 Tree Preservation.** The trees on the Property originally required by the approved landscape plan on file with the City shall be preserved and maintained by the Owner of the Exclusive Use Yard Area if the tree is located in an Exclusive Use Yard Area, or by the Association if the tree is located outside any Exclusive Use Yard Area. No such tree shall be removed without the approval of the City's Director of Community Development.

**7.6.7 Amendment.** This Section 7.6 may not be amended without the prior written consent of the City's Director of Community Development. Nothing contained in this Section 7.6 shall limit any other right or remedy which the City may have under its ordinances or state law.

**7.7 No Alteration.** No Owner shall, at its expense or otherwise, make any alteration or modification to any bearing wall, ceiling, floor, other structural or utility bearing portion of any Residential Building or to any fence or wall enclosing any Exclusive Use Easement Area without the prior approval of the Board or Architectural Committee in accordance with **Article 8**. No Owner of a Residential Unit in a Residential Building that contains more than one Residential Unit shall alter, modify or pierce any demising wall without the prior approval of the Board or Architectural Committee in accordance with **Article 8**.

**7.8 Duty to Protect Against Mechanics' Liens.** In performing its obligations for maintenance as provided in this Declaration, the Association and each Owner (for the purposes of this Section, the "**Contracting Party**", as applicable) shall each promptly pay all costs, expenses, liabilities and liens arising out of or in any way connected with contracts for any service, labor or materials provided or supplied to the Property or the construction of any Improvements authorized or undertaken by the Contracting Party. A Contracting Party shall not cause or permit any mechanic's lien to be filed against the Property for labor or materials alleged to have been furnished or delivered to the Property or any Property by the Contracting Party. If any Contracting Party causes a lien to be filed, such Contracting Party shall: (a) immediately

either cause the lien to be discharged within ten (10) days after notice to such responsible party by the Contracting Party, or post a bond which protects the title of the affected Contracting Party to their Property; (b) indemnify, protect, defend and hold harmless the other Contracting Party, as applicable, from any loss, damage, liability, expense or claims whatsoever by reason of any lien which may be filed against the Property or the other Contracting Party, such Contracting Party's Property for such work or services performed or materials supplied by any architect, engineer or contractor with whom the Contracting Party has contracted or any other person acting directly or indirectly by, through or under such architect, engineer or contractor supplying services, labor, materials or equipment; and (c) pay all expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and costs of defending against the foregoing claims by another Owner and any costs of enforcing this indemnity prior to the defense thereof by the Contracting Party.

**7.9 Future Construction.** Nothing in this Declaration shall limit the right of Declarant to complete construction of Improvements to the Association Property and to Condominiums owned by Declarant or to alter them or to construct additional Improvements as Declarant deems advisable before completion and sale of the entire Community.

**7.10 Inspection of the Community.** The Association shall regularly inspect the Association Property and other areas maintained by the Association pursuant to this Declaration, including without limitation the landscaping, drainage and irrigation systems serving or within the such areas. The Association shall also comply with the requirements, including the inspection requirements, set forth in the Association Maintenance Manual. The Association shall also inspect for any misaligned sprinklers or blocked drainage systems which could cause water damage to the Community. The Association shall employ the services of such experts and consultants as are necessary to assist the Association in performing such inspections and follow any recommendations contained in the Association Maintenance Manual. The inspections required to be conducted by the Board under this Section shall take place as required under the Association Maintenance Manual. The inspectors shall provide written reports of their inspections to the Association and, if requested by the Declarant, to the Declarant promptly following completion thereof. If requested by Declarant, Declarant shall be invited to attend any such inspections. The written reports shall identify any items of maintenance or repair which either require current action by the Association or will need further review and analysis. Such written reports shall specifically include a review of all irrigation and drainage systems located within the Association Property. The Association shall report the contents of such written reports to Declarant (if not already provided by the inspector directly) so requested by Declarant and to the Members of the Association at the next meeting of the Members following receipt of such written reports or as soon thereafter as reasonably practicable and shall include such written reports in the minutes of the Association meeting. The Association shall promptly cause all matters identified as requiring attention to be maintained, repaired, or otherwise pursued in accordance with prudent business practices and the recommendations of the inspectors and shall keep a record of all such matters in the Board's minutes. Should such inspection require the inspection of any Residential Unit, there is hereby created a non-exclusive easement in favor of the Association, and its officers, agents, employees and independent contractors, to conduct such inspections and to provide such maintenance, repair and replacement, provided that entrance is made at reasonable hours and with at least three (3) days' advance notice to the Owner, except in case of emergency. Any damage to any structure, landscaping or other improvements caused by

the Association, or any of its officers, agents, employees or independent contractors, while performing such maintenance, repair or replacement work shall be repaired by the Association at its sole cost and expense.

## ARTICLE 8 ARCHITECTURAL REVIEW

**8.1 Non-Applicability to Declarant.** The provisions of this Article shall not apply to any Improvements installed by Declarant, and neither the Board nor any Architectural Committee shall have any rights of review or approval with respect thereto.

**8.2 Scope of Architectural Review.** No Improvements of any kind whatsoever shall be commenced, erected, placed or altered upon or around any Residential Unit or any Exclusive Use Easement Area until the Owner has submitted to the Board complete plans and specifications showing the nature, kind, shape, height and materials, including the color and any other requirements set forth in the Architectural Guidelines (“**Plans and Specifications**”) and the Plans and Specifications have been approved in writing as to Artisan of external design and location to surrounding structures and topography by the Board. In addition, the grade, level or drainage characteristics of the Residential Unit, Exclusive Use Easement Area or any portion thereof shall not be altered without the prior written consent of the Board. A Owner shall also be obligated to obtain any approvals required by the City or other Governmental Agencies.

**8.3 Architectural Guidelines.** The Board may, from time to time and in accordance with Civil Code Section 1357.120, *et seq.*, adopt, amend and repeal, by unanimous vote, rules and regulations to be known as “Architectural Guidelines.” The Architectural Guidelines shall interpret and implement the provisions hereof by setting forth the standards and procedures for Board review and guidelines for architectural design of Improvements, placement of Improvements, color schemes, exterior finishes and materials and similar features which are recommended for use in the Community; provided, however, that said Architectural Guidelines shall not be in derogation of the standards required by this Declaration. The Architectural Guidelines shall comply with all Applicable Laws, including without limitation Sections 1353.7 and 1353.8 of the California Civil Code.

**8.4 Approval.** Prior to installing any Improvements or taking other action that requires the prior approval of the Association pursuant to this Declaration, the applicant shall submit a complete set of Plans and Specifications, any review fee required pursuant to the Architectural Guidelines and any other materials required by the Board, including evidence satisfactory to the Board that the proposed Improvements are acceptable under the terms of this Declaration and the Architectural Guidelines and that they comply with all Applicable Laws (“**Application**”).

**8.4.1 Time Periods for Review.** Within forty-five (45) days after an Owner’s proper application for approval, the Board shall consider and act upon such request. In the event the Board fails to approve or disapprove the Application within forty-five (45) days after all document fees and information requested by the Board have been received by it, the Owner requesting said approval may submit a written notice to the Board advising the same of its failure to act. If the Board fails to approve or disapprove any such Application within fifteen (15) days

after the receipt of said notice from such said Application shall be deemed approved, provided that any Improvements conform to all conditions and restrictions contained in this Article and are in Artisan with similar structures erected within the Community. In granting or denying approval, the Board may give the Owner such directions concerning the form and substance of the final application for approval as it may deem proper or desirable for the guidance of the Owner.

**8.4.2 Effectiveness of Final Approval.** The approval shall be effective for twelve (12) months from the date of issuance. In the event construction does not commence within such twelve (12) month period, the approval shall be deemed to have expired and a new approval pursuant to the provisions of this **Article 8** must be obtained.

**8.4.3 Approval of Solar Energy Systems.** Any Owner proposing to install or use a solar energy system, as defined in Civil Code Section 801.5 shall be subject to the same review and approval process as any Owner proposing to construct any Improvements or other actions requiring the approval of the Board pursuant to this Declaration. However, only reasonable restrictions on the installation and use of a solar energy system shall be permitted. Reasonable restrictions on a solar energy system are those restrictions that do not significantly increase the cost of the system or significantly decrease its sufficiency or specified performance, or which allow for an alternative system of comparable costs, efficiency, and energy conservation benefits.

**8.4.4 Approval of Modifications to Accommodate Disabled Owners.** Any Owner proposing to install Improvements or make modifications to such Owner's Condominium or the Association Property leading to such Owner's Residential Unit to facilitate access for persons who are blind, visually handicapped, deaf or partially disabled, or to other conditions which could be hazardous to such persons shall be subject to the same review and approval requirements as any Owner proposing to construct Improvements or other actions requiring approval of the Board pursuant to this Declaration; provided, however, that the Board shall not deny approval of the proposed modifications without good cause.

**8.4.5 Compliance With California Civil Code Section 1378.** In approving Plans and Specifications submitted to it pursuant to this **Article 8**, the Association shall comply with the requirements of California Civil Code Section 1378.

**8.5 Inspection and Correction of Work.** Inspection of work and correction of deficiencies therein shall proceed as set forth below.

**8.5.1 Right of Inspection During Course of Construction.** The Association or any of its duly authorized representatives may enter into any Residential Unit, from time to time, as provided below during the course of construction or installation of any Improvements for the purpose of inspecting such construction and/or installation. If the Board determines that such construction and/or installation is not being done in substantial compliance with the approved Plans and Specifications, it shall notify the Owner of such non-compliance. The Board may not enter into a Residential Unit without obtaining the prior permission of the Owner or Occupant of such Residential Unit; provided, however, that such prior permission shall not be

unreasonably withheld and shall be given for entry by the Board during daylight hours within forty-eight (48) hours of the request for entry.

**8.5.2 Notice of Completion.** Upon completion of any Improvements for which approved Plans and Specifications are required under this Article, the Owner shall give written notice of completion thereof to the Association.

**8.5.3 Inspection.** Within thirty (30) days after receiving notice of completion, the Board, or its duly authorized representative, shall have the right to enter into a Residential Unit, as provided in **Section 8.5.1** above, to inspect such Improvements to determine whether they were constructed, reconstructed or installed in substantial compliance with the approved Plans and Specifications. If the Board finds that such construction or installation, was not done in substantial compliance with the approved Plans and Specifications, it shall notify the Owner in writing of such non-compliance within such thirty (30) day period, specifying particulars of non-compliance, and shall require the Owner to remedy such non-compliance.

**8.5.4 Non-Compliance.** If an Owner fails to remedy such non-compliance within thirty (30) days after the date of notification of non-compliance, the Board, after affording such Owner Notice and Hearing, shall determine whether there is non-compliance, and if so, the nature thereof and the estimated cost of correcting or removing the same. If non-compliance exists, the Board shall require the Owner to remedy or remove the same within a period of not more than thirty (30) days from the date of the Board ruling. If the Owner does not comply with the Board ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board, at its option, may either remove the non-complying Improvement or remedy the non-compliance and the Owner shall reimburse the Association for all expenses incurred in connection therewith upon demand. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy an Reimbursement Assessment against such Owner for reimbursement.

**8.5.5 Failure to Notify.** If for any reason the Board fails to notify the Owner of any non-compliance within sixty (60) days after receipt of the notice of completion from the Owner, the Improvements shall be deemed to be in accordance with said approved Plans and Specifications.

**8.6 Government Regulations.** If there is any conflict between the requirements or actions of the Board and the Applicable Laws relating to the Property, to the extent that such Applicable Laws are more restrictive, shall control, and the Board shall modify its requirements or actions to conform to the government regulations, ordinances or rules; provided, however, that if the Applicable Laws are less restrictive, the provisions of this Declaration shall nonetheless apply. The application to and the review and approval by the Board of any Plans and Specifications or other submittals by an Owner shall in no way be deemed to be satisfaction or compliance with any building permit process or other Applicable Laws or public utility requirements (hereinafter collectively referred to as “**Additional Requirements**”) the responsibility for which shall lie solely with the Owner; provided, however, if the Additional Requirements are less restrictive than the provisions of this Declaration, the provisions of this Declaration shall nonetheless apply.

**8.7 Diligence in Construction.** Upon approval by the Board of any Plans and Specifications, the Owner shall promptly commence construction of the Improvements and diligently pursue the same to completion.

**8.8 Fee for Review.** The Board shall have the right to establish a fee for the review and approval of Plans and Specifications that must be submitted to the Board pursuant to the provisions of this Article. The Board shall have the right to hire an engineer or other consultant, the opinion of which the Board deems necessary in connection with its review of any plans submitted by any Owner and such Owner shall be liable for payment of such engineer's and/or consultant's fee.

**8.9 Interpretation.** All questions of interpretation or construction of any of the terms or conditions herein shall be resolved by the Board, and its decision shall be final, binding and conclusive on all of the parties affected. Notwithstanding the foregoing, in the event an Architectural Committee is appointed and the Architectural Committee disapproves any Plans and Specifications submitted by an Owner pursuant to this Article, the party or parties making such submission may appeal in writing to the Board. The Board must receive the written request for approval not more than thirty (30) days following the final decision of the Architectural Committee. Within thirty (30) days following receipt of the written request for appeal, the Board shall render its written decision. The failure of the Board to render a decision within the thirty (30) day period shall be deemed a decision against the Owner.

**8.10 Waiver.** The approval by the Board of any Plans and Specifications for any work done or proposed, or for any other matter requiring the approval of the Board under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar Plans and Specifications or matter subsequently submitted for approval.

**8.11 Estoppel Certificate.** Within thirty (30) days after written demand is delivered to the Association by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Association), the Board shall issue an estoppel certificate approved by a majority of its members and executed by two officers of the Association stating (with respect to the Condominium owned by said Owner) that, as of the date thereof, either: (a) all Improvements made and other work completed comply with this Declaration, or (b) such Improvements or work do not so comply, in which event the certificate shall also identify the non-complying Improvements or work and set forth with particularity the basis of such non-compliance. Any purchaser from the Owner, or from anyone deriving any interest in said Condominium through the Owner, shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, Declarant and all Owners and such Persons deriving any interest through them.

**8.12 Liability.** Neither the Board, any Architectural Committee nor any member thereof shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any Plans and Specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved Plans and Specifications; (c) damage to the Community or any property within the Community; or (d) the execution and filing of an estoppel certificate pursuant to **Section 8.11** whether or not the facts therein are correct, provided, however, that

such Board or Architectural Committee member has acted in good faith on the basis of such information as may be possessed by him or her. Without in any way limiting the generality of the foregoing, the Board or Architectural Committee, as the case may be, or any member thereof, may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any Plans and Specifications or any other proposal submitted to the Board or Architectural Committee, as the case may be.

**8.13 Variances.** The Association may authorize variances from compliance with any of the architectural provisions of this Declaration, including, without limitation, restrictions upon height, size, floor area or placement of Improvements or other similar restrictions, when circumstances such as topography, natural obstructions, aesthetic or environmental considerations may require. Such variances may be evidenced in writing, must be approved by a majority of the Board and signed by two (2) officers of the Association and shall become effective upon execution. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular Residential Unit and the particular provision hereof covered by the variance, nor shall it affect in anyway the Owner's obligation to comply with all Applicable Laws affecting its use of the Residential Unit, including, without limitation, zoning ordinances or other requirements imposed by the City or any other Governmental Agencies.

