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**AMENDED AND RESTATED DECLARATION**

**OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**OF**

**LELAND TERRACE**

Proposed 12

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**OF**  
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**AMENDED AND RESTATED DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
LELAND TERRACE**

The Declaration of Covenants, Conditions and Restrictions for Leland Terrace, executed by Cuesta Valley Two Ltd, A California Limited Partnership (hereafter referred to as the "Declarant-Phase I"), recorded on May 5, 1989 as Document No. 1989-027962; the Declaration of Annexation to Declaration of Covenants, Conditions and Restrictions of Leland Terrace Phase II Tract 1034, Lot 3 executed by Cuesta Valley Three Ltd, A California Limited Partnership (hereafter referred to as the "Declarant-Phase II"), recorded on April 17, 1990 as Document No. 1990-23663; and the Certificate of First Amendment to Declaration of Covenants, Conditions and Restrictions executed by Leland Terrace Condominium Association, a California Non-profit Mutual Benefit Corporation recorded on May 8, 2003 as Document No. 2003-049784, (collectively referred to as the "Original Declarations"), are hereby amended and restated in their entirety to read as follows:

**RECITALS**

A. Declarant-Phase I and Declarant-Phase II (collectively referred to as the "Declarant") were the original owners of that certain real property located in the City of San Luis Obispo, County of San Luis Obispo, State of California, which is more particularly described as follows:

Lot 2 (Phase I) and Lot 3 (Phase II) as shown on the Map entitled Tract 1034, filed for record on January 13, 1986, in Book 13, at Page 4 of San Luis Obispo County Records and corrected by Certificate of Correction recorded May 12, 1987 in Book 2990, Page 521 of Official Records (the "Property").

B. The Property was improved by the construction of a residential condominium project in two phases as currently defined in section 4125 of the California Civil Code, providing for separate title in each Condominium Unit within the Property, with each Unit having an undivided interest in the Common Areas, as defined herein (the "Project"). The first phase of the Project contains fourteen (14) Condominium Units, and the second phase contains twenty-one (21) Condominium Units.

C. Declarant deemed it desirable to impose a general plan for the development, maintenance, Improvement, protection, use, occupancy and enjoyment of the Property and to establish, adopt and impose covenants, conditions and restrictions upon the Property for the purpose of enforcing, protecting and preserving the value, desirability and attractiveness of the Property and the Improvements erected by the Declarant thereon.

D. Declarant also deemed it desirable for the efficient enforcement, protection and preservation of the value, desirability and attractiveness of the Project to create a non-profit mutual benefit corporation, known as the **Leland Terrace Condominium Association**, which was delegated and assigned the powers of administering and enforcing said covenants, conditions and

restrictions.

E. To effectuate the above-described plans and purposes, Declarant acted pursuant to sections 1350 et seq. of the California Civil Code (currently sections 4000 et seq.) to establish a plan for the development, maintenance, protection, Improvement, use, occupancy and enjoyment of the Property as a Condominium Project. Accordingly, Declarant subjected the Property to the covenants, conditions, restrictions, easements, reservations, liens and charges contained herein. Each and all of the covenants, conditions, restrictions, easements, reservations, liens and charges (hereinafter collectively referred to as the "covenants") shall run with the land and shall inure to the benefit of and be binding upon Declarant, its successors and assigns, and all subsequent Owners of all or any portion of the Property, together with their grantees, successors, heirs, executors, administrators, devisees and assigns.

F. On [Fill-in Date of Approval], more than a bare majority of the total voting power of the Association voted by written ballot in accordance with California Civil Code Section 4270 to amend and restate the Declaration, all in accordance with the procedures for amendment set forth in the Declaration. It was the intention of the Owners to replace the Declaration, in its entirety, with the Recordation of this Declaration. The Owners' action to amend and restate the Declaration as set forth herein and the fact that the requisite percentage of affirmative votes required in the Declaration was achieved is attested by the execution of this Declaration by duly authorized officers of the Association, as required by section 4270(a) of the California Civil Code. As so amended and restated these easements, covenants restrictions and conditions shall run with the Property and shall be binding upon all parties having or acquiring any right, title or interest in the Property or any portion thereof and shall inure to the benefit of each Owner thereof.

## **ARTICLE I DEFINITIONS**

Section 1.01. "Articles" means the Articles of Association; as such Articles may be amended from time to time.

Section 1.02. "Assessment" means any Regular, Special or Special Individual Assessment made or assessed by the Association against an Owner and the Owner's Condominium in accordance with the provisions of Article IV, below.

Section 1.03. "Association" means Leland Terrace Condominium Association, a California non-profit mutual benefit corporation, its successors and assigns. The Association is an "association" as defined in section 4080 of the California Civil Code.

Section 1.04. "Association Rules" means the Rules and Regulations adopted by the Board of Directors of the Association pursuant to Section 3.08, below, as the same may be in effect from time to time.

Section 1.05. "Board of Directors" or "Board" means the Board of Directors of the Association.



Section 1.06. "Bylaws" means the Bylaws of the Association; as such Bylaws may be amended from time to time.

Section 1.07. "City" means the incorporated municipal City of San Luis Obispo, located in the County of San Luis Obispo, State of California, and its various departments, divisions, employees and representatives.

Section 1.08. "Common Area" means the entire Property other than Units, as defined herein or as shown on the Condominium Plan and shall include, without limitation, land, buildings, roads, balconies, patios, driveways, parking areas, landscaping, irrigation systems, utilities, drainage areas, walls, fences, outdoor lighting, trash enclosures and common mailboxes. Portions of the Common Area are "Exclusive Use Common Area" as defined in Section 1.16, below.

Section 1.09. "Common Expense" means any use of Common Funds authorized by Article IV, below, and Article IX of the Bylaws and includes, without limitation: (a) all expenses or charges incurred by or on behalf of the Association for the management, maintenance, administration, insurance, operation, repairs, additions, alterations or reconstruction of the Property as incurred or as may be estimated from time to time by the Association's Board of Directors; (b) any amounts reasonably required to be set aside as reserves for maintenance, repair and replacement of the Common Facilities and for nonpayment of any Assessments; and (c) the use of such funds to defray costs and expenses incurred by the Association in the performance of its functions or in the proper discharge of the responsibilities of the Board as provided in the Governing Documents.

Section 1.10. "Common Facilities" refers to that portion of any residential building structure that is not defined as a Unit herein including, without limitation the vertical supports, horizontal supports, beams, stairway framing, soffit areas, yard fence supports, fences and railings, central services, bearing walls, columns, floors, roofs, foundations, balcony railings, pipes, ducts, chutes, flues, conduits, wires and other utility installations, wherever located, except the outlets thereof when located within a Unit, roadways, driveways and walkways, trees, hedges, plantings, lawns, shrubs, landscaping, fences, utilities, pipes, lines, lighting fixtures, buildings, trash enclosures, structures, and other facilities constructed or installed, to be constructed or installed, or currently located on or within any portion of the Common Area.

Section 1.11. "Common Funds" means all funds collected or received by the Association: (a) for use in the maintenance, management, administration, insurance, operation, replacement, repair, additions or alterations to, or reconstruction of all or any portion of the Common Area and Common Facilities; and (b) for use in discharging any and all of the Association's duties and responsibilities as provided in the Governing Documents.

Section 1.12. "Condominium" means an estate in real property as defined in California Civil Code section 4125, consisting of an undivided interest as a tenant-in-common in a portion of real property referred to herein as the Common Area, together with a fee interest in space called a Unit, all as shown and described in the Condominium Plan.

Section 1.13. "Condominium Plan" means the Condominium Plan-Phase I recorded on April 27, 1989 as Document No. 1989-025798 and Condominium Plan-Phase II recorded February 2, 1990 as Document No. 1990-007179 in the San Luis Obispo County records with respect to the Property.

Section 1.14. "Declarant" means the original developers of the Project, namely, Cuesta Valley Two Ltd, A California Limited Partnership for Phase I of the Project and Cuesta Valley Three Ltd, A California Limited Partnership for Phase II of the Project.

Section 1.15. "Declaration" means this instrument, as it may be amended from time to time. The "Original Declarations" means and refers to the documents referenced in the Recitals together with all amendments and annexations thereto adopted before adoption of this Declaration.

Section 1.16. "Exclusive Use Common Areas" means those portions of the Common Area which are set aside and allocated for the exclusive use of the Unit Owners and his or her guests and invitees including the "balconies, patios and decks" adjacent to the Units, including those areas referred to as the "Patio Use Area" appurtenant to certain Units as designated by a "P" on the Condominium Plan.

Section 1.17. "Family" means one or more persons each related to the other by blood, marriage or legal adoption, or a group of persons not so related who maintain a common household in a Condominium Unit. Section 7.10 imposes regulations on the total number of persons who can occupy a Unit.

Section 1.18. "Governing Documents" refers collectively to this Declaration and to the Articles, the Bylaws and the Association Rules, as the same may be amended from time to time.