**8.14 Appointment of Architectural Committee.** The Board shall have the right to delegate its review and approval rights under this **Article 8** to an Architectural Committee. If the Board so elects, the Architectural Committee shall consist of a minimum of three (3) members and a maximum of five (5) members. One (1) alternate member may be designated by the Board to act as a substitute on the Architectural Committee in the event of absence or disability of any member. In the event the Board appoints an Architectural Committee, all rights hereunder shall apply to the Architectural Committee and all references to the Board shall be deemed to refer to the Architectural Committee. In addition to the foregoing, the Board and/or the Architectural Committee shall have the right, but not the obligation, to assign a professional within the architecture field to work in conjunction with the Architectural Committee and/or Board in the approval of Plans and Specifications.

**8.15 Compensation.** The members of any Architectural Committee appointed by the Board shall receive no compensation for services rendered, other than reimbursement by the Association for expenses incurred by them in the performance of their duties hereunder, unless the Association retains a professional architect, engineer or designer as a member of the Architectural Committee for the purpose of providing professional services, in which event reasonable compensation for such member shall be approved by the Board.

**8.16 Amendments.** Notwithstanding the provisions of **Article 13**, no amendment, verification or rescission of this Article may be made, nor shall Declarant, or any successor thereof, be prohibited from completing the construction of the Community prior to the conveyance by Declarant, or its successor, of the last Condominium without the (a) written consent of Declarant, and the (b) recording of such consent in the Official Records.

## ARTICLE 9 DEVELOPMENT RIGHTS

**9.1 Limitations of Restrictions.** Declarant is undertaking the work of developing Condominiums and other Improvements within the Community. The completion of the development work and the marketing and sale, rental and other disposition of the Condominiums are essential to the establishment and marketing of the Property as a first-class residential community. In order that the work may be completed, nothing in this Declaration shall be interpreted to deny Declarant the rights set forth in this Article.

**9.1.1 Access.** Declarant, its agents, contractors and subcontractors shall have the right to obtain reasonable access over and across the Association Property or to do within any Residential Unit owned by it whatever is reasonably necessary or advisable in connection with the completion of the Community and the development, marketing and maintenance thereof, and Declarant and its contractors and subcontractors shall have such rights of access over and across the Association Property for purposes of satisfying any obligation of Declarant that Declarant has secured by a bond in favor of the City or other Governmental Agency. Declarant shall have the right to keep any gate to the Community open during the construction, sale, and marketing of the Community.

**9.1.2 Construct Improvements.** Declarant, its agents, contractors and subcontractors shall have the right to erect, construct and maintain on the Association Property or within any Residential Unit owned by it such structures or Improvements, including without limitation sales offices and signs, as may be reasonably necessary for the conduct of its business to complete the work, establish the Community as a residential community and dispose of interests in the Community by sale, lease or otherwise, as determined by Declarant in its sole discretion and to perform or complete any work to improvements required for Declarant to obtain a release of any bonds posted by Declarant with the City.

**9.1.3 Grant Easements.** Declarant shall have the right to establish and/or grant on, over, under and across the Common Area and Association Property such easements and rights of way for the benefit of the State of California, the City, the County or any other political subdivision or public organization, or any public utility entity or cable television provider, for the purpose of constructing, erecting, operating and maintaining Improvements thereon, therein or thereunder at that time or at any time in the future, including: (a) roads, streets, walks, driveways, trails, parkways and park areas; (b) poles, wires and conduits for transmission of electricity, providing telephone service and cable television service to the Community and for the necessary attachments in connection therewith; and (c) public and private sewers, sewage disposal systems, storm water drains, land drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any and all related equipment. The Common Area and Association Property shall be subject to any dedication stated in a Condominium Plan or on a Final Map for the Community of an easement for public use for installation, maintenance and operation of facilities for public utilities over all of the Common Area and Association Property. Said public utilities easement shall inure and run to all franchised utility companies and to the City, the County and the State and such utility companies to properly install, maintain, repair, replace and otherwise service such Utility Facilities. The grant of said public utility easement shall not be interpreted to imply any obligation or responsibility of any such utility company or

the City, the County or the State for maintenance or operation of any of the Common Area and Association Property or the facilities located thereon or the repair, replacement or reconstruction thereof except for those Improvements owned by the utility companies or the City, the County, or the State, and except as occasioned by the negligence or willful misconduct of the utility companies or the City or the County of the Utility Facilities for which they are responsible. Except for lawful and proper fences, structures and facilities placed upon the Association Property by utility companies, the Association Property that is subject to a public utility easement shall be kept open and free from buildings and structures. The City and County are furthermore granted a non-exclusive easement across the Association Property, including the Private Streets, for ingress and egress for use by emergency vehicles of the City or County.

**9.1.4 Use of Association Property Facilities.** Declarant shall have the right to reasonably use any facilities within the Association Property for promotional and other marketing activities, and Declarant shall have the right to reasonably display or show any facilities to prospective purchasers.

**9.2 Size and Appearance of Community.** Declarant shall not be prevented from increasing or decreasing the number of Condominiums in the Community or from changing the exterior appearance of Association Property structures, the landscaping or any other matter directly or indirectly connected with the Community in any manner deemed desirable by Declarant, if Declarant obtains governmental consents required by law.

**9.3 Marketing Rights.**

**9.3.1 General Rights.** Subject to the limitations set forth in this Declaration, Declarant shall have the right to: (a) maintain model homes, sales offices, customer service offices, storage areas and related facilities in any unsold Condominium or Association Property as are necessary or reasonable, in the opinion of Declarant, for the sale or disposition of the Condominiums; (b) make reasonable use of the Association Property and facilities for the sale of Condominiums; (c) post signs, flags and banners, billboards, balloons and banners and other advertising and promotional devices which Declarant may, in its sole discretion, deem appropriate in connection with its marketing and/or development of any portions of the Community ; and (d) conduct its business of disposing of Condominiums by sale, lease or otherwise. Declarant shall repair any portion of the Association Property that is damaged by Declarant.

**9.3.2 Agreement for Extended Use.** If Declarant requires exclusive use of any portion of the Association Property for marketing purposes following the fifth (5th) anniversary of the original issuance of a Public Report for the most recent Phase, Declarant may use the Association Property only if an agreement is entered into between Declarant and the Association. The agreement must specifically provide for a limited duration for such use and must provide for a specific reasonable rate of compensation to the Association by Declarant. Compensation shall be commensurate with the nature, extent and duration of the use proposed by Declarant. In no event, however, shall Declarant be denied the rights to use the Association Property or any Condominium owned by Declarant as an Owner.

**9.4 Alterations to Map.** At any time within three (3) years from the date that the first Condominium in a Phase is conveyed to an Owner other than Declarant, the boundaries of

any Residential Unit, Common Area or Association Property in that Phase may be altered by a lot line adjustment or other change reflected on a subsequently recorded Record of Survey, parcel map, final map or amended final map, provided that the altered boundaries are approved by Declarant and all owners of the Property involved in the boundary adjustment (the Board, with respect to property owned by the Association). Any alteration approved by Declarant may make minor changes to the number of Condominiums in the Community. An alteration shall be effective upon recordation of the Record of Survey or map and, upon such recordation, the boundaries of the altered Common Area or Association Property shall be altered for purposes of this Declaration to conform to the boundaries as shown on the Record of Survey or map.

**9.5 Title Rights.** The rights of Declarant under this Declaration may be assigned to any successor(s) by an express assignment in a recorded instrument, including without limitation, a deed, option or lease. This Declaration shall not be construed to limit the right of Declarant at any time prior to such an assignment to establish additional licenses, reservations and rights-of-way to itself, to utility companies, to the City, to the County, to the State, or to others as may be reasonably necessary to the proper development and disposal of property owned by Declarant.

**9.6 Power of Attorney.** Each Owner, by accepting a deed to a Condominium, shall be deemed to have irrevocably appointed Declarant, for so long as Declarant owns all or any portion of the Property, as its Attorney-in-Fact, for itself and each of its Mortgagees, optionees, grantees, licensees, trustees, receivers, Lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, and thereby to have conveyed a Power of Attorney coupled with an interest to Declarant as its Attorney-in-Fact to prepare, execute, acknowledge and record any parcel map, final map, amended final map, Condominium Plan or amendment to a Condominium Plan for all or any portion of the Property, regardless of whether Declarant owns any interest in the property which is the subject of such parcel map, final map, amended final map, Condominium Plan or amendment to Condominium Plan. However, nothing herein shall be deemed or construed as an agreement by Declarant that any Owner shall be entitled to any participation in or discretion over the preparation and recordation of a parcel map, final map, amended final map, Condominium Plan or amendment to a Condominium Plan for all or any portion of the Property. The acceptance or creation of any Mortgage or other encumbrance, whether or not voluntary, created in good faith, or given for value, shall be deemed to be accepted or created subject to each of the terms and conditions of the Power of Attorney described in this Section.

**9.7 Supplementary Condominium Plans and Supplementary Declarations.** So long as Declarant owns any portion of the Property, Supplementary Declarations and Supplementary Condominium Plans may be recorded by Declarant, without the consent of any Owner, for any of the purposes for which a Supplementary Condominium Plan or a Supplementary Declaration may be recorded.

**9.8 De-Annexation.** Declarant may delete all or any portion of the Property from the coverage of this Declaration, provided that (a) Declarant is the sole Owner of all of the real property to be de-annexed or obtains the consent of the fee title Owner of the real property to be de-annexed, (b) Declarant has not exercised any Association vote as an Owner of any portion of the real property to be de-annexed, and (c) assessments have not commenced with respect to any

portion of the real property to be de-annexed. Such deletion shall be effective upon the recordation of a written instrument signed by Declarant, in the same manner as a Supplementary Declaration.

**9.9 Amendment.** The provisions of this Article may not be amended without the consent of Declarant until all of the Condominiums in the Community owned by Declarant have been conveyed.

## **ARTICLE 10 INSURANCE**

### **10.1 Association's Insurance Obligations.**

**10.1.1 Liability Insurance.** The Association shall obtain and maintain liability insurance providing coverage at least as broad as a current Insurance Services Office, Inc. ("ISO") commercial general liability insurance form or its equivalent (including coverage for medical payments and coverage for owned and non-owned automobiles, if applicable), insuring the Association, the Declarant (as long as Declarant is the owner of any portion of the Property and/or has any rights under **Article 9** of this Declaration) and the Owners against liability arising from the Ownership, operation, maintenance and use of the Association Property by the Association and the performance by the Association of its duties under this Declaration. Coverage for such matters shall be primary to any coverage provided by any other liability insurance policy maintained by such insureds. The limits of such insurance shall not be less than Two Million Dollars (\$2,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate and shall at all times meet or exceed the minimum requirements of Section 1365.9 of the California Civil Code. Such insurance shall include coverage against water damage liability, a broad form named insured endorsement, if reasonably available as determined by the Board, and may include coverage against any other liability customarily covered with respect to properties similar in construction, location and use, all as may be determined by the Board. Such policy shall include, if reasonably available as determined by the Board, a cross-liability or severability or interest endorsement insuring each insured against liability to each other insured.

**10.1.2 Property Insurance.** The Association shall obtain and maintain property insurance for the risks covered by, and providing coverage at least as broad as, a current ISO "special form" policy or its equivalent, insuring (a) all Improvements upon, within or comprising the Association Property and any other areas to be maintained, repaired or replaced by the Association, including fixtures and building service equipment which are part thereof, (b) all personal property owned or maintained by the Association, and (c) any items required to be included under **Subsection 10.1.2(c)** below (collectively, the "**Association Insured Property**"). Such insurance shall be maintained in the amount of the maximum insurable replacement value of the property to be insured thereunder, as determined annually by the Board. Such coverage may exclude land, foundations, excavations, and other items typically excluded from property insurance coverage on properties similar in construction, location and use. The maximum deductible amount for such coverage shall not exceed the maximum deductible allowed by FNMA and/or FHA/VA.

(a) **Course of Construction.** Whenever any Improvements or alterations to the Association Insured Property are in the course of construction, the insurance required under this Section, to the extent appropriate, as determined by the Association, shall be carried by the Association in builder's risk form written on a completed value basis, insuring against loss to the extent of at least the full replacement value of the Association Insured Property (excluding foundations and footings, except for earthquake coverage) of that which is being covered.

(b) **Business Interruption.** Such insurance shall cover, if reasonably available as determined by the Board, loss of rents or income to the Association from any source including Assessments, as well as extra expenses, expediting expenses, and continuing fixed expenses.

(c) **Condominiums.** The property insurance maintained by the Association shall also cover any portions of the Condominiums not required to be insured by the Owners pursuant to **Section 10.2.1**, including without limitation the following items and components installed by Declarant within Residential Units at the time of original construction of the Residential Units (and any equivalent replacements thereof): fixtures, interior walls and doors, ceiling, floor and wall surface materials (e.g. paint, wallpaper, mirrors, carpets, and hardwood floors); cabinets, built-in appliances; heating and air conditioning systems, and water heaters.

(d) **Payment of Insurance Proceeds.** Subject to the rights of Mortgagees, the proceeds from such property insurance shall be payable to the Association or an insurance trustee ("Trustee") to be held in trust and expended for the benefit of the Association and the Owners, Mortgagees and others, as their respective interests shall appear. The Trustee shall be a commercial bank or other financial institution with trust powers in the county in which the Community is located that agrees in writing to accept such trust. If restoration is authorized, the Association will have the duty to contract for such work as provided in this Declaration.

(e) **Earthquake Insurance.** **EARTHQUAKE INSURANCE IS NOT INCLUDED IN THE BUDGET AND IS NOT BEING OBTAINED BY DECLARANT FOR THE BENEFIT OF THE OWNERS OR THE ASSOCIATION. NEITHER DECLARANT NOR THE ASSOCIATION IS OBLIGATED TO MAINTAIN EARTHQUAKE INSURANCE ON THE ASSOCIATION PROPERTY OR ANY PORTION THEREOF.** Declarant or any Owner (and/or their respective lenders) may maintain earthquake insurance on their own benefit, but the premiums therefor may not be included by Declarant or the Association as Common Expenses. Notwithstanding the foregoing, at such time as the Board is no longer controlled by Declarant, the Association may, in its discretion (but without any obligation to do so), obtain earthquake insurance from time to time on those portions of the Community that are to be insured by the Association as provided above in this Declaration, and if so obtained, the premiums for such insurance may be included in the Common Expenses. Earthquake insurance is typically very expensive and if purchased by the Association a material increase in Assessments may be required to cover the additional cost of such insurance.

(f) **Primary.** With respect to Association Insured Property, the property insurance maintained by the Association shall be primary and noncontributing with any other property insurance maintained by an Owner covering the same loss.

(g) **Endorsements.** The property insurance policy shall contain, to the extent available on commercially reasonable terms as may be determined by the Board, the following endorsements or their equivalents: agreed amount, boiler and machinery (to the extent applicable), inflation guard, ordinance or law, replacement cost, pollution claims (including mold), and such other endorsements as may customarily be obtained with respect to properties similar in construction, location and use, as may be determined by the Board.

(h) **Adjustment of Losses.** The Association shall timely file, pursue and complete the adjustment of all claims arising under the property insurance policies carried by the Association. The Board is appointed attorney-in-fact by each Owner (except for the Secretary, U.S. Department of Veterans Affairs), to negotiate and agree on the value and extent of any property damage under any policy carried by the Association. The Board is granted full right and authority to compromise and settle any property damage claim under any policy of property insurance carried by the Association or enforce any such claim by legal action or otherwise and to execute releases in favor of any insurer with respect to any such claim.

(i) **Waiver of Claims and Subrogation.** The Association waives all claims against the Owners for any damage to the Association Insured Property (including without limitation, any loss of use of such property), except to the extent that such damage is not covered by the property insurance required by this Declaration to be maintained by the Association or the property insurance actually maintained by the Association (whichever is greater), and such damage is caused by the gross negligence or willful misconduct of an Owner. All rights of subrogation between the Association's insurer and the Owners are waived. The insurance policies obtained by the Association shall include a waiver of all subrogation rights of the Association's insurer against Owners; provided, however, that any failure to obtain such a waiver from the insurer shall not defeat or impair the foregoing waiver between the Association and the Owners set forth herein. If an Owner is liable for damage under this Section, the Association may, after Notice and Hearing, levy a Reimbursement Assessment equal to the cost of repairing the damage, and the increase, if any, in insurance premiums directly attributable to such damage.

**10.1.3 Fidelity Bond.** The Association shall maintain a commercial crime policy or a fidelity bond in an amount equal to the greater of (a) the estimated maximum amount of funds, including reserves, expected to be regularly held by or on behalf of the Association or a managing agent at any given time during the term of the fidelity bond; and (b) three (3) months' aggregate of the Regular Assessments on all Residential Units plus any reserve funds. If the Association maintains a bond, the bond shall name the Association as obligee and if the Association maintains insurance, the policy shall name the Association as the insured and shall insure against loss by reason of the acts of the employees of the Association, and any managing agent and its employees, whether or not such persons are compensated for their services.

**10.1.4 Worker's Compensation Insurance.** The Association shall maintain worker's compensation insurance to the extent necessary to comply with all applicable laws.

**10.1.5 Directors and Officers Insurance.** The Association shall maintain a policy insuring the Association's officers and directors against liability for their acts or omissions while acting in their capacity as officers and directors of the Association. The limits of such insurance shall be not less than One Million Dollars (\$1,000,000) and shall at all times meet or exceed the minimum requirements of Section 1365.7 of the California Civil Code.

**10.1.6 General Policy Requirements.** All insurance policies the Association is required to obtain pursuant to this Article shall be placed and maintained with companies rated at least "A-/VII" by A.M. Best Insurance Service and otherwise reasonably satisfactory to the Association. If an A.M. Best Insurance Service rating is not available, a comparable rating service may be used. Such insurance policies may have reasonable deductible amounts comparable to those customarily maintained with respect to properties similar in construction, location and use, as may be determined by the Board. The coverage amounts required for such insurance policies may be satisfied by any combination of primary and excess policies that collectively serve to satisfy the requirements of this Article.

**10.1.7 Copies of Policies.** Copies of all insurance policies of the Association shall be retained by the Association and available for inspection by Owners at reasonable times. All such insurance policies shall provide that they shall not be cancelable or substantially modified by the insurer without first giving at least thirty (30) days' prior notice in writing to the Association, Owners and First Mortgagees, except that ten (10) days' prior written notice shall be required if the cancellation is for non-payment of premiums. In addition to the foregoing, the Association shall provide to the Owners such information regarding the insurance of the Association as may be required by Applicable Law or under the Bylaws.

**10.1.8 Compliance with Federal Regulations.** Notwithstanding any other provisions contained herein, the Association shall continuously maintain in effect such insurance and a fidelity bond meeting the minimum insurance and fidelity bond requirements for condominium and planned development communities established by FNMA, FHLMC, GNMA, VA and FHA, or any successor to those entities, so long as any of the above is a Mortgagee, insurer, guarantor or an Owner of a Condominium, except to the extent such coverage is not available or has been waived in writing by the FNMA, FHLMC, GNMA, VA and FHA, as applicable. If the FNMA and FHLMC requirements conflict, the more stringent requirements shall be met.

**10.2 Owners' Insurance Obligations.** Each Owner is strongly advised to seek the advice of a qualified insurance consultant regarding (a) the amount of property insurance the Owner should procure for casualty losses to property not covered under the Association's property insurance policy; and (b) the amount of personal liability insurance coverage the Owner should maintain.

**10.2.1 Property Insurance.** Each Owner shall be responsible, at its sole cost and expense, for insuring against loss to the following: (a) all personal property located in the Owner's Residential Unit or Exclusive Use Easement Area; (b) all fixtures and Utility Facilities (including lighting and plumbing fixtures) solely serving the Owner's Condominium; (c) wall and floor surface materials (e.g., paint, wallpaper, mirrors, carpets and hardwood, tile or stone floors) within the Owner's Residential Unit; (d) all interior doors in the Residential Unit; (e) all

cabinets and appliances located within the Owner's Residential Unit; and (f) any other Improvements installed by the Owner in the Owner's Condominium. No Owner shall separately insure any property covered by the Association's property insurance policy.

**10.2.2 Waiver of Claims and Subrogation.** Each Owner waives all claims against the Association for any damage to the real and personal property that such Owner is obligated under this Declaration to insure (including without limitation any loss of use of such property), except that an Owner may claim against the Association for property damage to the extent that the damage is caused by the gross negligence or willful misconduct of the Association or its managing agent. Any property insurance policy obtained by an Owner must contain a waiver of subrogation rights by the insurer consistent with this Section; provided, however, that the failure or inability of an Owner to obtain such a waiver from an insurer shall not defeat or impair the waivers between the Owners and the Association set forth herein. The waivers of claims and subrogation set forth in this Subsection apply only in favor of the Association and do not limit or waive, release or discharge any claims that an Owner (or its insurers) may have against any third party, including without limitation any contractor, service provider, agent, other Owner, or Invitee; provided, that such waivers shall also apply in favor of the Association's managing agent if and to the extent that the Association has similarly agreed in a written management agreement to a waiver of claims and subrogation against such managing agent.

**10.2.3 Liability Insurance.** Each Owner shall, at such Owner's sole cost and expense maintain liability insurance providing coverage at least as broad as the current ISO commercial general liability insurance form or its equivalent (including coverage for medical payments), insuring the Owner against liability arising from the ownership, operation, maintenance and use of the Owner's Residential Unit and Exclusive Use Easement Area by such Owner. Liability insurance maintained by Owners shall have limits of liability of not less than Three Hundred Thousand Dollars (\$300,000) per occurrence and Three Hundred Thousand Dollars (\$300,000) general aggregate.

**10.3 Copies of Policies.** The Association shall have the right, but not the obligation, to request copies of any insurance policy a certificate of such insurance which an Owner is required to maintain pursuant to this Declaration, and in such case, the Owner shall deliver a copy to the Association within fifteen (15) days of request. All policies shall indicate they may not be canceled or modified without thirty (30) days' prior written notice to the Association, except that ten (10) days' prior written notice shall be required if the cancellation is for non-payment of premiums. The acceptance of a copy of an insurance policy by the Association from an Owner shall not constitute a waiver of any of the insurance requirements set forth herein.

**10.4 General Policy Requirements.** All insurance policies the Owners are required to obtain pursuant to this Article shall be placed and maintained with companies rated at least "B/VII" by A.M. Best Insurance Service and otherwise reasonably satisfactory to the Association. The coverage types and amounts required for such insurance may be satisfied by any combination of primary and excess policies that collectively serve to satisfy the requirements of this Article, including without limitation condominium unit Owners' policy forms that provide both property damage and liability insurance coverage under one policy.

**10.5 Review of Insurance.** The Board shall review the adequacy of all insurance required by this Declaration to be maintained by the Association and by the Owners at least once every year. The review shall include a reasonable determination of the replacement cost of all Association Insured Property without respect to depreciation.

**10.6 Board's Authority to Revise Insurance Requirements.** Subject to any statutory insurance requirements, the Board shall have the power and right to adjust and modify the insurance requirements for Owners and the Association set forth herein to require coverage and protection that is customarily carried by and reasonably available to prudent Owners and associations of Communities similar in construction, location and use. If the Board elects to materially reduce the coverage required to be maintained by the Association from the coverage required in this Article, the Board shall make all reasonable efforts to notify the Owners and Mortgagees of the reduction in coverage and the reasons therefor at least thirty (30) days prior to the effective date of the reduction. The Association and its directors and officers, and the Owners shall have no liability to each other or to any Mortgagee and shall not be in breach of their obligations hereunder, if after a good faith effort, the Association or Owner is unable to obtain one or more of the insurance coverages required hereunder to the extent the insurance is no longer available, or, if available, the insurance can be obtained only at a cost that the Board, in its sole discretion, determines is unreasonable under the circumstances, or in the case of insurance required to be maintained by the Association, if the Owners fail to approve any assessment increase needed to fund the insurance premiums.

## **ARTICLE 11 DESTRUCTION OF IMPROVEMENTS; CONDEMNATION**

**11.1 Restoration Defined.** As used in this Article 12, the term "restore" or "restoration" shall mean repairing, rebuilding or reconstructing damaged Improvements to substantially the same condition and appearance in which they existed prior to fire or other casualty damage.

### **11.2 Restoration Proceeds for Association Property.**

**11.2.1 Sufficient Proceeds.** The costs of restoration of the damaged Improvement shall be paid first from any insurance proceeds paid to the Association under existing insurance policies. If the insurance proceeds exceed the costs of restoration, the excess proceeds shall be paid into reserves and held for the benefit of the Association. If the insurance proceeds are insufficient to restore the damaged Improvement, the Board shall then add to the insurance proceeds all reserve account funds designated for the repair or replacement of the damaged Improvement. If the total funds then available are sufficient to restore the damaged Improvement, the Improvement shall be restored. If the aggregate amount of insurance proceeds and such reserve account funds are insufficient to restore the damaged Improves, and if such claims are not waived, the Association shall determine whether to levy an Reimbursement Assessment against any Owner or Owners who caused such damage in accordance with **Section 10.1.2(i)**. If the aggregate amount of insurance proceeds and such reserve account funds are insufficient to pay the total costs of restoration, a Special Assessment against all Owners shall be levied by the Board up to the maximum amount permitted without the approval of the Members in accordance with the limitations set forth in this Declaration and by law. If the total

funds then available are sufficient to restore the damaged Improvement, the Improvement shall be restored.

**11.2.2 Insufficient Proceeds.** If the total funds available to the Association are still insufficient to restore the damaged Improvement, then the Board first shall attempt to impose an additional Special Assessment pursuant to **Subsection 11.2.2(a)** below, and second to use a plan of alternative reconstruction pursuant to **Subsection 11.2.2(b)** below. If the Members do not approve such actions, then the entire building of which the damaged Improvement is a part shall be sold pursuant to **Subsection 11.2.2(c)** below.

(a) **Additional Special Assessment.** If the total funds available to restore the damaged Improvement as provided in **Section 11.2.1** are insufficient, then a meeting of the Members shall be called for the purpose of approving a Special Assessment to make up all or a part of the deficiency (“**Additional Special Assessment**”). If the amount of the Additional Special Assessment approved by the Members, and the amounts available pursuant to **Section 11.2.1** above, are insufficient to restore the damaged Improvement, or if no Additional Special Assessment is approved, the Association shall consider a plan of alternative reconstruction in accordance with **Subsection 11.2.2(b)**.

(b) **Alternative Reconstruction.** The Board shall consider and propose plans to reconstruct the damaged Improvement making use of whatever funds are available to it pursuant to **Section 11.2.1** and **Subsection 11.2.2(a)** above (“**Alternative Reconstruction**”). All proposals shall be presented to the Owners. If two-thirds of the Voting Power of the Owners whose Residential Units were materially damaged, as determined by the Association (“**Affected Owners**”) and a majority of the Voting Power of the Members, including the Affected Owners, agree to any plan of Alternative Reconstruction, then the Board shall contract for the reconstruction of the damaged Improvement in accordance with the plan of Alternative Reconstruction making use of whatever funds are then available to it. If no plan of Alternative Reconstruction is agreed to, then the provisions of subsection (c) shall apply.

(c) **Sale of Community.** If the damaged Improvements will not be restored in accordance with the provisions of **Subsection 11.2.2(a)** or **11.2.2(b)** above, the Board, as the attorney-in-fact for each Owner, shall be empowered to sell the Community, including all Condominiums therein, in its then present condition, on terms to be determined by the Board.

(d) **Distribution of Proceeds.** The proceeds from the sale, together with the insurance proceeds received, after deducting therefrom the Association’s sale expenses, including commissions, title and recording fees, and legal costs, shall be distributed among the Owners and their respective Mortgagees in proportion to the respective fair market values of these Condominiums immediately prior to the date of the event causing the damage as determined by an independent appraisal made by a qualified real estate appraiser selected by the Board.

**11.3 Rebuilding Contract.** The Board or its authorized representative shall obtain bids from at least two (2) licensed and reputable contractors and shall accept the restoration work from whomever the Board determines to be in the best interests of the Members. The Board

shall have the authority to enter into a written contract with the contractor for such restoration, and the insurance proceeds shall be disbursed to the contractor according to the terms of the contract. The Board shall take all steps necessary to assure the commencement and completion of authorized restoration at the earliest possible date. Such restoration shall be commenced no later than one hundred eighty (180) days after the event requiring restoration and shall thereafter be diligently prosecuted to completion. Such restoration shall return the damaged Improvements to substantially the same condition and appearance in which it existed prior to the damage or destruction.

**11.4 Private Streets.** The Board shall restore all Private Streets within the Community. If insurance proceeds are not sufficient to cause such restoration, the Board shall levy a Special Assessment to provide the necessary funds for such restoration.

**11.5 Authority to Effect Changes.** If any adjacent Residential Units or portions thereof are damaged or destroyed or in need of renovation or rehabilitation and the Residential Units are repaired or reconstructed pursuant to the provisions set forth herein, the Residential Units may be repaired or reconstructed in a manner that alters the boundaries of such Residential Units or the adjacent Common Area or Association Property provided the following conditions are satisfied.

(i) the alteration has been approved by the Board, by the holders of any First Mortgages to the extent required herein and the Owners of the affected Residential Units;

(ii) the Board has determined that the alteration is necessary in order to comply with current building code requirements, to meet current building construction standards and procedures, or to improve the conditions and quality of the affected Residential Units;

(iii) the alteration does not materially change the location of any Residential Unit or materially reduce the size of any Residential Unit without the consent of the Residential Unit Owner and the holders of any First Mortgages thereon. For purposes herein, a material reduction in the size of the Residential Unit shall mean any alteration that increases or decreases the square footage of the interior floor space of the Residential Unit by more than 10% from the square footage as shown on the Condominium Plan;

(iv) the Board has determined that any alteration that will relocate or reduce the Association Property will not unreasonably interfere with the rights of the Owners and occupants to use and enjoy the Association Property;

(v) the Condominium Plan is amended to reflect the alteration to the Residential Units or Association Property; and

(vi) easements for any encroachments created by such alterations are granted to the affected Owners by the Association.