Section 1.19. "Lease" means any agreement (written or verbal) under which a person is permitted to occupy a Unit for any period of time for compensation of any kind including, without limitation, any fee, service, gratuity or other consideration. The verb "leasing" shall include renting or otherwise permitting a person other than an Owner to occupy a Unit for compensation of any kind including any fee, service, gratuity or other compensation.

Section 1.20. "Majority of a Quorum" means the vote of a majority of the votes cast at a meeting or by written ballot when the number of Members attending the meeting in person or casting written ballots equals or exceeds the minimum quorum requirement for Member action, as specified in the Bylaws or by statute.

Section 1.21. "Member" means every person or entity who holds a membership in the Association and whose rights as a Member are not suspended pursuant to Section 15.06 below.

Section 1.22. "Mortgage" means any security device, including any deed of trust, encumbering all or any portion of the Property. "Mortgagee" shall refer to a beneficiary under a deed of trust as well as to a Mortgagee in the conventional sense.

Section 1.23. "Owner" means any person, firm, corporation, or other entity (including

contract sellers but excluding any person or entity holding such interest merely as security for the payment of a debt or the performance of an obligation) which holds an interest in any Condominium and includes (except when the context otherwise requires) the Family, guests, tenants, and invitees of such Owner.

Section 1.24. "Project" means the common interest development consisting of Condominiums constructed on the Property.

Section 1.25. "Property" means that certain real property described in Recital A, above, including all structures and Improvements located thereon. The Property is a statutory "condominium project" as defined in California Civil Code section 4125.

Section 1.26. "Record" means, with respect to any document, the recordation or filing of such document in the Office of the San Luis Obispo County Recorder.

Section 1.27. "Regular Assessment" means an Assessment levied against an Owner and the Owner's Condominium in accordance with Section 4.02, below.

Section 1.28. "Residential Use" means occupancy and use of a Unit for dwelling purposes in conformity with this Declaration and the requirements imposed by applicable zoning or other state or municipal laws, ordinances, rules and regulations. In no event shall any Unit be occupied by more individuals than permitted by applicable law, zoning or regulation.

Section 1.29. "Special Assessment" means an Assessment levied against an Owner and the Owner's Condominium in accordance with Section 4.03, below.

Section 1.30. "Special Individual Assessment" means an Assessment levied against an Owner and the Owner's Condominium in accordance with Section 4.04, below.

Section 1.31. "Unit" means the elements of a Condominium that are not owned in common with the other Owners of Condominiums in the Property and shall consist of the interior finished surfaces of the perimeter walls, floors, ceilings, windows and doors of each unit and the space encompassed thereby, including the outlets of all utility installations therein. In interpreting deeds and plans, the existing physical boundaries of a Unit, or of a Unit reconstructed in substantial accordance with the original plans, shall be conclusively presumed to be the Unit's boundaries rather than the description expressed in the deed or plans, regardless of minor variances between the boundaries as shown on the plans or the deed and those of the building containing the Unit and regardless of settling or lateral movement of the building and regardless of minor variations between boundaries shown on the Condominium Plan or in the deed to a Unit and those of the building.

Whenever reference is made to a "Unit," whether in this Declaration, the Condominium Plan, any deed or elsewhere, it shall be assumed that such reference is made to the Unit as a whole, including each of its component elements (including the airspace so encompassed), and to any and all exclusive use areas and easements appurtenant to such Unit, if any. The term "Unit" does not include those areas of the Property that are defined herein as Common Area or Common Facilities.

Section 1.32 Definitions of Other Terms. Unless the context clearly requires otherwise, all other terms are defined in the Davis-Stirling Act.

## **ARTICLE II DECLARATION AND PROPERTY RIGHTS**

Section 2.01. Ownership of Condominium; Easements. The interest of every Owner of a Condominium within the Property shall include the Owner's Unit, the respective undivided one-thirty fifth (1/35<sup>th</sup>) interest in the Common Area appurtenant to such Unit, a membership in the Association, and any nonexclusive easements appurtenant to such Unit over the Common Area as described in this Declaration or the Condominium Plan. The common interest portion of a Condominium appurtenant to each Unit is declared to be permanent in character and cannot be altered or severed from other interests in the Project, except as otherwise provided in Articles XII and XIII, below. An Owner's undivided interest in his or her Condominium shall be deemed to be conveyed or encumbered together with its respective Unit even though the instrument of conveyance or encumbrance may refer only to the fee title to the Unit.

Section 2.02. Owners' Nonexclusive Easements of Enjoyment. Every Owner of a Condominium shall have a nonexclusive right and easement of enjoyment in and to the Project's Common Area, including ingress and egress to and from the Owner's Unit. However, such nonexclusive easements shall be subordinate to, and shall not interfere with, the exclusive easements appurtenant to a Unit. Each such nonexclusive easement shall be appurtenant to and shall pass with the title to every Condominium, subject to the following provisions:

(a) The right of the Association to assign, rent, license, lease, charge reasonable fees for, and to otherwise designate and control the use of any unassigned parking and storage spaces situated within the Common Area and to reasonably limit the number of guests of Owners who may use any Common Facilities located within the Common Area.

(b) The right of the Association to adopt rules and regulations as provided in Section 3.08, below, (the "Association Rules") and, in the event of a breach of the Association Rules or of any other provision of the Governing Documents, to initiate disciplinary action against the violating Owner or tenant in accordance with Section 15.06, below. Such action may include the levying of fines and/or the temporary suspension of an Owner's voting rights or the right of an Owner, the Owner's tenants and guests to use any Common Facilities.

(c) The right of the Association, in accordance with the Governing Documents, to borrow money for the purpose of improving the Common Areas or Common Facilities; provided, however, that any such indebtedness shall be considered an expense of the Association for purposes of determining whether membership approval is required pursuant to the Special Assessment provisions of Section 4.03, below.

(d) The right of the Association to consent to or join in the grant or conveyance of easements, leases, licenses or rights-of-way in, on or over the Common Areas; however, such

grants or conveyances must be consistent with the intended use of the Property as a residential Condominium project and shall not impair the ingress and egress to or from any Unit.

(e) The right of each Owner to the exclusive use and enjoyment of all elements of the Owner's Unit, including, the Exclusive Use Common Area.

(f) All easements affecting the Common Area which are described in Article VIII, below.

Section 2.03. Delegation of Use.

(a) Delegation of Use and Leasing of Units, Generally. Any Owner may rent or lease his Unit and any portion of his Unit, delegate his or her rights to use and enjoy the Common Area and Common Facilities to tenants or lessees who reside in the Unit; provided, however, that any rental or lease may only be for residential purposes and for an initial term of not less than thirty (30) days and provided both the Owner-lessor and the prospective tenant shall execute and deliver to the Association or its agent prior to tenant's occupancy of the Unit a "Lease Addendum" supplied by the Association meeting all the requirements set forth below. The restrictions on residential purposes imposed by this paragraph are intended to protect, enhance, and maintain the residential atmosphere that exists within the Development and to avoid an overburdening of Common Areas and Common Facilities.

During any period when a Unit has been rented or leased, the Owner-lessor, his or her family, guests, and invitees shall not be entitled to use and enjoy the Common Facilities of the Project, except to the extent reasonably necessary to perform the Owner's responsibilities as a lessor of the Unit, provided, however, that this restriction shall not apply to any Owner-lessor who is contemporaneously residing in another Unit within the Project.

Any rental or lease of a Unit shall be subject to the provisions of the Governing Documents all of which shall be deemed incorporated by reference in the lease or rental agreement. Each Owner-lessor shall provide any tenant or lessee with a current copy of all Governing Documents and shall be responsible for compliance by the tenant or lessee with all of the provisions of the Governing Documents during the tenant's/lessee's occupancy and use of the Unit.

(b) Requirements that Must be Observed in all Residential Leases. The following requirements and limitations shall apply to all leases or tenancies of a Unit and shall be included in a form of Lease Addendum signed by the Owner-lessor and the tenant prior to tenant's occupation of the Unit: (i) no Unit may be leased or rented for an initial term of less than thirty (30) days, including, without limitation, any lease or rental on a time share basis shall be strictly prohibited; (ii) any rental shall be evidenced by a written lease or rental agreement with attached Lease Addendum as provided herein that together shall provide that the tenancy is subject to the terms of the Governing Documents and that any failure of the tenant to comply with the terms of any Governing Document relating to residential leases, property use restrictions, or the use and enjoyment of any portion of the Common Area and Common Facilities shall constitute a default under the lease or rental agreement and shall subject the tenant to all disciplinary measures procedures thereunder; (iii) no assignments or subleases shall be allowed unless the Owner-lessor

and the assignee or sublessee has signed a new Lease Addendum meeting all the requirements set forth herein; (iv) in the event the Owner-lessor becomes delinquent in the payment of assessments to the Association, the Owner-lessor agrees to an assignment of rents from his/her Unit to the Association and/or the tenant agrees to pay the Owner-lessors delinquent assessments. Failure of the Owner-lessor or the tenant to comply with the terms of the written lease or rental agreement or the Lease Addendum shall entitle the Association to terminate the tenancy on thirty (30) days written notice to the Owner-lessor and the tenant; and (v) Tenant's use of the Common Area shall not be allowed unless the signed Lease Addendum required hereunder is on file with the Association. The Owner-lessor's right to terminate a lease or rental agreement on account of the tenant's violation of the Governing Documents shall in no way restrict the right of the Association or any Owner to enforce the Governing Documents in accordance with this Declaration when the Owner's tenant is violating the Governing Documents.

(c) Discipline of Lessees. Subject to subparagraph (d), below, if any tenant or lessee fails to honor the provisions of any Governing Document, the Association shall be entitled to take such corrective action as it deems necessary or appropriate under the circumstances to preserve the quiet enjoyment of other Owners and residents of the Project. Without limitation, the Association's actions in response to a tenant's violation of the Governing Documents may include the right to terminate the tenancy after notice to the Owner-lessor and tenant as provided above and the imposition of fines and penalties against the Owner-lessor of the Unit.

(d) Due Process Requirements for Disciplinary Action. Except for circumstances in which immediate corrective action is necessary to prevent damage or destruction to any portion of the Project or to preserve the rights of quiet enjoyment of other Owners, the Association shall have no right to initiate disciplinary action against an Owner-lessor (or the Owner's lessee or tenant) on account of the misconduct of the Owner's lessee or tenant unless and until the following conditions have been satisfied: (i) the Owner has received written notice from the Board, the Association's property manager, or an authorized committee of the Board detailing the nature of the lessee's/tenant's alleged infraction or misconduct and advising the Owner of the Owner's right to a hearing on the matter if the Owner believes that remedial or disciplinary action is unwarranted or unnecessary; (ii) the Owner has been given a reasonable opportunity to take corrective action on a voluntary basis or to appear at a hearing, if one is requested by the Owner; and (iii) the Owner has failed to prevent or correct the tenant's objectionable actions or misconduct. Any hearing requested under this subparagraph shall be conducted in accordance with applicable California law.

Section 2.04. Obligations of Owners. Owners of Condominium Units shall be subject to the following:

(a) Owner's Duty to Notify Association of Tenants and Contract Purchasers. Each Owner shall notify the secretary of the Association or the Association's property manager, if any, of the names of any contract purchaser or lessee residing in the Owner's Condominium. Each Owner, contract purchaser or lessee shall also notify the secretary of the Association or the Association's property manager of the names of all persons to whom such Owner, contract purchaser or lessee has delegated any rights to use and enjoy the Property and the relationship that each such person bears to the Owner, contract purchaser or lessee.

(b) Contract Purchasers. A contract seller of a Condominium must delegate his or her voting rights as a Member of the Association and his or her right to use or enjoy the Common Area and Common Facilities to any contract purchaser in possession of the Property. Notwithstanding the foregoing, the contract seller shall remain liable for any default in the payment of Assessments by the contract purchaser until title to the Condominium which is the subject of the contract has been transferred to the purchaser.

(c) Notification Regarding Governing Documents.

(i) Delivery of Governing Documents and Financial Information, By Owner. As more particularly provided in section 4525 of the California Civil Code, as soon as practicable before transfer of title or the execution of a real property sales contract with respect to any Condominium Unit, the Owner thereof must give the prospective purchaser:

(A) A copy of the Governing Documents;

(B) A copy of the Association's most recent documents distributed by the Association pursuant to California Civil Code section 5300 et seq.;

(C) A true statement in writing from an authorized representative of the Association as to: (1) the amount of any unpaid Assessments, penalties, attorneys' fees and other charges due and unpaid with respect to the Condominium as of the date the statement is issued ("delinquency statement"); (2) the amount of the Association's current Regular and Special Assessments and fees; and (3) any monetary fines or penalties levied upon the owner's interest and unpaid on the date of the statement;

(D) A copy or summary of any notice previously sent to the Owner pursuant to Civil Code section 5855, that sets forth any alleged violations of the governing documents that remains unresolved at the time of the request; and

(E) A statement identifying any change in the Association's current Regular and Special Assessments and fees which have been approved by the Board but have not become due and payable as of the date the information is provided.

(ii) Association's Obligation to Provide Information; Charges. In order to carry out the intent and purpose of this statutory provision, the Association shall, within ten (10) days of the mailing or delivery of a request therefor, provide the Owner with a copy of the documents specified in subparagraph (c)(i) above. The Association shall be entitled to impose a reasonable fee for this service, which shall not exceed the Association's reasonable cost to prepare and reproduce the requested items.

(e) Payment of Assessments and Compliance with Restrictions and Rules. Each Owner shall pay, when due, each Regular, Special and Special Individual Assessment levied against the Owner and his or her Condominium and shall observe, comply with and abide by any and all rules, regulations and restrictions set forth in, or promulgated pursuant to, any Governing

Document for the purpose of protecting the interests of all Owners or protecting the Common Area and Common Facilities.

(e) Discharge of Assessment Liens. Each Owner shall promptly discharge any Assessment lien that may hereafter become a charge against his or her Condominium.

(f) Joint Ownership of Condominiums. In the event of joint ownership of any Condominium, the obligations and liabilities of the multiple Owners shall be joint and several. Without limiting the foregoing, this subparagraph (f) shall apply to all obligations, duties and responsibilities of Owners as set forth in this Declaration, including, without limitation, the payment of all Assessments.

(g) Prohibition on Avoidance of Obligations. No Owner, by non-use of the Common Area or Common Facilities, abandonment of the Owner's Condominium or otherwise, may avoid the burdens and obligations imposed on such Owner by the Governing Documents, including, without limitation, the payment of all Assessments duly levied against the Owner and his or her Condominium Unit pursuant to Article IV, below.

(h) Termination of Obligations. Upon the conveyance, sale, assignment or other transfer of a Condominium to a new Owner, the transferor-Owner shall not be liable for any Assessments levied with respect to such Condominium after the date of recording of the deed evidencing said transfer, and upon such recording all Association membership rights possessed by the transferor by virtue of the ownership of said Condominium shall automatically cease.

### **ARTICLE III HOMEOWNERS ASSOCIATION**

Section 3.01. Association Membership. Every Owner of a Condominium shall be a Member of the Association. An Owner shall hold one membership in the Association for each Condominium owned and the membership shall be appurtenant to such Condominium. Sole or joint ownership of a Condominium shall be the sole qualification for membership in the Association. Each Owner shall remain a Member of the Association until the Owner's ownership interest in all Condominiums in the Property ceases, at which time the Owner's membership in the Association shall automatically cease. Persons or entities who hold an interest in a Condominium merely as security for performance of an obligation shall not be regarded as Members until such time as the security holder comes into title to the Condominium through foreclosure or acceptance of a deed in lieu thereof. Where Units are owned by more than one person, the Board shall have the right, pursuant to Section 3.08, below, to adopt a rule designating the minimum percentage ownership of a Unit to qualify the Owner as a Member for purposes of using any Common Facility or for determining eligibility to serve as a director. Spouses shall be permitted to aggregate their ownership interests to determine either spouse's percentage ownership of a Unit.

Section 3.02. One Class of Membership. The Association shall have one class of membership and the rights, duties, obligations and privileges of the Members shall be as set forth in the Governing Documents.



Section 3.03. Voting Rights of Members. Each Member of the Association shall be entitled to one vote for each Condominium Unit owned by said Member. When more than one person holds an interest in any Unit, all such persons shall be Members; although in no event shall more than one vote be cast with respect to any Unit. An Owner's voting rights may be temporarily suspended under those circumstances described in Article XV, Section 15.06, below.

Section 3.04. Transfer of Memberships. Membership in the Association shall not be transferred, encumbered, pledged or alienated in any way, except upon the sale of the Condominium to which it is appurtenant, and then, only to the purchaser. In the case of a sale, the membership appurtenant to the transferred Unit shall pass automatically to the purchaser upon Recordation of a deed evidencing the transfer of title. A Mortgagee does not have membership rights until he or she becomes an Owner by foreclosure or deed in lieu thereof. Any attempt to make a prohibited transfer of a membership is void. If any Owner fails or refuses to transfer the membership registered in his or her name to the purchaser of the Condominium, the Association shall have the right to record the transfer upon its books and thereupon any other membership outstanding in the name of the seller shall be null and void.

Section 3.05. Assessments. The Association shall have the power to establish, fix and levy Assessments and to enforce payment of such Assessments as more particularly provided in Article IV, below. Any Assessments levied by the Association against its Members shall be levied in accordance with and pursuant to the provisions of this Declaration.

Section 3.06. Powers and Authority of the Association.