Each Owner irrevocably appoints the Association as that Owner's attorney-in-fact (except for the Secretary, U.S. Department of Veterans Affairs) and irrevocably grants to the Association the full power in the name of the Owner to effect any alteration to any Residential Unit or Association Property as authorized above, including, without limitation, the execution, delivery and recordation of any Condominium Plan amendments, deeds or other instruments.

**11.6 Minor Repair and Reconstruction.** The Board shall have the duty to repair and reconstruct Improvements, without the consent of Members and irrespective of the amount of available insurance proceeds, in all cases of partial destruction when the estimated cost of repair and reconstruction does not exceed Ten Thousand Dollars (\$10,000.00). The Board is expressly empowered to levy a Special Assessment for the cost of repairing and reconstructing improvements to the extent insurance proceeds are unavailable and determine whether to levy an Reimbursement Assessment against any Owner who caused the damage pursuant to **Section 10.1.2(i)**, such assessment to be levied as described above (but without the consent or approval of Members, despite any contrary provisions in this Declaration).

**11.7 Damage to or Destruction of a Residential Unit.** In the event of damage to or destruction of any Residential Unit, the Owner thereof shall (unless the Association is not required to repair surrounding damaged Association Property pursuant to the terms set forth above) reconstruct the same as soon as reasonably practicable and substantially in accordance with the original plans and specifications therefor; provided, however, that any such Owner may, with the written consent of the Board, reconstruct or repair the same pursuant to new or changed plans and specifications. In the event the Board fails to approve or disapprove such changed plans and specifications within sixty (60) days of the receipt thereof, they shall be deemed to have been approved. The Owner shall be entitled to the benefit of any master policy of property insurance maintained by the Association to the extent it covers the damage or destruction of elements of the Condominium that are within the Residential Unit and which are the obligation of the Owner to repair as provided in this Declaration. With the exception of any casualty or damage insured against by the Association pursuant to **Section 10.1** of this Declaration, restoration and repair of any damage to the interior of any individual Residential Unit, including without limitation all fixtures, cabinets and improvements therein, together with restoration and repair of all interior paint, wall coverings and floor coverings, shall be made by and at the individual expense of the Owner of the Residential Unit so damaged; provided, however, that nothing contained in this Section shall be construed as a waiver of claims that the Owner of a damaged Residential Unit may have against another Owner who caused the damage. In the event of a determination to rebuild the damaged or destroyed Association Property after partial or total destruction, as provided in this **Article 12**, such interior repair and restoration shall be completed as promptly as practical and in a lawful and workmanlike manner, in accordance with Plans and Specifications approved in accordance with **Article 8** of this Declaration.

**11.8 Condemnation of Common Area or Association Property.** If any portion of the Common Area or Association Property is taken by condemnation, eminent domain or any proceeding in lieu thereof, then the Owners and their Mortgagees, as their respective interests then appear, shall be entitled to receive a distribution from the award for such taking in the same proportion as insurance proceeds would be distributed pursuant to the provisions above; 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 above in this Article for repairing damaged 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 above in this Article for determining whether to rebuild or repair following damage or destruction.

**11.9 Condemnation of a Residential Unit.** In the event of any taking of a Residential Unit, the Owner thereof (and such Owner's Mortgagees, as their respective interests may appear) 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 all further interest in the Condominium (as applicable) and membership in the Association if such Owner shall vacate such Owner's Residential Unit as a result of such taking. In such event, an affected Owner shall grant its remaining interest in the Common Area appurtenant to the Residential Unit so taken to the other Owners owning a fractional interest in the same Common Area, such grant to be in proportion to the fractional interest in the Common Area then owned by each.

## ARTICLE 12 PARTITION AND SEVERABILITY OF INTERESTS

**12.1 Suspension.** The right of partition of the Common Area in the Project is suspended pursuant to California Civil Code Section 1359. Nothing in this Article shall be deemed to prohibit partition of a co-tenancy in a Condominium.

**12.2 Partition.** Except as provided in this Declaration, there shall be no judicial partition of the Common Area, or any part thereof, for the term of the Community, nor shall Declarant, any Owner or any other person acquiring any interest in any Condominium in the Property seek any such judicial partition. The undivided interest in the Common Area described above may not be altered or changed as long as the prohibition against severability of interests in a Condominium remains in effect as provided in this Declaration. Notwithstanding the foregoing, judicial partition shall be permitted as follows:

**12.2.1** With the approval, after substantial destruction or condemnation of the Community occurs, of at least sixty-seven percent (67%) of the total Voting Power of the Association and approval by Eligible Holders who represent at least fifty-one percent (51%) of the Condominiums that are subject to Mortgages held by Eligible Holders; or

**12.2.2** With the approval, for reasons other than substantial destruction or condemnation of the Community, of at least sixty-seven percent (67%) of the total Voting Power of the Association and approval by Eligible Holders who represent at least sixty-seven percent (67%) of the Condominiums that are subject to Mortgages held by Eligible Holders; or

**12.2.3** As allowed by California law, including Civil Code Section 1359, as the same may be amended from time to time.

An Eligible Holder who receives a written request to give such approvals who does not deliver or mail the requesting party a negative response within sixty (60) days shall be deemed to have given such approval provided such written request was delivered by certified mail or registered mail with "return receipt" requested. For so long as is required by FNMA's legal requirements

for project acceptance, all references to "Eligible Holder" in this Section 12.2 shall be deemed to include all First Mortgagees.

**12.3 Distribution of Proceeds.** Proceeds or property resulting from a partition shall be distributed to and among the respective Owners and their Mortgagees as specified or apportioned in the judgment of partition, or if not so specified, as their interests appear in proportion to the fair market value of the Condominiums at the date of the sale as determined by an independent appraisal conducted by a member of the American Institute of Real Estate Appraisers with the designation of a Member Appraisal Institute (M.A.I.) or if such institute no longer exists, an appraiser of comparable experience.

**12.4 Power of Attorney.** Each Owner irrevocably appoints the Association as his or her attorney-in-fact and irrevocably grants to the Association full power in the name and stead of such Owner to sell the entire Community and to execute deeds and conveyances to it, in one or more transactions, for the benefit of all Owners when partition of the Community may be had under California Civil Code Section 1359. The power of attorney shall:

**12.4.1** Be binding on all Owners, whether they assume the obligations under this Declaration or not;

**12.4.2** Be exercisable by a majority of the Board acting on behalf of the Association, subject to obtaining the prior approval by vote or written consent of at least seventy-five percent (75%) of the Owners and at least seventy-five percent (75%) of all Institutional Mortgagees; and

**12.4.3** Be exercisable only after recordation with the County Recorder of a certificate executed by those who have power to exercise the power of attorney that the power of attorney is properly exercisable under the authority of this Declaration. This certificate shall be conclusive evidence of proper exercise in favor of any person relying on it in good faith; provided, however, that said power of attorney shall not apply to the Administrator of Veterans Affairs, an Officer of the United States of America.

**12.5 Prohibition Against Severance.** An Owner shall not be entitled to sever such Owner's Residential Unit from its membership in the Association, and an Owner shall not be entitled to sever such Owner's Residential Unit and such Owner's membership from such Owner's undivided interest in the Common Area for any purpose. None of the component interests in a Condominium may be severally sold, conveyed, encumbered, hypothecated or otherwise dealt with, and any violation or attempted violation of this provision shall be void. Similarly, no Owner can sever any exclusive easement appurtenant to such Owner's Residential Unit over the Common Area or Association Property from such Owner's Condominium, and any attempt to do so shall be void. It is intended hereby to restrict severability pursuant to California Civil Code Section 1358. Notwithstanding the foregoing, the suspension of such right of severability contained herein shall not extend beyond the period set forth in Section 12.2 in which the right to partition the Community is suspended thereunder.

**12.6 Conveyances.** After the initial sales of the Condominiums, any conveyance of a Condominium by an Owner shall be presumed to convey the entire Condominium. However,

nothing contained in this Section shall preclude the Owner of any Condominium from creating an estate for life or years, cotenancy or joint tenancy in the ownership of the Condominium with any other Person or Persons.

### **ARTICLE 13 RIGHTS OF MORTGAGEES**

**13.1 Conflict.** Notwithstanding any contrary provision contained elsewhere in the Governing Documents, the provisions of this Article shall control with respect to the rights and obligations of Mortgagees as specified herein.

**13.2 Liability for Unpaid Assessments.** Any Institutional Mortgagee who obtains title to a Condominium pursuant to the remedies provided in the First Mortgage (except upon a voluntary conveyance to the Institutional Mortgagee) or by foreclosure of the First Mortgage shall take the property free of any claims for unpaid assessments or charges against the Condominium which accrue prior to the acquisition of title to the Condominium by the Institutional Mortgagee.

**13.3 Payment of Taxes and Insurance.** All taxes, assessments and charges that may become a lien prior to the lien of any First Mortgagee shall be levied only to the individual Condominium and not the Community as a whole. Institutional Mortgagees may, jointly or singly, pay taxes or other charges that are in default and that may or have become a charge against any Association Property or Improvements situated thereon and may pay overdue premiums on property insurance policies or secure new hazard insurance coverage on the lapse of a policy for such Association Property. Institutional Mortgagees making such payments shall be owed immediate reimbursement for such expenditures from the Association and, on demand, the Association shall execute an agreement in favor of all Institutional Mortgagees reflecting entitlement to reimbursement.

**13.4 Notice Eligible Holders.** An Eligible Holder is entitled to timely written notice of the following events:

**13.4.1** Any condemnation loss or casualty loss that affects either a material portion of the Community or the Condominium on which the Eligible Holder holds a First Mortgage;

**13.4.2** Any delinquency in the payment of assessments or charges owed by the Owner of a Condominium that is subject to a First Mortgage held by the Eligible Holder if the delinquency is not cured within sixty (60) days after its due date;

**13.4.3** Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

**13.4.4** Any proposal to take any action specified in this **Article 13** or in **Article 11** hereof;

**13.4.5** Any default by the Owner-Mortgagor of a Condominium that is subject to a First Mortgage held by an Eligible Holder in the performance of its obligations under this Declaration or the Bylaws which is not cured within sixty (60) days; or

**13.4.6** Any proposed action that requires the consent of a specified percentage of the Eligible Holders.

For so long as is required by FNMA's legal requirements for Community acceptance, all references to "Eligible Holder" in this Section 13.4 shall be deemed to include all First Mortgagees and all guarantors of First Mortgages.

**13.5 Reserve Fund.** The Association shall maintain a reserve account fund sufficient to pay for maintenance, repair and periodic replacement of the Association Property and other Improvements that the Association is obligated to maintain. This reserve fund shall be funded by Regular Assessments of Owners that are payable in installments rather than by Special Assessment; provided, however, that this provision shall not be deemed to limit the power of the Association to levy any other type of assessment or charge authorized by this Declaration.

**13.6 Inspection of Books and Records.** Upon request, any Owner or First Mortgagee shall be entitled to inspect the books, records and financial statements of the Association, the Governing Documents and any amendments thereto during normal business hours or under other reasonable circumstances.

**13.7 Financial Statements.** The Association, at its expense, shall prepare an audited financial statement for the immediately preceding Fiscal Year and make the same available within one hundred twenty (120) days after the Association's Fiscal Year-end to any Institutional Mortgagee or Eligible Holder that has submitted a written request for it.

**13.8 Actions Requiring Eligible Holder Approval.** Unless at least sixty-seven percent (67%) of the Eligible Holders (based on one vote for each First Mortgage owned) and at least sixty-seven percent (67%) of the Owners other than Declarant have given their prior written approval, the Association shall not be entitled to:

**13.8.1** By act or omission, seek to abandon or terminate the Community;

**13.8.2** By act or omission abandon, partition, subdivide, encumber, sell or transfer any property or improvements owned, directly or indirectly, by the Association for the benefit of the Condominiums and the Owners. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Community by the Association and Owners shall not be deemed a transfer within the meaning of this Section);

**13.8.3** By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to architectural design or exterior appearance of Residential Units, the exterior maintenance of Residential Units, or the upkeep of lawns, plantings or other landscaping in the Community;

**13.8.4** By act or omission change the method of determining the obligations, assessments, dues or other charges that may be levied against an Owner;

**13.8.5** Partition or subdivide a Condominium;

**13.8.6** Fail to maintain fire and extended coverage insurance on insurable portions of the Association Property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value based on current replacement cost; and

**13.8.7** Use hazard insurance proceeds for losses to any property or Improvements owned by the Association other than for the repair, replacement or reconstruction of such property and Improvements.

**13.9 Votes for Termination of Community.** Any election to terminate the legal status of the Community as a condominium development shall require:

**13.9.1** The approval of Eligible Holders that represent at least fifty-one percent (51%) of the votes of Condominiums that are subject to Mortgages held by Eligible Holders and at least sixty-seven percent (67%) of the total Voting Power of the Association if the election to terminate the legal status is a result of substantial destruction or a substantial taking in condemnation of the property within the Community; or

**13.9.2** The approval of at least sixty-seven percent (67%) of the total Voting Power of the Association and Eligible Holders that represent at least sixty-seven percent (67%) of the votes of Condominiums that are subject to Mortgages held by Eligible Holders if **Section 13.9.1** is not applicable.

For so long as is required by FNMA's legal requirements for Community acceptance, all references to "Eligible Holder" in this **Section 13.9** shall be deemed to include all First Mortgagees.

**13.10 Condemnation or Destruction.** In the event a portion of the Community is either condemned or destroyed or damaged by a hazard that is insured against, restoration or repair shall be performed substantially in accordance with the provisions of this Declaration and the original plans and specifications for the Community unless Eligible Holders representing at least fifty-one percent (51%) of the votes of Condominiums subject to Mortgages held by Eligible Holders approve the taking of other action by the Association.

**13.11 Self-Management.** The vote or approval by written ballot of at least sixty-seven percent (67%) of the total voting power of the Association and Eligible Holders that represent at least fifty-one percent (51%) of the votes of Condominiums that are subject to Mortgages held by Eligible Holders shall be required to assume self-management of the Community if professional management of the Community has been required by an Eligible Holder at any time.

**13.12 Mortgagee Protection.** A breach of any of the conditions contained in this Declaration shall not defeat nor render invalid the lien of any First Mortgage made in good faith and for value as to any Condominium in the Community; provided, however, that the conditions contained in this Declaration shall be binding upon and effective against any Owner of a Condominium if the Condominium is acquired by foreclosure, trustee's sale or otherwise.

**13.13 Distribution of Insurance and Condemnation Proceeds.** No Owner, or any other party, shall have priority over any right of an Institutional Mortgagee of a Condominium pursuant to its Mortgage in case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Condominiums or Association Property. Any provision to the contrary in this Declaration or in the Bylaws or other documents relating to the Community is to such extent void. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses acceptable to the affected Institutional Mortgagees naming the Mortgagees, as their interests may appear.

**13.14 Voting Rights on Default.** In case of default by any Owner in any payment due under the terms of any Institutional Mortgage encumbering such Owner's Condominium, or the promissory note secured by the Mortgage, the Mortgagee or its representative, on giving written notice to such defaulting Owner or Owners, and placing of record a notice of default, is hereby granted a proxy and can exercise the voting rights of such defaulting Owner attributable to such Condominium at any regular or special meeting of the Members held during such time as such default may continue.

**13.15 Foreclosure.** If any Condominium is encumbered by a First Mortgage made in good faith and for value, the foreclosure of any lien created by any provision set forth in this Declaration for Assessments, or installments of Assessments, shall not affect or impair the lien of the First Mortgage. On foreclosure of the Mortgage, the lien for Assessments, or installments, that has accrued up to the time of foreclosure shall be subordinate to the lien of the Mortgage, with the foreclosure-purchaser taking title to the Condominium free of the lien for Assessments and Additional Charges, or installments of Assessments, that have accrued up to the time of the foreclosure sale. On taking title to the Condominium the foreclosure-purchaser shall only be obligated to pay Assessments or other charges levied or assessed by the Association after the foreclosure-purchaser acquired title to the Condominium. The subsequently accrued assessments or other charges may include previously unpaid assessments provided all Owners, including the foreclosure-purchaser, and its successors and assigns are required to pay their proportionate share as provided in this Section.

**13.16 Non-Curable Breach.** Any Mortgagee who acquires title to a Condominium by foreclosure or by deed in lieu of foreclosure or assignment-in-lieu of foreclosure shall not be obligated to cure any breach of this Declaration that is non-curable or that is not practical or feasible to cure.

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

**13.18 Appearance at Meetings.** Because of its financial interest in the Community, any Mortgagee may appear (but cannot vote except as may be provided for herein) at meetings of the Members and the Board to draw attention to violations of this Declaration that have not been corrected or made the subject of remedial proceedings or assessments.

**13.19 Right to Furnish Information.** Any Mortgagee can furnish information to the Board concerning the status of any Mortgage.

**13.20 Right of First Refusal Not Applicable to Mortgagee.** No right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey the Owner's Condominium shall be granted to the Association without the written consent of any Mortgagee of the Condominium. Any right of first refusal or option to purchase a Condominium that may be granted to the Association (or other person, firm or entity) shall not apply to any conveyance or transfer of title to such Condominium, whether voluntary or involuntary, to a Mortgagee that acquires title to or ownership of the Condominium pursuant to the remedies provided in its Mortgage or by reason of foreclosure of the Mortgage or deed or assignment in lieu of foreclosure.

**13.21 Written Notification to Mortgagees or Guarantors of First Mortgages.** If a Mortgagee or guarantor of a First Mortgage has not given written notice to the Association specifying its name, the name of the Owner and address of the Condominium encumbered by the First Mortgage, any written notice or proposal required or permitted by this Declaration to be given to such Mortgagee or guarantor shall be deemed properly given if deposited in the United States mail, postage prepaid, and addressed to the Mortgagee or guarantor at its address appearing of record in the First Mortgage (or assignment thereof, if applicable).

#### **ARTICLE 14 AMENDMENTS**

Except as otherwise set forth in this Declaration, this Article shall not be amended, modified or rescinded until Declarant has conveyed all of the Condominiums within the Community, including any Phase which may be annexed to and made a part of the Community pursuant to **Article 15** hereof, without (a) the prior written consent of Declarant and (b) the recording of said written consent in the Official Records.

**14.1 Amendment Before the Close of First Sale.** Before the conveyance of the first Condominium to a First Purchaser, this Declaration and any amendments to it may be amended in any respect or revoked by the execution by Declarant and any Mortgagee of record of an instrument amending or revoking this Declaration. The amending or revoking instrument shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the office of the County Recorder.

**14.2 Amendments After the Close of First Sale.** Except as may otherwise be stated in this Declaration, after the conveyance of the first Condominium to a First Purchaser and during the period of time prior to conversion of the Class B membership in the Association to Class A membership, this Declaration may be amended at any time and from time to time provided that the vote or approval by written ballot of a majority of the Voting Power of each class of Members of the Association has been obtained. After conversion of the Class B membership in the Association to Class A membership, this Declaration may be amended at any time and from time to time, provided that the vote or approval by written ballot of (a) at least a majority of the total Voting Power of the Association and (b) at least a majority of the Voting Power of the Members of the Association, other than Declarant, has been obtained. If any

provision of this Declaration requires a greater or lesser percentage of the voting rights of any class of Members in order to take affirmative or negative action under such provision, the same percentage of such class or classes of Members shall be required to amend or revoke such provision. The vote on a proposed amendment to the Declaration shall be held by secret written ballot in accordance with the procedures set forth in California Civil Code Section 1363.03 and the rules adopted by the Board pursuant thereto. Such amendment shall become effective upon the recording in the Official Records of a Certificate of Amendment signed and acknowledged by the President or Vice President of the Association and the Secretary or Assistant Secretary of the Association certifying that such votes or approval by written ballot have been obtained. For the purposes of recording the Certificate of Amendment, the President or Vice-President and Secretary or Assistant Secretary of the Association are hereby granted an irrevocable power of attorney to act for and on behalf of each and every Owner in certifying and executing and recording the Certificate of Amendment in the Official Records.

**14.3 Approval of Material Amendments.** In addition to the foregoing, in the case of any Material Amendment, as defined below, the vote of Eligible Holders that represent at least fifty-one percent (51%) of the votes of Condominiums that are subject to Mortgages held by Eligible Holders and at least sixty-seven percent (67%) of the Voting Power of each class of Members (or, after conversion of the Class B membership to Class A, at least sixty-seven percent (67%) of the total Voting Power of the Association and at least sixty-seven percent (67%) of the voting power of Members of the Association other than Declarant) shall also be required. For purposes of this **Section 14.2**, "Material Amendment" shall mean any amendments to provisions of this Declaration governing any of the following subjects:

**14.3.1** The fundamental purpose for which the Community was created (such as a change from residential use to a different use);

**14.3.2** Assessments, collection of Assessments, Assessment liens and subordination thereof;

**14.3.3** The reserve for repair and replacement of the Association Property;

**14.3.4** Property maintenance obligations;

**14.3.5** Casualty and liability insurance or fidelity bond requirements;

**14.3.6** Reconstruction in the event of damage or destruction;

**14.3.7** Rights to use the Association Property;

**14.3.8** Reallocation of any interests in the Common Area or conveyance of the Common Area or Association Property;

**14.3.9** Voting;

**14.3.10** Expansion or contraction of the Community or the addition, annexation or withdrawal of property to or from the Community, other than the addition or deletion of the Additional Property;

**14.3.11** Redefinition of Residential Unit boundaries;

**14.3.12** The conversion of a Residential Unit into Common Area or Association Property or vice versa;

**14.3.13** Imposition of any restriction on any Owner's right to lease, sell or transfer its Condominium;

**14.3.14** Merger or consolidation of the Association;

**14.3.15** A determination not to require professional management if required pursuant to this Declaration; and

**14.3.16** Any provision that, by its terms, is specifically for the benefit of Eligible Holders, or specifically confers rights on Eligible Holders.

Any Eligible Holder who receives written request to consent to additions or amendments requiring consent under this provision who does not deliver to the requesting party a negative response within sixty (60) days after receipt of a notice delivered by certified or registered mail, return receipt requested, shall be deemed to have consented to such request. For so long as is required by FNMA's legal requirements for Community acceptance, all references to "Eligible Holder" in this **Section 14.3** shall be deemed to include all First Mortgagees.

#### **14.4 Additional Approvals.**

**14.4.1 Governmental Approvals.** If the consent or approval of any Governmental Agency, Mortgagee or other person, firm, agency or entity is required under this Declaration with respect to any amendment or revocation of any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained.

**14.4.2 Amendment of Certain Provisions.** Notwithstanding anything to the contrary contained in this Declaration, **Sections 3.3.18, 3.4.11, 3.4.14, 3.4.16, 7.3.2, 7.4.1, 15.3** and **15.4** of this Declaration shall not be amended without the vote or approval by written ballot of (a) at least ninety percent (90%) of the Voting Power of the Members of the Association other than Declarant, and (b) at least ninety percent (90%) of the Mortgagees.

**14.5 Conflict with Article 13 or Other Provisions of this Declaration.** To the extent any provisions of this Article conflict with the provisions of **Article 13** or any other provision of this Declaration except those contained in **Sections 14.2** and **14.3**, the provisions of **Article 13** or the other provisions shall control.

**14.6 Business and Professions Code Section 11018.7.** All amendments or revocations of this Declaration shall comply with the provisions of California Business and Professions Code Section 11018.7 to the extent such section is applicable.

**14.7 Reliance on Amendments.** Any amendment made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith.

## ARTICLE 15 ENFORCEMENT

**15.1 Term.** The covenants, conditions and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Association or any Member, their respective legal representatives, heirs, successors and assigns with respect to such portion of the Property, for a term of sixty (60) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each, unless an instrument, signed by at least sixty-seven percent (67%) of the then Members has been recorded, at least one (1) year prior to the end of any such period in the manner required for a conveyance of real property, in which it is agreed that this Declaration shall terminate at the end of the then applicable term.

### **15.2 Enforcement and Nonwaiver.**

**15.2.1 Rights of Enforcement of Governing Documents.** The Association, Declarant or any Owner shall have a right of action against any Owner, and any Owner or Declarant shall have a right of action against the Association, to enforce by proceedings at law or in equity, all covenants, conditions and restrictions, now or hereafter imposed by the provisions of the Governing Documents or any amendment thereto, including the right to prevent the violation of such covenants, conditions and restrictions and the right to recover damages or other dues for such violation except that Owners shall not have any right of enforcement concerning Assessment liens. The Association shall have the exclusive right to the enforcement of provisions relating to architectural control and the Association Rules, unless the Association refuses or is unable to effectuate such enforcement, in which case any Owner who otherwise has standing shall have the right to undertake such enforcement. Failure of the Association, Declarant or any Owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**15.2.2 Procedure for Enforcement.** Notwithstanding anything to the contrary set forth in **Section 15.2.1**, in enforcing any action under the Governing Documents for monetary damages, the parties shall comply with the notice and delivery requirements and other provisions of California Civil Code Section 1350 et seq. relating to such enforcement action.

**15.3 Notice of Actions Against Declarant.** Subject to the provisions of **Section 15.4** hereof, the Association shall comply with the provisions of California Civil Code Section 1368.5 and California Civil Code Sections 910 through 938 prior to the filing of any civil action by the Association against Declarant or other developer of the Community for either alleged damage to the Association Property or other property within the Community that the Association is obligated to maintain or repair, or alleged damage to any other portion of the Community that arises out of, or is integrally related to, such damage to the Association Property or other property within the Community that the Association is obligated to maintain or repair. Such notice shall specify all of the matters set forth in California Civil Code Section 1368.5 and/or California Civil Code Sections 910 through 938, as applicable.

**15.4 Alternative Dispute Resolution.** The purpose of this **Section 15.4** is to provide an expedited means of resolving any claims, disputes and disagreements which may arise

between Owner or the Association and Declarant (including any affiliated general contractor of Declarant, as defined in California Civil Code Section 911) after the close of escrow or other conveyance of any portion of the Property by Declarant concerning the Property, Limited Warranty and/or Customer Care Program that are not resolved pursuant to any applicable statutory dispute resolution procedures (individually referenced to herein as “Dispute” and collectively as “Disputes”). Initially, Declarant will attempt to resolve any Dispute asserted by an Owner or the Association of which it is given notice. If the Dispute cannot be resolved between the parties in this manner, the parties will proceed to mediation, according to the procedures set forth below. If the matter is not resolved by the mediation process, it will be decided through the arbitration procedure as set forth below. Alternatively, Declarant, an Owner or the Association may elect to resolve such Disputes through a small claims court proceeding. **THIS PROCESS INVOLVES WAIVER OF THE RIGHT TO A JURY TRIAL. BY EXECUTING THIS DECLARATION AND BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, RESPECTIVELY, DECLARANT, EACH OWNER AND THE ASSOCIATION, AGREE TO BE BOUND BY THE PROVISIONS OF THIS SECTION 15.4.**

**15.4.1 Mediation.** Subject to the provisions of **Section 15.4.2(c)(v)** below, and except for actions in small claims court or Disputes that have already been mediated, Owner, Association and Declarant agree to submit any and all Disputes to non-binding mediation pursuant to the rules of Judicial Arbitration and Mediation Services (“JAMS”) before commencing arbitration. The cost of mediation shall be paid by Declarant. Each party to the mediation shall bear its own attorneys’ fees and costs in connection with such mediation. The mediation shall take place in the county in which the Property is located.

**15.4.2 Arbitration.**

(a) **Agreement to Arbitrate.** The Association, each Owner and Declarant shall resolve any Dispute not resolved as provided above exclusively through binding arbitration in the county in which the Property is located. This arbitration provision shall apply to Disputes of any kind or nature regardless of when the Dispute first arose or the nature of the relief sought.

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

(c) **Rules Applicable to All Cases.** The arbitration will be conducted by JAMS in accordance with the rules of JAMS in effect as of the initiation of the arbitration (“JAMS Rules”), as supplemented by this **Section 15.4**. The following supplemental rules shall apply to all arbitration proceedings and shall govern in the event of a conflict between the rules set forth below and the JAMS Rules.

(i) **Qualifications of Arbitrators.** The arbitrator shall be neutral and impartial and either a retired judge or a member or former member of the California State Bar with at least 15 years’ experience as a practicing lawyer. |

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

(iii) **Expenses.** All fees charged by JAMS and the arbitrator shall be advanced by Declarant. If Declarant is the prevailing party in the arbitration, the arbitrator may, in its discretion and only to the extent permitted by law and the JAMS Minimum Standards of Procedural Fairness, direct the Owner or Association to reimburse Declarant for Owner's or the Association's, as applicable, pro rata share of the JAMS fee and arbitrator's fee advanced by Declarant.

(iv) **Venue.** The venue of the arbitration shall be in the County where the Community is located unless the parties agree in writing to another location.

(v) **Preliminary Procedures.** If state or federal law requires the Association or an Owner or Declarant to take steps or procedures before commencing an action in court, then the Owner or Declarant must take such steps or follow such procedures, as the case may be, before commencing the arbitration. For example, any claims or Disputes pursuant to California Civil Code Section 895 et. seq. as hereafter amended may be subject to the non-adversarial procedures set forth in California Civil Code Section 910 through 938, prior to the initiation of any arbitration or small claims court proceeding against Declarant. In addition, nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code Sections 1368.5, 1375, 1375.05 or 1375.1.

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

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

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

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

(i) **Qualifications of Arbitrator.** In addition to the requirements of Section 15.4.2(c)(i) above, the arbitrator shall be a retired judge of the California Superior Court, a California Court of Appeal, or the California Supreme Court.

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

(iii) **Written Decision.** Within thirty (30) days after the hearing is closed, the arbitrator must issue a written decision. If an Owner, the Association or Declarant requests it, the arbitrator must issue a reasoned award.

**15.4.3 Procedure for Appeal of Certain Cases.** In any arbitration in which a claim or arbitration award of an Owner, the Association or Declarant exceeds \$500,000 in value, Owner and Declarant hereby adopt and agree to the JAMS Optional Appeal Procedure. The following additional rules will supplement the JAMS Optional Appeal Procedure and govern in the event of a conflict between the following rules and the JAMS Optional Appeal Procedure.