(a) General Statement of Association Powers. The Association shall have all of the powers of a nonprofit unincorporated association organized under the laws of the State of California in operating and managing the Property and the Project and in otherwise discharging its responsibilities for the benefit of its Members, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Governing Documents. The Association and its Board of Directors shall have the power to do any and all lawful things which may be authorized, required or permitted to be done under and by virtue of the Governing Documents and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association for the peace, health, comfort, safety or general welfare of the Members in common. The specific powers of the Association and the limitations thereon shall be as set forth in Article IX of the Bylaws. The additional powers and rights described in subparagraphs (b) through (d) of this section are not intended to limit the general statement of Association authority set forth in this subparagraph (a).

(b) Association's Limited Right of Entry.

(i) Right of Entry, Generally. It is expressly agreed that the right of the Association, or its agents, when necessary, shall have the right to enter any Unit in order to:

(A) perform the Association's obligations under this Declaration, including its obligation to enforce the covenants and restrictions set forth herein, to construct,

maintain and repair Common Facilities as necessary for the benefit of the Common Areas or the Owners in common;

(B) to remove any Improvement which is erected or constructed by an Owner or tenant contrary to Article V, below; or

(C) to make necessary repairs that an Owner has failed to perform which, if left undone, will pose a threat or nuisance to, or cause an unreasonable interference with the Owners in common or any portions of the Project which the Association is obligated to repair or maintain.

(ii) Limitations on Exercise of Right. The Association's right of entry pursuant to this subparagraph (b) shall be subject to the following:

(A) The right of entry may be exercised immediately and without prior notice to the Owner or resident in case of an emergency originating in or threatening the Unit where entry is required or any adjoining Units or Common Area. The Association's work may be performed under such circumstances whether or not the Owner or his or her lessee is present.

(B) In all non-emergency situations involving routine repair and/or maintenance activities, the Association, or its agents, shall furnish the Owner or his or her lessee with at least 24 hours prior written notice of its intent to enter the Unit, specifying the purpose and scheduled time of such entry, and shall make every reasonable effort to perform its work and schedule its entry in a manner that respects the privacy of the persons residing in the Unit.

(C) In all non-emergency situations involving access by the Association for purposes of enforcing the Governing Documents against an Owner in default, the Association's entry shall be subject to observance of the notice and hearing requirements imposed by Section 15.06, below.

(c) Designation of Association as Attorney-in-Fact. The Association is hereby irrevocably appointed as the attorney-in-fact for the Owners of each and every Unit to: (i) manage, control and deal with the interest of such Owners in the Common Area so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder; (ii) institute, defend, settle or intervene in litigation, arbitration, mediation or administrative proceedings on behalf of the Owners pursuant to California Code of Civil Procedure section 374 or successor statute; (iii) deal with the Property upon its destruction or obsolescence as hereinafter provided; and (iv) to deal with and handle insurance and insurance proceeds, as provided in Article IX, below, and condemnation and condemnation awards, as provided in Article XI, below. The acceptance by any person or entity of any interest in any Unit shall constitute an appointment of the Association as the Owner's attorney-in-fact as provided above.

(d) Management Contracts. The Association shall have the authority to contract with a Manager for the performance of bookkeeping, maintenance and repair and for conducting other activities on behalf of the Association as may be determined by the Board.

Section 3.07. Association Action; Board of Directors and Officers. Except as to matters which under the Governing Documents require the approval of Members, the affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint.

Section 3.08. Association Rules.

(a) Rule Making Power. The Board may, from time to time and subject to the provisions of this Declaration, propose, enact and amend rules and regulations of general application to the Owners ("Association Rules"). The Association Rules may concern, but need not be limited to: (i) matters pertaining to use of the Common Area and Common Facilities; (ii) regulation of pet ownership, parking, signs, collection and disposal of refuse, and any other subject or matter that is subject to regulation or restriction under Article VII, below; (iii) collection of delinquent Assessments; (iv) the conduct of disciplinary hearings and enforcement proceedings pursuant to Section 15.06, below; (v) designating the minimum percentage ownership of a Unit necessary to qualify an Owner as a Member, as more particularly described in Section 3.01, above; and (vi) any other matter within the jurisdiction of the Association under the Governing Documents.

Notwithstanding the foregoing grant of authority, the Association Rules shall not be inconsistent with or materially alter any provision of the other Governing Documents or the rights, preferences and privileges of the Owners thereunder. In the event of any material conflict between any Association Rule and any provision of any other Governing Document, the conflicting provision contained in the other Governing Document shall prevail.

(b) Distribution of Rules. A copy of the Association Rules and any amendments thereto, shall be mailed or otherwise delivered to each Owner upon request. Furthermore, anytime a rule is amended, or a new Rule is added to the Association Rules, a copy of the Rule or Rule amendment shall be provided to each Member. Finally, a current copy of the Association Rules shall be available and open for inspection by all Members during normal business hours at the principal office of the Association.

(c) Adoption and Amendment of Rules. Association Rules may be adopted, amended or supplemented by a majority vote of the Board; provided, however, that the Board shall distribute to the Members a copy of the text of any proposed new rule or rule amendment at least thirty (30) days prior to the scheduled date of the Board meeting at which the Board is scheduled to act on the matter. Amendments to the Association Rules and any new Rules shall be distributed to each Member either by mail or by personal delivery. Association Rules shall become effective immediately after their adoption by the Board or at such later date as the Board may fix considering the nature of the rule and the circumstances attendant to its adoption.

Section 3.09. Breach of Rules or Restrictions. Any breach of the Association Rules or of any other Governing Document provision shall give rise to the rights and remedies set forth in Section 15.06, below.

Section 3.10. Limitation on Liability of the Association's Directors and Officers.

(a) Claims Regarding Breach of Duty. No director or officer of the Association (collectively and individually referred to as the "Released Party") shall be personally liable to any of the Members or to any other person, for any error or omission in the discharge of his or her duties and responsibilities or for his or her failure to provide any service required under the Governing Documents; provided that such Released Party has, upon the basis of such information as he or she possessed, acted in good faith, in a manner that such person believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Without limiting the generality of the foregoing, this standard of care and limitation of liability shall extend to such matters as the establishment of the Association's annual financial budget, the funding of Association capital replacement and reserve accounts, repair and maintenance of Common Areas and Common Facilities and enforcement of the Governing Documents.

(b) Other Claims Involving Tortious Acts and Property Damage. No person who suffers bodily injury (including, without limitation, emotional distress or wrongful death) as a result of the tortious act or omission of a volunteer director or volunteer officer of the Association shall recover damages from such director or officer if all of the following conditions are satisfied:

- (i) The director or officer owns no more than two Units;
- (ii) The act or omission was performed within the scope of the volunteer director's or officer's Association duties;
- (iii) The act or omission was performed in good faith;
- (iv) The act or omission was not willful, wanton, or grossly negligent;
- (v) The Association maintained and had in effect at the time the act or omission occurred and at the time a claim is made general liability insurance with coverage in the minimum amounts required under Civil Code sections 5800 and 5805 or their replacement statutes.

The payment of actual expenses incurred by a Board member or officer in the execution of such person's Association duties shall not affect such person's status as a volunteer Board member or officer for the purposes of this section. The provisions of this subparagraph (b) are intended to reflect the protections accorded to volunteer directors and officers of community associations pursuant to California Civil Code section 5800. In the event said Civil Code section is amended or superseded by another, similar provision of the California statutes, this subparagraph (b) shall be deemed amended, without the necessity of further Member approval, to correspond to the amended or successor Civil Code provision.

## ARTICLE IV ASSESSMENTS

### Section 4.01. Assessments Generally.

(a) Covenant to Pay Assessments. Each Owner of one or more Condominium Units, by acceptance of a deed or other conveyance therefor (whether or not it shall be so expressed in such deed or conveyance), covenants and agrees to pay to the Association any: (i) Regular Assessments; (ii) Special Assessments; and (iii) Special Individual Assessments in accordance with this Article.

(b) Extent of Owner's Personal Obligation for Assessments. All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a debt and a personal obligation of the person who is the Owner of the Unit at the time the Assessment is levied. Each Owner who acquires title to a Unit (whether at judicial sale, trustee's sale or otherwise) shall be personally liable only for Assessments attributable to the Unit which become due and payable after the date that the person acquires title. Accordingly, when a person acquires title to a Unit, he or she shall not be personally liable for delinquent Assessments of prior Owners of the same Unit unless the new Owner expressly assumes the personal liability of a prior Owner. However, if the acquired Unit is conveyed subject to a valid lien for delinquent Assessments (and related costs of collection), the Association may continue to exercise its foreclosure remedies against the Unit, regardless of the change of ownership, and/or the Association may pursue its collection remedies against the prior Owner, individually.

(c) Creation of Assessment Lien. All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a charge on the Unit and may become a lien upon the Unit against which such Assessment is made when a notice of assessment lien is recorded in accordance with Section 4.10, below. Any lien for unpaid Assessments created pursuant to the provisions of this Article may be subject to foreclosure to the extent and as provided in Section 4.10(b) below.

(d) No Avoidance of Assessment Obligations. No Owner may exempt himself/herself from personal liability for Assessments duly levied by the Association, nor release the Unit or other property owned by him/her from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area or any facilities thereon or by abandonment or non-use of his/her Unit or any other portion of the Property.

### Section 4.02. Regular Assessments.

(a) Preparation of Annual Budget; Establishment of Regular Assessments. Not less than thirty (30) days nor more than sixty (60) days prior to the beginning of the Association's fiscal year, the Board shall estimate the total amount required to fund the Association's anticipated Common Expenses for the next succeeding fiscal year (including additions to any reserve fund established to defray the costs of future repairs, replacement or additions to the Common Facilities) by preparing and distributing to all Members a budget satisfying the requirements of Section 12.05

of the Bylaws. If the Board fails to distribute the budget for any fiscal year within the time period specified in the first sentence of this section, the Board shall not be permitted to increase Regular Assessments for that fiscal year unless the Board first obtains the Members' prior approval in accordance with Section 4.08, below.

(b) Establishment of Regular Assessment by Board/Membership Approval Requirements. The total annual expenses estimated in the Association's budget (less projected income from sources other than Assessments) shall become the aggregate Regular Assessment for the next succeeding fiscal year; provided, however, that, except as provided in Section 4.05, below, the Board of Directors may not impose a Regular Assessment that is more than twenty percent (20%) greater than the Regular Assessment for the Association's immediately preceding fiscal year without the Members' prior approval in accordance with Section 4.08, below.

(c) Allocation of Regular Assessment. The total estimated Common Expenses, determined in accordance with subparagraph (a), shall be allocated among, assessed against, and charged to each Owner equally.

(d) Assessment Roll. That portion of the estimated Common Expenses assessed against and charged to each Owner shall be set forth and recorded in an Assessment roll which shall be maintained and available with the records of the Association and shall be open for inspection at all reasonable times by each Owner or his or her authorized representative for any purpose reasonably related to the Owner's interest as a property Owner or as a Member of the Association. The Assessment roll (which may be maintained in the form of a computer printout) shall show, for each Unit, the name and address of the Owner of Record, all Regular, Special and Special Individual Assessments levied against each Owner and his or her Unit, and the amount of such Assessments which have been paid or remain unpaid. The delinquency statement required by Section 2.04(c)(i), above, shall be conclusive upon the Association and the Owner of such Unit as to the amount of such indebtedness appearing on the Association's Assessment roll as of the date of such statement, in favor of all persons who rely thereon in good faith.

(e) Mailing Notice of Assessment. Within the time requirements specified in subparagraph (a), above, the Board of Directors shall mail to each Owner, at the street address of the Owner's Unit, or at such other address as the Owner may from time to time designate in writing to the Association, a statement of the amount of the Regular Assessment for the next succeeding fiscal year.

(f) Failure to Make Estimate. If, for any reason, the Board of Directors fails to make an estimate of the Common Expenses for any fiscal year, then the Regular Assessment made for the preceding fiscal year, together with any Special Assessment made pursuant to Section 4.03(a)(i), below, for that year, shall be assessed against each Owner and his or her Condominium Unit on account of the then current fiscal year, and installment payments (as hereinafter provided) based upon such automatic Assessment shall be payable on the regular payment dates established by the Board.

(g) Installment Payment of Assessments. The Regular Assessment levied against each Owner and his or her Unit shall be due and payable in advance to the Association in equal monthly

installments on the first day of each month or on such other date or dates as may be established from time to time by the Association's Board of Directors. Installments of Regular Assessments shall be delinquent if not paid within fifteen (15) days of the due date as established by the Board. Any assessment not paid within fifteen (15) days after the due date shall be subject to a ten percent (10%) late payment charge or such other charge as may be allowed by law.

Section 4.03. Special Assessments.

(a) Purposes for Which Special Assessments May Be Levied. Subject to the membership approval requirements set forth in subparagraph (b) below, the Board of Directors shall have the authority to levy Special Assessments against the Owners and their Condominium Units for the following purposes:

(i) Regular Assessment Insufficient in Amount. If, at any time, the Regular Assessment for any fiscal year is insufficient in amount due to extraordinary expenses not contemplated in the budget prepared for said fiscal year, then, except as prohibited by Section 4.02(a), above, the Board of Directors shall levy and collect a Special Assessment, applicable to the remainder of such year only, for the purpose of defraying, in whole or in part, any deficit which the Association may incur in the performance of its duties and the discharge of its obligations hereunder.

(ii) New Capital Improvements. The Board may levy Special Assessments for additional capital Improvements within the Common Area (i.e., Improvements not in existence on the date of this Declaration that are unrelated to repairs for damage to, or destruction of, the existing Common Facilities). The Special Assessment power conferred hereunder is not intended to diminish the Board's obligation to plan and budget for normal maintenance, and replacement repair of the Common Area or existing Common Facilities through Regular Assessments (including the funding of reasonable reserves) and to maintain adequate insurance on the Common Area and existing Common Facilities in accordance with Article IX, below.

(iii) Major Capital Repair and Reconstruction Projects. As more particularly provided in Section 10.03, below, the Board shall be entitled to levy a Special Assessment to fund uninsured major repairs or reconstruction of Common Areas, subject to the membership approval requirements of said Section 10.03.

(b) Special Assessments Requiring Membership Approval. The following Special Assessments require prior membership approval in accordance with Section 4.08, below: (i) any Special Assessments which, in the aggregate, exceed five percent (5%) of the Association's budgeted gross expenses for the fiscal year in which the Special Assessment(s) is/are levied; and (ii) any Special Assessments imposed pursuant to subparagraph (a)(i) of this section when the Board has failed to distribute a budget to the Members within the time specified in Section 4.02(a), above. The foregoing Member approval requirements shall not apply, however, to any Special Assessment imposed to address any "emergency situation" as defined in Section 4.05, below.

(c) Allocation and Payment of Special Assessments.

(i) When levied by the Board or approved by the Members as provided above, Special Assessments shall be divided among, assessed against and charged to each Owner and his or her Condominium Unit in the same manner prescribed for the allocation of Regular Assessments pursuant to subparagraph 4.02(c), above.

(ii) Any Special Assessment duly levied hereunder shall be recorded on the Association's Assessment roll and notice thereof shall be mailed to each Owner. Special Assessments for purposes described in subparagraph (a)(i) of this section shall be due as a separate debt of the Owner and a lien against his or her Condominium Unit and shall be payable to the Association in equal monthly installments during the remainder of the then current fiscal year. Special Assessments for purposes described in subparagraph (a)(ii) shall be due as a separate debt of the Owner and a lien against his or her Unit and shall be payable in full to the Association within thirty (30) days after the mailing of such notice or within such extended period as the Board shall determine to be appropriate under the circumstances giving rise to the Special Assessment. Special Assessments levied pursuant to subparagraph (a)(iii), above, and, Section 10.03, below, shall be due as a separate debt of each Owner and a lien against the Owners' Units at such time as required by the repair or reconstruction project, but in no event sooner than sixty (60) days following receipt of the Association's notice of levy of the Assessment.

Section 4.04. Special Individual Assessments.

(a) Circumstances Giving Rise to Special Individual Assessments. In addition to the Special Assessments levied against all Owners in accordance with Section 4.03, above, the Board of Directors may impose Special Individual Assessments against an Owner in any of the circumstances described in subparagraphs (i) through (iii) below; provided, however, that no Special Individual Assessments may be imposed against an Owner pursuant to this section until the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to Section 15.06, below, and, if appropriate, has been given a reasonable opportunity to comply voluntarily with the Governing Documents. Subject to the foregoing, the facts and circumstances giving rise to liability for Special Individual Assessments include the following:

(i) Damage to Common Area or Common Facilities. In the event that any damage to, or destruction of, any portion of the Common Area, Exclusive Use Common Area or the Common Facilities is caused by the willful misconduct or negligent act or omission of any Owner, any member of his or her family, or any of his or her tenants, guests, servants, employees, licensees or invitees, the Board shall cause the same to be repaired or replaced, and all costs and expenses incurred by the Association in connection therewith (to the extent not compensated by insurance proceeds) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

(ii) Expenses Incurred in Gaining Member Compliance. In the event that the Association incurs any costs or expenses to: (A) accomplish the payment of delinquent Assessments; (B) perform any repair, maintenance or replacement to any portion of the Property that the Owner is responsible to maintain under the Governing Documents but has failed to



undertake or complete in a timely fashion; or (C) otherwise bring the Owner and/or his or her Condominium Unit into compliance with any provision of the Governing Documents, the amount incurred by the Association (including title company fees, accounting fees, court costs and reasonable attorneys' fees) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment. The Association's Special Individual Assessment authority hereunder shall extend to the collection of any reasonable fines or penalties imposed against an Owner pursuant to Article XV, below.