(a) **Right of Appeal.** There shall be no right to appeal unless the oral evidence received by the arbitrator was preserved in a manner such that it can be converted to an accurate and reliable written transcript.

(b) **Appellate Panel.** An appeal shall be decided by one (1) neutral appeal arbitrator unless either party, within the time permitted for the appointment of the appeal arbitrator, elects to have the appeal decided by a panel of three (3) appeal arbitrators. Any party who elects to have an appeal decided by a panel of three (3) appeal arbitrators agrees to be solely responsible for the cost of having two (2) additional appeal arbitrators. The sole appeal arbitrator, or at least one member of any panel of three (3) arbitrators, shall have prior experience as a member of an appellate panel of the California Court of Appeal.

(c) **Issues on Appeal.** The only issues that may be considered on appeal are: (1) the award of money was excessive; (2) the award of money was insufficient; (3) the arbitrator awarded non-monetary relief that was inappropriate; (4) a party who received non-monetary relief should have received other or additional relief. A majority of the appeal arbitrators may affirm the arbitration award or make any alternative award they find to be just, but they must not reject the arbitrator's decisions (a) that a particular party is entitled to relief of some nature or amount or (b) that a particular party is responsible to provide relief of some nature or amount.

(d) **Expenses and Costs on Appeal.** The fees charged by JAMS and the appeal arbitrator(s) shall be advanced by Declarant, except as provided in **Section 15.4.3(b)** above. The party who files the appeal must, at its sole expense, provide JAMS and all non-appealing parties with a certified copy of the hearing transcript, and must provide JAMS with copies of all documentary evidence and all other tangible evidence received by the arbitrator. If more than one party appeals, the appealing parties must share equally the cost of the transcript and copies of all other documentary and tangible evidence received by the arbitrator. The appeal arbitrators may, within thirty (30) days of their determination award costs of the nature provided in the Federal Rules of Appellate Procedure. If Declarant is the prevailing party on appeal, the appeal arbitrator(s) may, in his, her or their discretion and only to the extent permitted by law and JAMS Minimum Standards of Procedural Fairness, include the non-prevailing party(ies) pro rata share of the JAMS fee and arbitrator's fee advanced by Declarant in the award of costs on appeal.

(e) **New Evidence.** The appeal arbitrators must not receive new evidence. The appeal arbitrators must make their decision based only on the evidence that was

presented to the arbitrator, except that the appeal arbitrators may visit any site involved in the Dispute.

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

**15.4.5 ARBITRATION OF DISPUTES.** DECLARANT, BY EXECUTING THIS DECLARATION, AND EACH OWNER AND THE ASSOCIATION, BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, AGREE TO HAVE ANY DISPUTE DECIDED BY NEUTRAL ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT AND ARE GIVING UP ANY RIGHTS THEY MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. TO THE EXTENT THAT THE CALIFORNIA ARBITRATION ACT IS INCONSISTENT WITH THE FEDERAL ARBITRATION ACT, THE FEDERAL ARBITRATION ACT SHALL CONTROL. DECLARANT, OWNER AND ASSOCIATION ARE GIVING UP THEIR RESPECTIVE JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THIS SECTION 15.4. IF DECLARANT, ANY OWNER OR THE ASSOCIATION REFUSES TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, SUCH PARTY MAY BE COMPELLED TO ARBITRATE UNDER THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT.

**15.4.6 Final and Binding Award.** The decision of the arbitrator or, if an appeal is heard, the decision of the appeal arbitrators, shall be final and binding. A petition to confirm, vacate, modify or correct an award may be filed in any court of competent jurisdiction in the county in which the Property is located, but the award may be vacated, modified or corrected only as permitted by the Federal Arbitration Act.

**15.5 Severability.** In addition to and without limiting the effect of any general severability provisions of this Declaration, if the arbitrator or any court determines that any provision of this Section 15.4 is unenforceable for any reason, that provision shall be severed, and proceedings agreed to in this Section 15.4 shall be conducted under the remaining enforceable terms of this Section 15.4.

## ARTICLE 16 GENERAL PROVISIONS

**16.1 Headings.** The headings used in this Declaration are for convenience only and are not to be used to interpret the meaning of any of the provisions of this Declaration.

**16.2 Severability.** The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision or provisions of it shall not invalidate any other provisions. In the event that any phrase, clause,

sentence, paragraph, section, article or other portion of this Declaration shall become illegal, null, void, against public policy or otherwise unenforceable, for any reason, the remaining portions of this Declaration shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law.

**16.3 Cumulative Remedies.** Each remedy provided for in this Declaration shall be cumulative and not exclusive. Failure to exercise any remedy provided for in this Declaration shall not, under any circumstances, be construed as a waiver.

**16.4 Violations as Nuisance.** Every act or omission in violation of the provisions of this Declaration shall constitute a nuisance and, in addition to all other remedies herein set forth, may be abated or enjoined by any Owner, any Member of the Board, the manager, or the Association.

**16.5 No Racial Restriction.** No Owner shall execute or cause to be recorded any instrument which imposes a restriction upon the sale, leasing or occupancy of its Condominium on the basis of race, sex, color or creed.

**16.6 Access to Books.** Declarant may, at any reasonable time and upon reasonable notice to the Board or manager, cause an audit or inspection to be made of the books and financial records of the Association.

**16.7 Mergers or Consolidations.** Upon a merger or consolidation of the Association with another association, the Association's properties, rights and obligations may, by operation of law, be transferred to the surviving or consolidated association, or, alternatively, the properties, right and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants, conditions and restrictions established by this Declaration within the Community, together with the covenants and restrictions established upon any other property as one plan.

**16.8 Liberal Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision thereafter.

**16.9 Notification of Sale of Condominium.** Concurrently with consummation of the sale of a Condominium under circumstances whereby the transferee becomes an Owner thereof, or within five (5) business days thereafter, the transferee shall notify the Board in writing of such sale. Such notification shall set forth the name of the transferee and its Mortgagee and transferor, the common address of the Condominium purchased by the transferee, the transferee's and the Mortgagee's mailing address, and the date of sale. Prior to the receipt of such notification, any and all communications required or permitted to be given by the Association, the Board or the manager shall be deemed to be duly made and given to the transferee if duly and timely made and given to said transferee's transferor. Mailing addresses may be changed at any time upon written notification to the Board. Notices shall be deemed received forty-eight (48) hours after mailing if mailed to the transferee, or to its transferor if the Board has received no notice of transfer as above provided, by certified mail return receipt

requested, at the mailing address above specified. Notices shall also be deemed received on the next business day after being sent by overnight courier or upon delivery if delivered personally to any occupant of a Condominium over the age of twelve (12) years.

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

**16.11 Exhibits.** All exhibits referred to in this Declaration are attached to this Declaration and incorporated by reference.

**16.12 Binding Effect.** This Declaration shall inure to the benefit of and be binding on the successors and assigns of Declarant, and the heirs, personal representatives, grantees, tenants, successors and assigns of the Owners.

**16.13 Easements Reserved and Granted.** Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in the first deed by Declarant to any Condominium.

**16.14 Statutory References.** All references in this Declaration to various statutes, codes, regulations, ordinances and other laws shall be deemed to include those laws in effect as of the date of this Declaration and any successor laws as may be amended from time to time.

**16.15 Approval of VA and FHA.** So long as there is a Class B membership in the Association, the following actions shall require the prior approval of VA if a VA blanket loan approval is in effect for the Community or a VA loan encumbers any Condominium in the Community: any reorganization, merger, dissolution, or consolidation of the Association, and any amendment to this Declaration, a draft of which shall be submitted to and approved by the VA prior to recordation. FHA shall have the same approval rights given to VA in this Section if an FHA blanket loan approval is in effect for the Community or an FHA loan encumbers any Condominium in the Community.

**16.16 Applicability of FHA/VA Regulations.** For so long as FHA and/or VA blanket loan approvals are in effect for the Community and while any FHA/VA loan encumbers any Condominium in the Community, the FHA and VA guidelines and regulations shall apply to the Community to the extent that FHA or VA, respectively, asserts application of such guidelines and regulations and those guidelines and regulations are not in conflict with California law or with the requirements of the DRE. At such time as the blanket loan approvals are no longer in effect and no FHA or VA loans encumber any Condominium in the Community, the FHA and VA guidelines and regulations shall have no further applicability with respect to the Community.

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IN WITNESS WHEREOF, Declarant has executed this instrument as of the date set forth above.

DECLARANT:

D.R. Horton BAY, Inc., a Delaware corporation

By: [Signature]

Name: DEAN K MILLS

Its: U.P. Forward Planning

STATE OF CALIFORNIA )

COUNTY OF Alameda )

On March 28, 2013 before me, Amie Bautista, Notary Public,

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[Signature]  
Signature

(Seal)

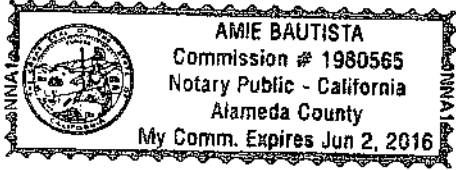


EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

FIRST PHASE:

That certain real property in the City of Menlo Park, County of San Mateo, State of California, described as:

Parcels 1 and 2 as shown on that certain map entitled "Final Map, Artisan, For Condominium Purposes," filed April 22, 2013 in Book 139 of Maps, at Pages 30 through 32, inclusive, San Mateo County Records;

EXCEPTING THEREFROM Module 2 as shown on the Artisan Condominium Plan recorded in the Office of the County Recorder of San Mateo County, California, on April 23, 2013 as Document No. 2013-061062 ("Condominium Plan").

Association Property in First Phase:

That certain real property in the City of Menlo Park, County of San Mateo, State of California, described as:

Parcels 1 and 2 as shown on that certain map entitled "Final Map, Artisan, For Condominium Purposes," filed April 22, 2013 in Book 139 of Maps, at Pages 30 through 32, inclusive, San Mateo County Records;

EXCEPTING THEREFROM Module 2 as shown on the Condominium Plan;

FURTHER EXCEPTING THEREFROM the Residential Units and Common Area within Module 1, all as shown on the Condominium Plan.

SECOND PHASE:

That certain real property in the City of Menlo Park, County of San Mateo, State of California, described as:

Module 2 as shown on the Condominium Plan, being portions of Parcels 1 and 2 as shown on that certain map entitled "Final Map, Artisan, For Condominium Purposes," filed April 22, 2013 in Book 139 of Maps, at Pages 30 through 32, inclusive, San Mateo County Records.

Association Property in Second Phase:

Module 2 as shown on the Condominium Plan, being portions of Parcels 1 and 2 as shown on that certain map entitled "Final Map, Artisan, For Condominium Purposes," filed April 22, 2013 in Book 139 of Maps, at Pages 30 through 32, inclusive, San Mateo County Records;

EXCEPTING THEREFROM the Residential Units and Common Area within Module 2, all as shown on the Condominium Plan.

**EXHIBIT "B"**

**MAINTENANCE RESPONSIBILITY CHART**

Each Owner is responsible for the maintenance, repair and replacement of all elements of the Residential Unit, except as otherwise set forth below or in the Governing Documents. The Association is responsible for all of the maintenance, repair and replacement of the Association Property. Notwithstanding the foregoing, in the event of a casualty, the Association shall repair and replace all items covered by the Association's insurance. The Owner Maintenance Manual and the Association Maintenance Manual may also expand on the scope of the maintenance responsibilities set forth below.

IMPROVEMENT	MAINTENANCE OBLIGATION & RESPONSIBLE PARTY						
	Clean	Maintain	Repair	Replace	Paint	Resurface	Repave
The interior of the Residential Unit, including without limitation all appliances, cabinets, plumbing fixtures and all other items within the Residential Unit, whether free-standing or built-in	O	O	O	O	O	O (if applicable)	N/A
Utility Facilities and equipment which exclusively service the Residential Unit whether located in the Residential Unit or in Association Property	N/A	O	O	O	N/A	N/A	N/A
Windows enclosing a Residential Unit, including metal frames, tracks and exterior screens of glass doors and windows	O (A - exterior of inaccessible windows)	O	O	O	A (exterior of window frame only)	N/A	N/A
Doors (including without limitation the garage door) enclosing an Owner's Residential Unit	O (interior) A (exterior)	A	A	A	O to paint interior A to paint exterior	N/A	N/A

"O" indicates an obligation of the Owner.  
 "A" indicates an obligation of the Association.  
 "N/A" indicates an obligation that is "not applicable."

802694303.8 / 131457-01109  
 Artisan / CC&Rs

Order: KX23SRPWJ  
 Address: Artisan Way  
 Order Date: 07-23-2025  
 Document not for resale  
 HomeWiseDocs

Each Owner is responsible for the maintenance, repair and replacement of all elements of the Residential Unit, except as otherwise set forth below or in the Governing Documents. The Association is responsible for all of the maintenance, repair and replacement of the Association Property. Notwithstanding the foregoing, in the event of a casualty, the Association shall repair and replace all items covered by the Association's insurance. The Owner Maintenance Manual and the Association Maintenance Manual may also expand on the scope of the maintenance responsibilities set forth below.

IMPROVEMENT	MAINTENANCE OBLIGATION & RESPONSIBLE PARTY						
	Clean	Maintain	Repair	Replace	Paint	Resurface	Repave
Exclusive Use Decks and Porches (excluding any Improvements located within such areas and excluding any railings, and walls surrounding such areas)	O	O	A	A	A	A	N/A
Walls surrounding Exclusive Use Porch Areas	O (interior) A (exterior)	O (interior) A (exterior)	A	A	A	A	N/A
Railings bordering Exclusive Use Deck Areas	A	A	A	A	A	A	N/A
Exclusive Use Yard Areas (excluding any Improvements located within such areas and excluding any fencing surrounding such areas)	O	O	A	A	A	N/A	N/A
Fencing surrounding Exclusive Use Yard Areas (excluding those fences designated for Association maintenance on Exhibit "C")	O	O	O	O	O	N/A	N/A
Exterior fixtures, including light fixtures, photocells, and light bulbs, not servicing the front entry of a Residential Unit	A	A	A	A	A	N/A	N/A

"O" indicates an obligation of the Owner.  
 "A" indicates an obligation of the Association.  
 "N/A" indicates an obligation that is "not applicable."

802694303.11 / 131457-01109  
 Artisan / CC&Rs

Order: KX23SRPWJ  
**EXHIBIT "B"**  
 Address: 5 Artisan Way  
 2  
 Order Date: 07-23-2025  
 Document not for resale  
 HomeWiseDocs

Each Owner is responsible for the maintenance, repair and replacement of all elements of the Residential Unit, except as otherwise set forth below or in the Governing Documents. The Association is responsible for all of the maintenance, repair and replacement of the Association Property. Notwithstanding the foregoing, in the event of a casualty, the Association shall repair and replace all items covered by the Association's insurance. The Owner Maintenance Manual and the Association Maintenance Manual may also expand on the scope of the maintenance responsibilities set forth below.