(iii) Required Maintenance of Condominium Units. If any Unit is maintained so as to become a nuisance, structural, fire or safety hazard for any reason, including without limitation, the accumulation of trash, the Association shall have the right to enter said Unit, correct the condition and recover the cost of such action through imposition of a Special Individual Assessment against the offending Owner. Any entry of a Unit by Association agents shall be undertaken in strict compliance with Section 3.06(b), above.

(b) Levy of Special Individual Assessment and Payment. Once a Special Individual Assessment has been levied against an Owner for any reason described, and subject to the conditions imposed in subparagraph (a) of this section, such Special Individual Assessment shall be recorded on the Association's Assessment roll and notice thereof shall be mailed to the affected Owner. The Special Individual Assessment shall thereafter be due as a separate debt of the Owner payable in full to the Association within thirty (30) days after the mailing of notice of the Assessment. As more particularly provided in Section 4.10(b)(ii), below, only certain Special Individual Assessments may be collected through the use of lien and foreclosure remedies.

Section 4.05. Assessments to Address Emergency Situations. The requirement of a membership vote to approve:

(a) Regular Assessment increases in excess of twenty percent (20%) of the previous year's Regular Assessment; or

(b) Special Assessments which, in the aggregate, exceed five percent (5%) of the Association's budgeted gross expenses for the fiscal year in which the Special Assessment(s) is/are levied, shall not apply to Assessments which are necessary to address emergency situations.

For purposes of this section, an emergency situation is any of the following:

(i) An extraordinary expense required by an order of a court.

(ii) An extraordinary expense necessary to repair or maintain the Common Areas, Common Facilities or any portion of the Units which the Association is obligated to maintain where a threat to personal safety is discovered.

(iii) An extraordinary expense necessary to repair or maintain the Common Areas, Common Facilities or any portion of the Units which the Association is obligated to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the budget pursuant to Section 4.02(a); provided, however, that prior to the imposition or collection

of an assessment under this subparagraph (iii), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The Board's resolution shall be distributed to the Members together with the notice of assessment.

Section 4.06. Purpose and Reasonableness of Assessments. Each Assessment made in accordance with the provisions of this Declaration is hereby declared and agreed to be for use exclusively:

- (a) to promote the recreation, health, safety and welfare of individuals residing within the Property;
- (b) to promote the enjoyment and use of the Property by the Owners and their families, tenants, invitees, licensees, guests and employees; and
- (c) to provide for the repair, maintenance, replacement and protection of the Common Area and Common Facilities, including the Exclusive Use Common Areas.

Each and every Assessment levied hereunder is further declared and agreed to be a reasonable Assessment, and to constitute a separate, distinct and personal obligation (with respect to which a separate lien may be created hereby) of the Owner of the Unit against which the Assessment is imposed that shall be binding on the Owner's heirs, successors and assigns; provided, however, that the personal obligation of each Owner for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

Section 4.07. Exemption of Certain Portions of the Property from Assessments. The following real property subject to this Declaration shall, unless devoted to the use as a residential dwelling, be exempt from the Assessments and the lien thereof provided herein:

- (a) Any portion of the Property dedicated and accepted by a local public authority;
- (b) The Common Area and Common Facilities; and
- (c) Any Condominium Unit owned by the Association.

Section 4.08. Notice and Procedure for Member Approval Pursuant to Sections 4.02 and 4.03. If Member approval is required in connection with any increase or imposition of Assessments pursuant to Sections 4.02 and 4.03, above, the affirmative vote required to approve the increase shall be a Majority of a Quorum of the Members. The quorum required for such membership action shall be a majority of the Members.

Section 4.09. Maintenance of Assessment Funds.

(a) Bank Accounts. All sums received or collected by the Association from Assessments, together with any interest or late charges thereon, shall be promptly deposited in one or more federally insured checking, savings or money market accounts in a bank or other financial

institution selected by the Board of Directors. In addition, the Board shall be entitled to make prudent investment of reserve funds in insured certificates of deposit, money market funds or similar investments consistent with the investment standards normally observed by trustees. The Board and such officers or agents of the Association as the Board shall designate shall have exclusive control of said account(s) and investments and shall be responsible to the Owners for the maintenance at all times of accurate records thereof. The withdrawal of funds from Association accounts shall be subject to the minimum signature requirements imposed by California Civil Code section 5510 and Section 12.02 of the Bylaws. Any interest received on deposits shall be credited proportionately to the balances of the various Assessment fund accounts maintained on the books of the Association as provided in subparagraph (b), below.

(b) Expenditure of Assessment Funds. Except as provided below, the proceeds of each Assessment shall be used only for the purpose for which such Assessment was made, and such funds shall be received and held in trust by the Association for such purpose. Notwithstanding the foregoing, the Board, in its discretion, may make appropriate adjustments among the various line items in the Board's approved general operating budget if the Board determines that it is prudent and in the best interest of the Association and its Members to make such adjustments. If the proceeds of any Special Assessment exceed the requirement of which such Assessment was levied, such surplus may, in the Board's discretion, be: (i) returned proportionately to the contributors thereof; (ii) reallocated among the Association's reserve accounts if any such account is, in the Board's opinion, underfunded; or (iii) credited proportionately on account of the Owners' future Regular Assessment obligations.

(c) Separate Accounts; Commingling of Funds. To preclude a multiplicity of bank accounts, the proceeds of all Assessments may be commingled in one or more accounts and need not be deposited in separate accounts so long as the separate accounting records described herein are maintained. For purposes of accounting, but without requiring any physical segregation of assets, the Association shall keep a separate accounting of all funds received by it in payment of each Assessment and of all disbursements made therefrom; provided, however, that receipts and disbursements of Special Assessments made pursuant to Section 4.03(a)(i), above, shall be accounted for together with the receipts and disbursements of Regular Assessments, and a separate accounting shall be maintained for each capital improvement for which reserve funds for replacement are required to be maintained by the Association.

Unless the Association is exempt from federal or state taxes, all sums allocated to capital replacement funds shall be accounted for as contributions to the capital of the Association and as trust funds segregated from the regular income of the Association or in any other manner authorized by law or regulations of the Internal Revenue Service and the California Franchise Tax Board that will prevent such funds from being taxed as income of the Association.

(d) Reserve Funds. The Board shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components of the Properties which the Association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established. However, the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash-

flow requirements or other expenses, provided the Board has made a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed, and describing when and how the money will be repaid to the reserve fund.

The transferred funds shall be restored to the reserve fund within one year of the date of the initial transfer, except that the Board may, upon making a finding supported by documentation that a temporary delay would be in the best interests of the Properties, temporarily delay the restoration. The Board shall exercise prudent fiscal management in delaying restoration of these funds and in restoring the expended funds to the reserve account, and shall, if necessary, levy a Special Assessment to recover the full amount of the expended funds within the time limits required by this subparagraph (d). This Special Assessment is subject to the Member approval requirements of California Civil Code section 5600-5625 and Section 4.03(b), above, if the aggregate amount of the Special Assessment exceeds five percent (5%) of the budgeted gross expenses of the Association for the year in which the Special Assessment is imposed. The Board may, at its discretion, extend the date the payment on the Special Assessment is due. Any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of an unpaid Special Assessment.

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

Section 4.10. Collection of Assessments; Enforcement of Liens. The Association may elect to pursue one or both of the following remedies in the event of a delinquent assessment:

(a) Personal Obligation. The Association may bring a legal action directly against the Owner for breach of the Owner's personal obligation to pay the assessment and in such action shall be entitled to recover the delinquent assessment or assessments, accompanying late charges, interest, costs and reasonable attorneys' fees. Commencement of a legal action shall not constitute a waiver of any lien rights as described in subparagraph (b), below.

(b) Assessment Lien. Except as otherwise provided in Section 4.04, above, with respect to the limitation on the imposition of liens for Special Individual Assessments, the Association may impose a lien against the Owner's Unit for the amount of the delinquent assessment or assessments, plus any reasonable costs of collection (including reasonable attorneys' fees), late charges and interest by taking the following steps:

(i) At least thirty (30) days prior to recording a lien upon the Owner's Unit to collect a delinquent assessment, the Association shall notify the Owner in writing by certified mail of the following (the "Delinquency Notice"):

(A) A general description of the collection and lien enforcement procedures of the Association and the method of calculation of the amount, a statement that the

Owner of the Unit has the right to inspect the Association records, pursuant to Section 5200 of the Civil Code, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed: **“IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION.”**

(B) An itemized statement of the charges owed by the Owner, including items on the statement which indicate the amount of any delinquent assessments, the fees and reasonable costs of collection, reasonable attorneys’ fees, any late charges, and interest, if any.

(C) A statement that the Owner shall not be liable to pay the charges, interest, and costs of collection, if it is determined the assessment was paid on time to the Association.

(D) The right of the notified Owner to request a meeting with the Board as provided in subparagraph, below.

(ii) Any payments made by the Unit Owner toward the delinquent assessment shall first be applied to the assessments owed; and only after the assessments owed are paid in full shall the payments be applied to the fees and the costs of collection, attorneys’ fees, late charges or interest. When an Owner makes a payment, the Owner may request a receipt and the Association shall provide it. The receipt shall indicate the date of payment and the Person who received it. The Association shall provide its Members with a mailing address for overnight payment of Assessments.

(iii) An Owner may dispute the amounts claimed as due and owing in the Delinquency Notice by submitting to the Board a written explanation of the reasons for his or her dispute. If the Owner wishes to submit an explanation, it must be mailed to the Association within fifteen (15) days of the postmark of the Delinquency Notice. The Board shall respond in writing to the Owner within fifteen (15) days of the date of the postmark of the Owner’s explanation.

(iv) An Owner may also submit a written request to meet with the Board to discuss a payment plan for the delinquent assessment. This request must also be made within fifteen (15) days of the postmark of the Delinquency Notice. The Association shall provide the Owners with the standards for payment plans if such standards have been adopted. So long as a timely request for a meeting has been tendered, the Board shall meet with the Owner in executive session within forty-five (45) days of the postmark of the request for a meeting, unless there is no regularly-scheduled Board meeting within that period, in which case the Board may designate a committee of one or more Members to meet with the Owner.

(v) The amount of the Assessment, plus any costs of collection, late charges, and interest assessed in accordance with Civil Code section 5650 shall be a lien on the Owner’s Unit from and after the time the Association causes to be recorded with the County Recorder a Notice of Delinquent Assessment, which shall state the amount of the Assessment and other sums imposed in accordance with Civil Code Section 5650, a legal description of the Owner’s Unit against which the Assessment and other sums are levied, the name of the record owner of the Owner’s Unit against which the lien is imposed. In order for the lien to be imposed by non-judicial

foreclosure as provided in subparagraph (viii), below, the Notice of Delinquent Assessment shall state the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice of Delinquent Assessment shall be signed by any officer of the Association or by the person designated by the Association for that purpose and mailed in the manner set forth in Civil Code Section 2924b to all record owners of the Owner's Unit no later than ten (10) calendar days after recordation. Within twenty-one (21) days of the payment of the sums specified in the Notice of Delinquent Assessment, the Association shall record or cause to be recorded in the Office of the County Recorder a lien release or notice of rescission and provide the Unit Owner a copy of the lien release or notice that the delinquent assessment has been satisfied.

(vi) Once the Association is no longer subject to the regulatory jurisdiction of the Department of Real Estate, a Special Individual Assessment or other monetary charge imposed by the Association as a means of reimbursing the Association for costs incurred in the repair of damage to Common Areas and Common Facilities for which the Member or the Member's guests or tenants were responsible may become a lien against the Member's Unit that is enforceable by sale of the Unit in non-judicial foreclosure pursuant to Civil Code sections 2924, 2924b and 2924c.

(vii) A lien created pursuant to subparagraph (v), above, shall be prior to all other liens recorded against the Owner's Unit subsequent to the Notice of Delinquent Assessment, except as described in Section 4.12, below.

(viii) Subject to the limitations of this Section 4.10(b), after the expiration of thirty (30) days following the recording of a Notice of Delinquent Assessment, the lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent assessment, or sale by a trustee substituted pursuant to Civil Code section 2934a. Any sale by the trustee shall be conducted in accordance with Civil Code sections 2924, 2924b and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trusts. The fees of a trustee may not exceed the amounts prescribed in Civil Code sections 2924c and 2924d.

(ix) If it is determined that a lien previously recorded against a Unit was recorded in error, the party who recorded the lien, within twenty-one (21) calendar days, shall record or cause to be recorded in the Office of the County a lien release or notice of rescission and provide the Unit Owner with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission.

(x) If the Association fails to comply with the procedures set forth in this Section 4.10(b) prior to recording a lien, the Association shall recommence the required notice process. Any costs associated with recommencing the notice process shall be borne by the Association and not by the Unit Owner.

The provisions of this Section 4.10(b) are intended to comply with the requirements of Civil Code Section 5650 et seq. as may be amended from time to time.

Section 4.11. Transfer of Condominium Unit by Sale or Foreclosure. The following rules shall govern the right of the Association to enforce its Assessment collection remedies following the sale or foreclosure of a Condominium Unit:

(a) Except as provided in subparagraph (b), below, the sale or transfer of any Condominium Unit shall not affect any Assessment lien which has been duly recorded against the Unit prior to the sale or transfer, and the Association can continue to foreclose its lien in spite of the change in ownership.

(b) The Association's Assessment lien shall be extinguished as to all delinquent sums, late charges, interest and costs of collection incurred prior to the sale or transfer of a Condominium Unit pursuant to a foreclosure or exercise of a power of sale by the holder of a prior encumbrance (but not pursuant to a deed-in-lieu of foreclosure). A "prior encumbrance" means any first Mortgage or other Mortgage, or lien recorded against the Unit at any time prior to recordation of the Association's Assessment lien (see Section 4.12, below).

(c) No sale or transfer of a Unit as the result of foreclosure, exercise of a power of sale, or otherwise, shall relieve the new Owner of such Unit (whether it be the former beneficiary of the first Mortgage or other prior encumbrance or a third party acquiring an interest in the Unit) from liability for any Assessments which thereafter becomes due with respect to the Unit or from the lien thereof.

(d) Any Assessments, late charges, interest and associated costs of collection which are lost as a result of a sale or transfer of a Unit covered by subparagraph (b), above, shall be deemed to be a Common Expense collectible from the Owners of all of the Units, including the person who acquires the Unit and his or her successors and assigns.

(e) No sale or transfer of a Unit as the result of foreclosure, exercise of a power of sale, or otherwise, shall affect the Association's right to maintain an action against the foreclosed previous Owner personally to collect the delinquent Assessments, late charges, interest and associated costs of collection incurred prior to and/or in connection with the sale or transfer.

Section 4.12. Priorities. When a Notice of Delinquent Assessment has been recorded, such notice shall constitute a lien on the Unit prior and superior to all other liens or encumbrances recorded subsequent thereto except: (a) all taxes, bonds, assessments and other levies which, by law, would be superior thereto; and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to the transfer of such property pursuant to the exercise of a power of sale or a judicial foreclosure involving a default under such first Mortgage or other prior encumbrance.

Section 4.13. Unallocated Taxes. In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than being assessed to the individual Units, such taxes shall be included in the Regular Assessment imposed pursuant to Section 4.02, above, and, if necessary, a Special Assessment may be levied against the Units in an

amount equal to such taxes to be paid in two installments, thirty (30) days prior to the due date of each tax installment.

Section 4.14. Assignment of Rents. Each Owner does hereby presently assign to the Association, absolutely and regardless of possession of the property, all rents and other monies now due or hereafter to become due under any lease or agreement or otherwise for the use or occupancy of any or all parts of any Unit owned by the Owner, now existing or hereafter made for the purpose of collecting all Assessments due the Association pursuant to this Declaration which are in default. The Association hereby confers on each Owner the authority to collect and retain the rents and other monies derived from any such lease or agreement as they become due and payable; provided, however, that the Association at its sole discretion, may revoke such authority at any time, upon written notice to the Owner of a default in the payment of any Assessment due hereunder. Upon revocation of such authority the Association may, pursuant to court order or by court appointed receiver, collect and retain such monies, whether past due and unpaid or current.

Section 4.15. Waiver of Exemptions. Each Owner, to the extent permitted by law, waives, to the extent of any liens created pursuant to this Article, the benefit of any homestead or exemption law of California in effect at the time any Assessment or installment thereof becomes delinquent, or any lien is imposed.

## ARTICLE V ARCHITECTURAL APPROVAL OF IMPROVEMENTS

Section 5.01. Approval of Improvements in General. No "Improvement" (as defined in Section 5.02 below) of any kind shall be commenced, erected or maintained on the Property, nor shall any exterior addition to or change or alteration be made in or to any Unit or Common Facility until the plans and specifications showing the nature, color, kind, shape, height (including front, side and rear elevations), materials, and location of the same shall have been submitted to and approved in writing by the Association's Board of Directors or its duly appointed Architectural Committee as to quality of workmanship and materials, harmony of external design and location in relation to surrounding structures, setback lines and topography and finish grade elevation.

Section 5.02. Definition of Improvements Requiring Approval/Exclusion for Interior Projects. As used herein, the term "Improvement" shall include, without limitation, any building, outbuilding, structural improvement, exterior landscaping, fence, wall, crawlspace, attic, exterior modification of existing structures, internal modification of any Unit involving any roof, bearing wall or other structural component thereof, any change in exterior color of any building improvement or landscape structure, or the installation of solar energy panels, spas, hot tubs, awnings, antennas, television satellite reception dishes or patio covers; or any Improvement to be located within the Exclusive Use Common Area.