IMPROVEMENT	MAINTENANCE OBLIGATION & RESPONSIBLE PARTY						
	Clean	Maintain	Repair	Replace	Paint	Resurface	Repave
Exterior fixtures, including light fixtures, photocells and light bulbs, servicing the front entry of a Residential Unit	O	O	O	O	O	N/A	N/A
Established system of drainage within the Owner's Exclusive Use Easement Areas, including without limitation any Cross-Yard Drainage Facilities	O	O	O	O	N/A	N/A	N/A
Lock on Owner's mailbox	O	O	O	O	N/A	N/A	N/A
All Association Property, including without limitation roofs, structural components, bearing walls, foundations, recreational facilities (if any), Private Streets, landscaping, open spaces situated within the Association Property, except any Exclusive Use Easement Areas, as provided herein	A	A	A	A	A	A	A
All Utility Facilities serving two or more Condominiums, and all private Utility Facilities serving Association Property other than Association Property in a Residential Building	N/A	A	A	A	N/A	N/A	N/A

"O" indicates an obligation of the Owner.  
 "A" indicates an obligation of the Association  
 "N/A" indicates an obligation that is "not applicable."

802694303.8 / 131457-01109  
 Artisan / CC&Rs

Order: KX23SRPWJ  
**EXHIBIT "B"**  
 Address: Artisan Way  
 3  
 Order Date: 07-23-2025  
 Document not for resale  
 HomeWiseDocs

Each Owner is responsible for the maintenance, repair and replacement of all elements of the Residential Unit, except as otherwise set forth below or in the Governing Documents. The Association is responsible for all of the maintenance, repair and replacement of the Association Property. Notwithstanding the foregoing, in the event of a casualty, the Association shall repair and replace all items covered by the Association's insurance. The Owner Maintenance Manual and the Association Maintenance Manual may also expand on the scope of the maintenance responsibilities set forth below.

IMPROVEMENT	MAINTENANCE OBLIGATION & RESPONSIBLE PARTY						
	Clean	Maintain	Repair	Replace	Paint	Resurface	Repave
Cluster Mailboxes (excluding locks on individual mailboxes)	A	A	A	A	A	N/A	N/A
Walls and railings on Association Property that do not enclose an Exclusive Use Easement Area	A	A	A	A	A	N/A	N/A
Fencing designated for Association maintenance on Exhibit "C" that borders an Exclusive Use Yard Area	O (interior) A (exterior)	O (interior) A (exterior)	A	A	A	N/A	N/A

"O" indicates an obligation of the Owner.  
 "A" indicates an obligation of the Association.  
 "N/A" indicates an obligation that is "not applicable."

802694303.11 / 131457-01109

Artisan / CC&Rs

Order: KY23SBPWJ  
**EXHIBIT "B"**  
 Address: 4 Artisan Way  
 Order Date: 07-23-2025  
 Document not for resale  
 HomeWiseDocs

**EXHIBIT "C"**

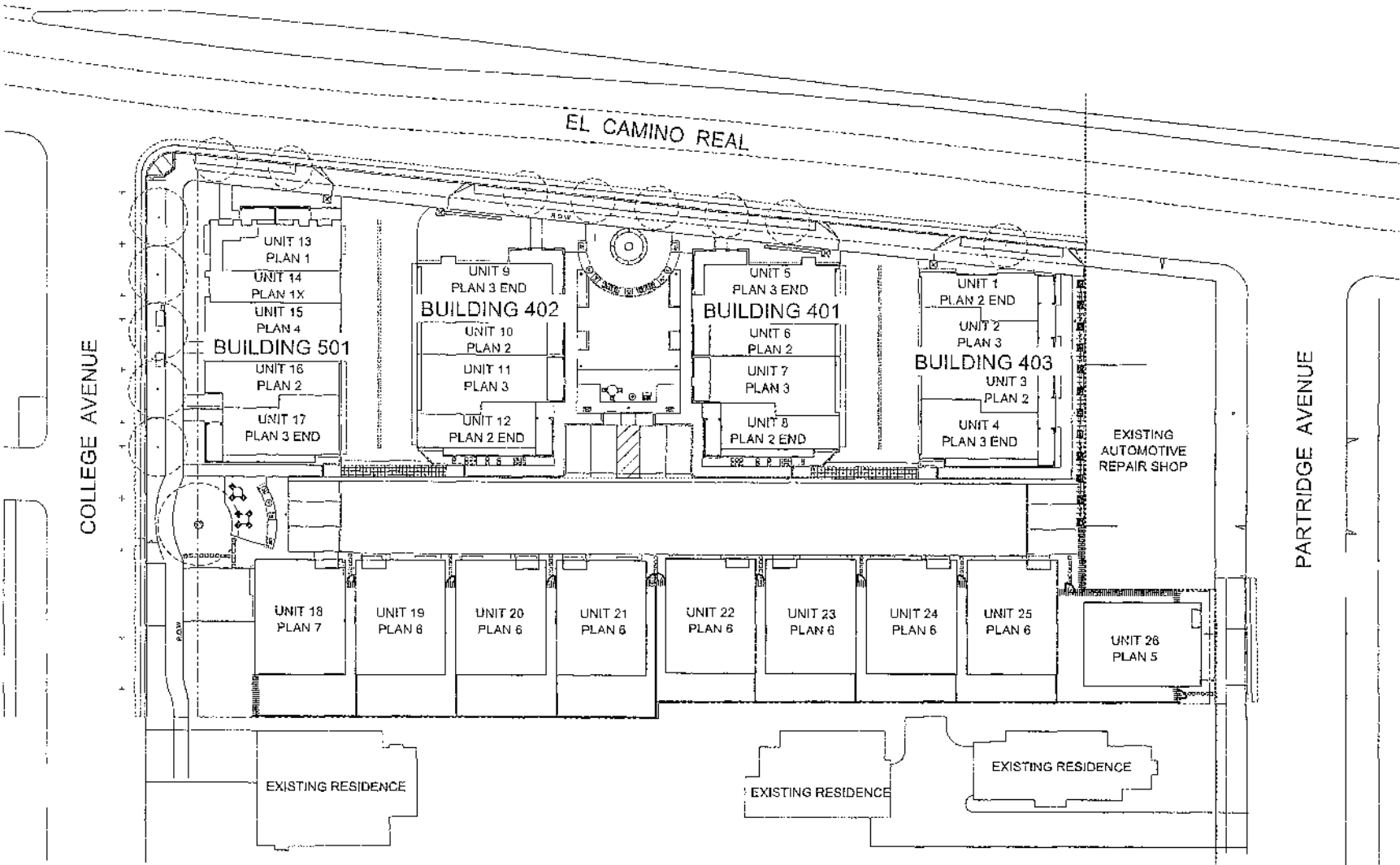
**ASSOCIATION-MAINTAINED FENCING**

**[attached]**

All improvements and locations shown on the attached plat are for informational purposes only and should not be relied upon for content, precise design or dimension. The actual conditions will control. The attached plat is for illustrative purposes only and all dimensions are approximate.






CLEAR NAME:  
D.R. Horton  
6530 Quorum Drive  
Pleasanton, CA 94588  
PROJECT NAME:



Association-Maintained  
Fencing  
389 El Camino Real  
Menlo Park, California



COPYRIGHT ©  
DATE: 2/2023  
DESIGN BY: RB  
DRAWN BY: RB  
CHECKED BY: RB

- LEGEND**
-  6'-0" HIGH REDWOOD FENCE TO BE MAINTAINED BY THE HOMEOWNER'S ASSOCIATION
  -  6'-0" HIGH REDWOOD GATE TO BE MAINTAINED BY THE HOMEOWNER'S ASSOCIATION
  -  9'-0" MAX. HIGH GREEN SCREEN TO BE MAINTAINED BY THE HOMEOWNER'S ASSOCIATION

Association  
Maintained  
Fencing

PLAN VIEW  
NTS

PROJECT NUMBER: 200-16  
SHEET NUMBER:  
**L1.0**  
OF 1 SHEET

**EXHIBIT "D"**

**TRANSPORTATION DEMAND MANAGEMENT PROGRAM ELEMENTS**

• **Transit Information Kiosk**

A transit information kiosk shall be placed centrally on the site as shown in the attached plat. The kiosk should have the following information:

- Post and/or provide copies of route maps and schedules, including Caltrain, shuttles, and SamTrans buses;
- Walking map of downtown and nearby areas; and,
- Provide contact information for transit agencies.

The Association or its representative shall ensure that the information provided is updated on a regular basis, as necessary.

• **Bicycle Racks**

Bicycle racks shall be installed throughout the site as shown in the attached plat. The Association will be responsible for maintaining the bicycle racks.

**[see attached plat]**

All improvements and locations shown on the attached plat are for informational purposes only and should not be relied upon for content, precise design or dimension. The actual conditions will control. The attached plat is for illustrative purposes only and all dimensions are approximate.



PLANNING URBAN DESIGN  
 341 W. LAMAR BLVD  
 SUITE 200  
 PLEASANTON, CA 94588  
 PHONE: (925) 433-1100  
 WWW: RSTUDIOS.COM

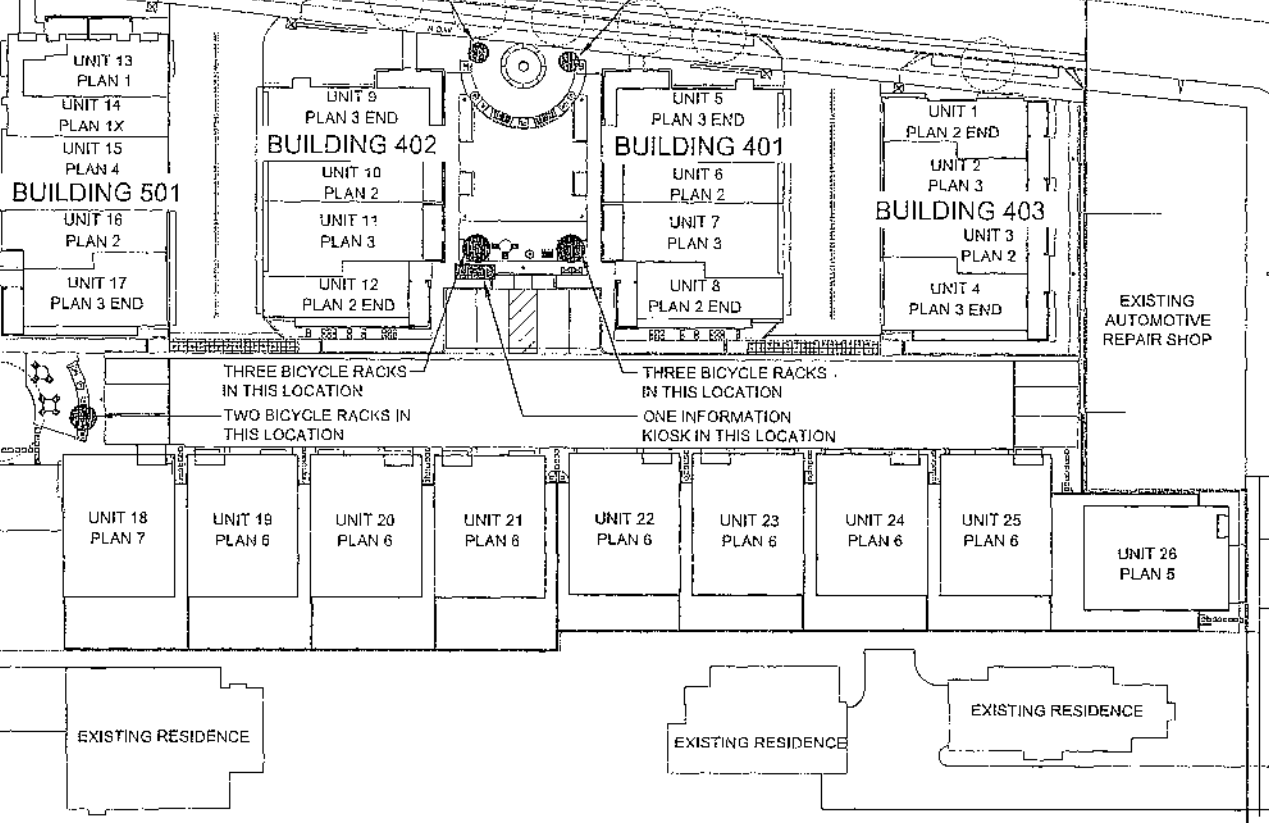
CLIENT NAME:  
 D.R. Horton  
 6800 Owens Drive  
 Pleasanton, CA 94588

PROJECT NAME:

COLLEGE AVENUE

EL CAMINO REAL

PARTRIDGE AVENUE



Bicycle Rack & Information Kiosk Locations  
 389 El Camino Real  
 Menlo Park, California



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 ALL RIGHTS RESERVED  
 NO PART OF THIS DOCUMENT MAY BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF THE LANDSCAPE ARCHITECT.

DATE: 07/20/10  
 DRAWING BY: HRS  
 DESIGN BY: HRS  
 CHECKED BY: HRS

SHEET DESCRIPTION:  
 Bicycle Rack & Information Kiosk Locations

PROJECT NUMBER: 100-1  
 SHEET NUMBER:

L1.0  
 OF 1 SHEET

LEGEND

- BICYCLE RACK LOCATION
- INFORMATION KIOSK LOCATION

PLAN VIEW  
 NTS



RECORDING REQUESTED BY:

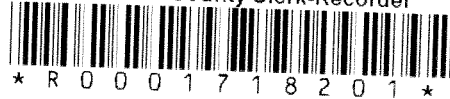
WHEN RECORDED MAIL TO:

McKenna Long & Aldridge LLP  
600 West Broadway, Suite 2600  
San Diego, CA 92101-3372  
Attn: Ms. Katie Jacobsen

#4167848

2013-118184

FIRST AMERICAN TITLE COMPANY  
8:00 am 08/14/13 A3 Fee: 33.00  
Count of Pages 7  
Recorded in Official Records  
County of San Mateo  
Mark Church  
Assessor-County Clerk-Recorder



SPACE ABOVE FOR RECORDER'S USE ONLY

7p

**FIRST AMENDMENT TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
ARTISAN**

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF ARTISAN (“**Amendment**”) is made as of August 9, 2013, by D.R. Horton BAY, Inc., a Delaware corporation (“**Declarant**”), with reference to the facts set forth below.

**RECITALS**

A. Declarant caused that certain Declaration of Covenants, Conditions and Restrictions of Artisan to be recorded in the Office of the County Recorder of San Mateo County, California, on April 23, 2013 as Document No. 2013-061063 (“**Declaration**”). Except as otherwise provided in this Amendment, all initially capitalized terms used herein shall have the meanings given them in the Declaration.

B. The Declaration encumbers the real property in the City of Menlo Park, County of San Mateo, California, described on **Exhibit “A”** attached hereto (“**Property**”).

C. As of the date of this Amendment, Declarant owns all of the Property and, pursuant to Section 14.1 of the Declaration, wishes to amend the Declaration as provided herein.

NOW, THEREFORE, Declarant declares as follows:

1. **Residential Unit.** Clause (f) of Section 1.68 of the Declaration is amended, by the addition of the words “Common Area,” to read as follows: “(f) all Utility Facilities serving solely that Residential Unit, whether located in the Residential Unit, Common Area or the Association Property;”

2. **Easements in Favor of Owners.** Section 2.6 of the Declaration is amended by the addition of the following as new subsection 2.6.5:

“2.6.5 **Exclusive Use Easements.** Declarant hereby reserves and grants to each Owner an exclusive easement to use each portion (if any) of the Association Property and Common Area that is described in the Condominium Plan or the deed to the Owner’s Residential Unit as being an Exclusive Use Easement Area appurtenant to such Residential Unit for the purposes described in this Declaration or the deed.”

3. **Storm Water Pollution Requirements.** Section 6.18.3 of the Declaration is amended by the deletion of the words “and Additional Property” from the first sentence thereof.

4. **Scope of Architectural Review.** The first sentence of Section 8.2 of the Declaration is amended by substituting the word “harmony” for the word “Artisan” to read as follows:

“No Improvements of any kind whatsoever shall be commenced, erected, placed or altered upon or around any Residential Unit or any Exclusive Use Easement Area until the Owner has submitted to the Board complete plans and specifications showing the nature, kind, shape, height and materials, including the color and any other requirements set forth in the Architectural Guidelines (“**Plans and Specifications**”) and the Plans and Specifications have been approved in writing as to harmony of external design and location to surrounding structures and topography by the Board.”

5. **Time Periods for Review.** The third sentence of Section 8.4.1 of the Declaration is amended by substituting the word “harmony” for the word “Artisan” to read as follows:

“If the Board fails to approve or disapprove any such Application within fifteen (15) days after the receipt of said notice from such said Application shall be deemed approved, provided that any Improvements conform to all conditions and restrictions contained in this Article and are in harmony with similar structures erected within the Community.”

6. **Amendments.** The first paragraph of Article 14 of the Declaration is amended to read as follows:

“Except as otherwise set forth in this Declaration, this Article shall not be amended, modified or rescinded until Declarant has conveyed all of the Condominiums within the Community without (a) the prior written consent of Declarant and (b) the recording of said written consent in the Official Records.”



**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE PROPERTY**

That certain real property in the City of Menlo Park, County of San Mateo, State of California, described as:

Parcels 1 and 2 as shown on that certain map entitled "Final Map, Artisan, For Condominium Purposes," filed April 22, 2013 in Book 139 of Maps, at Pages 30 through 32, inclusive, San Mateo County Records.

## EXHIBIT "B"

### MAINTENANCE RESPONSIBILITY CHART

Each Owner is responsible for the maintenance, repair and replacement of all elements of the Residential Unit, except as otherwise set forth below or in the Governing Documents. The Association is responsible for all of the maintenance, repair and replacement of the Association Property. Notwithstanding the foregoing, in the event of a casualty, the Association shall repair and replace all items covered by the Association's insurance. The Owner Maintenance Manual and the Association Maintenance Manual may also expand on the scope of the maintenance responsibilities set forth below.							
IMPROVEMENT	MAINTENANCE OBLIGATION & RESPONSIBLE PARTY						
	Clean	Maintain	Repair	Replace	Paint	Resurface	Repave
The interior of the Residential Unit, including without limitation all appliances, cabinets, plumbing fixtures and all other items within the Residential Unit, whether free-standing or built-in	O	O	O	O	O	O (if applicable)	N/A
Utility Facilities and equipment which exclusively service the Residential Unit whether located in the Residential Unit or in Association Property	N/A	O	O	O	N/A	N/A	N/A
Windows enclosing a Residential Unit, including metal frames, tracks and exterior screens of glass doors and windows	O (A - exterior of inaccessible windows)	O	O	O	A (exterior of window frame only)	N/A	N/A
Doors (including without limitation the garage door) enclosing an Owner's Residential Unit	O (interior) A (exterior)	A	A	A	O to paint interior A to paint exterior	N/A	N/A
Exclusive Use Decks and Porches (excluding any Improvements located within such areas and excluding any railings, and walls surrounding such areas)	O	O	A	A	A	A	N/A
Walls surrounding Exclusive Use Porch Areas	O (interior) A (exterior)	O (interior) A (exterior)	A	A	A	A	N/A

"O" indicates an obligation of the Owner.

"A" indicates an obligation of the Association.

"N/A" indicates an obligation that is "not applicable."

Each Owner is responsible for the maintenance, repair and replacement of all elements of the Residential Unit, except as otherwise set forth below or in the Governing Documents. The Association is responsible for all of the maintenance, repair and replacement of the Association Property. Notwithstanding the foregoing, in the event of a casualty, the Association shall repair and replace all items covered by the Association's insurance. The Owner Maintenance Manual and the Association Maintenance Manual may also expand on the scope of the maintenance responsibilities set forth below.

IMPROVEMENT	MAINTENANCE OBLIGATION & RESPONSIBLE PARTY						
	Clean	Maintain	Repair	Replace	Paint	Resurface	Repave
Railings bordering Exclusive Use Deck Areas	A	A	A	A	A	A	N/A
Exclusive Use Yard Areas (excluding any Improvements located within such areas and excluding any fencing surrounding such areas)	O	O	O	O	N/A	N/A	N/A
Fencing surrounding Exclusive Use Yard Areas (excluding those fences designated for Association maintenance on <b>Exhibit "C"</b> to the Declaration)	O	O	O	O	O	N/A	N/A
Exterior fixtures, including light fixtures, photocells, and light bulbs, <u>not</u> servicing the front entry of a Residential Unit or an Exclusive Use Deck Area	A	A	A	A	A	N/A	N/A
Exterior fixtures, including light fixtures, photocells and light bulbs, servicing the front entry of a Residential Unit or an Exclusive Use Deck Area	O	O	O	O	O	N/A	N/A
Established system of drainage within the Owner's Exclusive Use Easement Areas, including without limitation any Cross-Yard Drainage Facilities	O	O	O	O	N/A	N/A	N/A
Lock on Owner's mailbox	O	O	O	O	N/A	N/A	N/A

"O" indicates an obligation of the Owner.

"A" indicates an obligation of the Association.

"N/A" indicates an obligation that is "not applicable."

803858630.1 / 131457-01109

Artisan / CC&R Amendment

Order: KX23SRPWJ  
 Address: 5 Artisan Way  
 Order Date: 07-23-2025  
 Document not for resale  
 HomeWiseDocs

**EXHIBIT "B"**

Each Owner is responsible for the maintenance, repair and replacement of all elements of the Residential Unit, except as otherwise set forth below or in the Governing Documents. The Association is responsible for all of the maintenance, repair and replacement of the Association Property. Notwithstanding the foregoing, in the event of a casualty, the Association shall repair and replace all items covered by the Association's insurance. The Owner Maintenance Manual and the Association Maintenance Manual may also expand on the scope of the maintenance responsibilities set forth below.

IMPROVEMENT	MAINTENANCE OBLIGATION & RESPONSIBLE PARTY						
	Clean	Maintain	Repair	Replace	Paint	Resurface	Repave
All Association Property, including without limitation roofs, structural components, bearing walls, foundations, recreational facilities (if any), Private Streets, landscaping, open spaces situated within the Association Property, except any Exclusive Use Easement Areas, as provided herein	A	A	A	A	A	A	A
All Utility Facilities serving two or more Condominiums, and all private Utility Facilities serving Association Property other than Association Property in a Residential Building	N/A	A	A	A	N/A	N/A	N/A
Cluster Mailboxes (excluding locks on individual mailboxes)	A	A	A	A	A	N/A	N/A
Walls and railings on Association Property that do not enclose an Exclusive Use Easement Area	A	A	A	A	A	N/A	N/A
Fencing designated for Association maintenance on <b>Exhibit "C"</b> to the Declaration that borders an Exclusive Use Yard Area	O (interior) A (exterior)	O (interior) A (exterior)	A	A	A	N/A	N/A

"O" indicates an obligation of the Owner.

"A" indicates an obligation of the Association.

"N/A" indicates an obligation that is "not applicable."

803858630.1 / 131457-01109

Artisan / CC&R Amendment

Order: KX23SRPWJ  
 Address: 5 Artisan Way  
**EXHIBIT "B"**  
 Order Date: 07-23-2025  
 Document not for resale  
 HomeWiseDocs

**RECORDING REQUESTED BY:**

First American Title Company

**WHEN RECORDED MAIL TO:**

McKenna Long & Aldridge LLP  
600 West Broadway, Suite 2600  
San Diego, CA 92101-3372  
Attn: Ms. Katie Jacobsen

**2013-147439 CONF**

1:30 pm 10/18/13 A3 Fee: 21.00

Count of pages 3

Recorded in Official Records

County of San Mateo

Mark Church

Assessor-County Clerk-Recorder



\* R 0 0 0 1 7 5 6 5 4 2 \*

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**SECOND AMENDMENT TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
ARTISAN**

THIS SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF ARTISAN ("Amendment") is made as of October 16, 2013, by D.R. Horton BAY, Inc., a Delaware corporation ("Declarant"), with reference to the facts set forth below.

**RECITALS**

A. Declarant caused that certain Declaration of Covenants, Conditions and Restrictions of Artisan to be recorded in the Office of the County Recorder of San Mateo County, California, on April 23, 2013 as Document No. 2013-061063, which was amended by First Amendment to Declaration of Covenants, Conditions and Restrictions of Artisan recorded in the Office of the County Recorder of San Mateo County, California, on August 14, 2013 as Document No. 2013-118184 (collectively, the "Declaration"). Except as otherwise provided in this Amendment, all initially capitalized terms used herein shall have the meanings given them in the Declaration.

B. The Declaration encumbers the real property in the City of Menlo Park, County of San Mateo, California, described on Exhibit "A" attached hereto ("Property").

C. As of the date of this Amendment, Declarant owns all of the Property and, pursuant to Section 14.1 of the Declaration, wishes to amend the Declaration as provided herein.

NOW, THEREFORE, Declarant declares as follows:

1. **Airport in Vicinity.** The following is added to the Declaration as new Section 6.22:

"6.22 **Notice of Airport in Vicinity.** The Property is presently located in the vicinity of an airport, within what is known as

an airport influence area. For that reason, the Property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. Prospective purchasers should consider what airport annoyances, if any, are associated with the Property before completing their purchase and determine whether such annoyance are acceptable to them."

2. **Affirmation.** Except as amended or modified herein or to the extent inconsistent with this Amendment, the Declaration remains in full force and effect.

IN WITNESS WHEREOF, Declarant has executed this instrument as of the date first above written.

DECLARANT:

D.R. Horton BAY, Inc., a Delaware corporation

By: [Signature]  
Name: Dean K. Mills  
Title: Assistant Vice President

STATE OF CALIFORNIA )  
COUNTY OF Alameda )

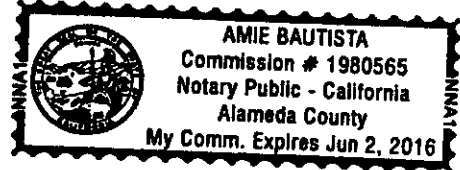
On October 16, 2013, before me, Amie Bautista, Notary Public,  
personally appeared Dean K. Mills  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[Signature]  
Signature

(Seal)



**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE PROPERTY**

That certain real property in the City of Menlo Park, County of San Mateo, State of California, described as:

Parcels 1 and 2 as shown on that certain map entitled "Final Map, Artisan, For Condominium Purposes," filed April 22, 2013 in Book 139 of Maps, at Pages 30 through 32, inclusive, San Mateo County Records.

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:

McKenna Long & Aldridge LLP  
600 West Broadway, Suite 2600  
San Diego, CA 92101-3372  
Attn: Ms. Katie Jacobsen

SPACE ABOVE FOR RECORDER'S USE ONLY

**THIRD AMENDMENT TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
ARTISAN**

THIS THIRD AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF ARTISAN (“**Amendment**”) is made as of October \_\_\_\_, 2013, by D.R. Horton BAY, Inc., a Delaware corporation (“**Declarant**”), with reference to the facts set forth below.

**RECITALS**

A. Declarant caused that certain Declaration of Covenants, Conditions and Restrictions of Artisan to be recorded in the Office of the County Recorder of San Mateo County, California, on April 23, 2013 as Document No. 2013-061063, which was amended by First Amendment to Declaration of Covenants, Conditions and Restrictions of Artisan recorded in the Office of the County Recorder of San Mateo County, California, on August 14, 2013 as Document No. 2013-118184 and by Second Amendment to Declaration of Covenants, Conditions and Restrictions of Artisan recorded in the Office of the County Recorder of San Mateo County, California, on October 18, 2013 as Document No. 2013-147439 (collectively, the “**Declaration**”). Except as otherwise provided in this Amendment, all initially capitalized terms used herein shall have the meanings given them in the Declaration.

B. The Declaration encumbers the real property in the City of Menlo Park, County of San Mateo, California, described on **Exhibit “A”** attached hereto (“**Property**”).

C. As of the date of this Amendment, Declarant owns all of the Property and, pursuant to Section 14.1 of the Declaration, wishes to amend the Declaration as provided herein.

NOW, THEREFORE, Declarant declares as follows:

1. **Owner Maintenance Obligations.** Subparagraph (f) of Section 7.3.1 of the Declaration is amended to read as follows:

“(f) **Exclusive Use Easement Areas.** Each Owner shall be responsible for the routine cleaning and maintenance of each Exclusive Use Easement Area (if any) which the Owner has the exclusive right to use. Such routine maintenance includes, without limitation, landscape maintenance, sweeping, cleaning, and keeping any drainage facilities (including without limitation Cross-Yard Drainage Facilities) located within such Exclusive Use Easement Area free and clear of debris to insure proper drainage, maintenance of any Pollution Control Devices located within the Owner’s Exclusive Use Yard Area in accordance with all requirements of each Governmental Agency with jurisdiction, and maintenance of any Improvements the Owner makes to his or her Exclusive Use Easement Area.”

2. **Association Maintenance Obligations.** Subparagraph (g) of Section 7.4.1 of the Declaration is amended to read as follows:

“(g) **Pollution Control Devices.** The Association shall maintain all Pollution Control Devices installed in the Community, except those installed within an Exclusive Use Yard Area, in accordance with all requirements of each Governmental Agency with jurisdiction.”

3. **Owner Property Insurance.** Section 10.2.1 of the Declaration is amended to read as follows:

“**10.2.1 Property Insurance.** Each Owner shall be responsible, at its sole cost and expense, for insuring against loss to the following: (a) all personal property located in the Owner’s Residential Unit or Exclusive Use Easement Area; and (b) any upgrades other Improvements installed by the Owner in the Owner’s Condominium. No Owner shall separately insure any property covered by the Association’s property insurance policy.”

4. **Affirmation.** Except as amended or modified herein or to the extent inconsistent with this Amendment, the Declaration remains in full force and effect.

IN WITNESS WHEREOF, Declarant has executed this instrument as of the date first above written.

DECLARANT:

D.R. Horton BAY, Inc., a Delaware corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF CALIFORNIA )

)

COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_,

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature

(Seal)

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE PROPERTY**

That certain real property in the City of Menlo Park, County of San Mateo, State of California, described as:

Parcels 1 and 2 as shown on that certain map entitled "Final Map, Artisan, For Condominium Purposes," filed April 22, 2013 in Book 139 of Maps, at Pages 30 through 32, inclusive, San Mateo County Records.