The term "Improvement" shall not include any work or Improvement located exclusively within the interior airspace comprising an Owner's Unit so long as the project does not involve any load bearing wall or breach or entry into the roof of the Unit. Accordingly, unless otherwise provided herein, each Owner shall have the exclusive right to paint, plaster, panel, tile, wallpaper



or otherwise finish, refinish or decorate the inner surfaces of the walls, ceiling, floors, windows (See 7.19) or doors of the Owner's Unit. Such projects shall not be subject to this Article.

Section 5.03. Appointment of Architectural Committee. The Board of Directors may, but shall not be obligated to, appoint an Architectural Committee. If such a Committee is appointed, it shall be composed of not less than three (3) or more than five (5) members. Committee members appointed shall be from the membership of the Association. Members of the Committee shall serve for a term of one year. In the event of the death or resignation of any member of the Architectural Committee, a successor shall be appointed by the Board. Neither the members of the Committee nor its designated representatives shall be entitled to any compensation for services performed pursuant hereto. If an Architectural Committee is appointed, any references in this Article to the Board shall be deemed to be a reference to the Committee unless the context clearly indicates a contrary intent.

Section 5.04. Submission of Plans. Plans and specifications shall be submitted to the Board by personal delivery or first-class mail to the secretary of the Association or the chairperson of the Architectural Committee. In the event the Board fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, the request shall be deemed to have been approved. Approval by the Board may contain conditions or requests for modification of particular aspects of the Owner's plans and specifications. If a Committee is appointed pursuant to Section 5.03, approval by the Committee shall be deemed to be a recommendation to the Board of Directors which must be confirmed or rejected by the Board at its next regularly scheduled meeting, but in no event later than thirty (30) days following action by the Committee. The 30-day time limitation for action shall apply only to the initial action by the Board or its Committee and shall not include the thirty (30) days prescribed herein for Board review of Committee actions.

Section 5.05. Architectural Rules. The Board of Directors, may from time to time adopt, amend and repeal rules and regulations to be known as "Architectural Rules." The Architectural Rules shall interpret and implement the provisions of this Declaration by setting forth the standards and procedures for review of plans and specifications and guidelines for architectural design, placement of any work of Improvement or color schemes, exterior finishes and materials and similar features which are recommended or required for use in connection with particular Improvement projects within the Property; provided, however, that said, rules shall not be in derogation of the minimum standards required by this Declaration. In the event of any conflict between the Architectural Rules and this Declaration, the provisions of the Declaration shall prevail. If an Architectural Committee is appointed, the Committee may recommend Architectural Rules for adoption by the Board.

Section 5.06. Variances. The Board of Directors or its Architectural Committee, if duly authorized, shall be entitled to allow reasonable variances with respect to this Article or any restrictions specified in Article VII in order to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardships, provided the following conditions are met:

(a) All requests for variances shall be submitted to the Association in writing. If the Board reserves authority to grant variances, requests shall be submitted to the Association

secretary. If variance authority is delegated to the Architectural Committee, submissions shall be made to the Committee Chair.

(b) If the requested variance will necessitate deviation from, or modification of, a property use restriction that would otherwise apply under this Declaration, the Board or the Architectural Committee must conduct a hearing on the proposed variance after giving at least ten (10) days' prior written notice to the Board and to all Owners of Units located in the same building structure as the Unit affected by the variance or located within 100 feet of the Unit for which the variance applies. The Owners receiving notice of the proposed variance shall have thirty (30) days in which to submit to the Board or Committee written comments or objections with respect to the variance. No decision shall be made with respect to the proposed variance until the 30-day comment period has expired.

(c) The Board or Committee must make a good faith determination that: (i) the requested variance, if granted, will not constitute a material deviation from the overall plan and scheme of development within the Property or from any restriction contained herein or that the variance proposal allows the objectives of the violated requirement(s) to be substantially achieved despite noncompliance; or (ii) the variance relates to a requirement hereunder that it is unnecessary or burdensome under the circumstances; or (iii) the variance, if granted, will not result in a material detriment, or create an unreasonable nuisance, with respect to any other Unit, Common Area, Exclusive Use Common Area or Owner within the Property.

Section 5.07. Estoppel Certificate. Within thirty (30) days after written demand is delivered to the Board by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Board), the Board shall execute an estoppel certificate certifying (with respect to any Unit owned by the applicant Owner) that as of the date thereof, either: (i) all Improvements made and other work completed by said Owner with respect to the Unit(s) comply with this Declaration; or (ii) that such Improvements or work do not so comply, in which event the certificate shall also identify the noncomplying Improvements or work and set forth with particularity the bases of such noncompliance. Any purchaser from the Owner, or anyone deriving any interest in said Unit 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, all Owners and any persons deriving any interest through them.

## **ARTICLE VI ASSOCIATION AND OWNER MAINTENANCE RESPONSIBILITIES**

Section 6.01. Maintenance and Repair of Open Space and Common Areas. No Improvement, excavation or work which in any way alters any portion of the Common Area devoted to open space, driveways walkways, parking, fencing, lighting, or landscaping from its condition or appearance as constructed or improved by Declarant or installed by the Association shall be made or done except upon strict compliance with, and within the restrictions and limitations of, the following provisions of this section:

(a) No person other than the Association or its duly authorized agents shall construct, reconstruct, refinish, alter or maintain any Improvement upon, or shall make or create any

excavation or fill upon, or shall change the natural or existing drainage of, or shall destroy or remove any tree, shrub or other vegetation from, or plant any tree, shrub, or other vegetation upon the Common Area.

(b) The Association shall at any time, and from time to time:

(i) Repair, maintain, install, construct, reconstruct, replace or refinish any Common Facility or other Improvement or portion thereof within the Common Area in accordance with the original design, finish or standard of construction of such Improvement or similar Improvements within the Common Area. Without limiting the foregoing, it is noted that the on-site sanitary sewer and on-site storm drainage within the Property are private and connect with the public systems in the adjacent streets and the Association shall maintain, repair and replace such sewer and drainage facilities as well as all underground utilities within the Common Area to the point where such facilities and utilities enter the perimeter bearing walls of a Unit; except, plumbing pipes which shall be maintained to the point of the main shut-off valve outside the Unit only.

(ii) Construct, reconstruct, replace, and refinish any parking Improvement or asphalt surface upon any portion of the Common Area designated on the subdivision map as a parking area.

(iii) In its sole discretion, replace destroyed trees or other vegetation and plant or remove trees, shrubs and ground cover upon any portion of Common Area.

(iv) In its sole discretion, place and maintain upon the Common Area and Common Facilities such signs as the Association may deem necessary for the identification of the Project; parking Improvements; and the regulation of traffic in the Project, including parking and the regulation and use of Common Area and Common Facilities.

Section 6.02. Maintenance and Repair of Unit Building Structures. In addition to its responsibilities to maintain, repair and replace all components of the open space Common Areas, parking areas and other general Common Facilities within the Project, the Association shall also maintain, repair and replace all Common Facility building structures, housing Units and chimneys of Units, including, without limitation, bearing walls, columns, fences, vertical supports, roofs (except level deck surfaces above entryways), and exterior walls of said structures, gutters and downspouts, patio block walls and the water and utility lines servicing the individual Units to the point where such lines enter the Units; except, plumbing pipes which shall be maintained to the point of the main shut-off valve outside the Unit only. The Association's obligation to respond to major damage or destruction of building structures shall be further subject to Article X, below. The Association shall not be responsible for investigation, treatment or eradication of termites, dry rot or other wood-destroying organisms, or for the repair or any damage caused by such organisms, located with and throughout any Unit including Exclusive Use Common Areas.

Section 6.03. Association Maintenance and Repair Obligations with Respect to Exclusive Use Common Areas. Except as otherwise specified herein, the Association shall be responsible for the maintenance, repair or replacement of improvements in the Exclusive Use Common Areas including as follows: maintenance, repair or replacement of the concrete patio slabs, concrete piers;

and any damage to the improvements caused by movement of soil under and around the foundation of the Units (as determined by a Board approved engineer); painting the walls, railings, and spindles on the balconies, decks and patios due to normal weathering (not including level walking surfaces).

Except as provided in this section, the Association shall not be responsible for the maintenance, repair or replacement of any other Exclusive Use Common Areas or any improvements in such areas, including, any damage caused by wood destroying organisms in any part of the structures located therein which shall be the Owners' responsibility.

Section 6.04. Owners' Maintenance and Repair Responsibilities. Except as provided in section 6.02 and 6.03 above, each Owner of a Condominium shall be responsible for maintaining, repairing and replacing all components of the Owner's Unit and any Improvements installed by the Owners on the Owners Exclusive Use Common Areas, including, without limitation, the following:

(a) Maintain the Owner's Unit, including the areas designated in the Condominium Plan as elements of the Unit and the parking space designated for such Unit in a clean, attractive and sanitary condition and promptly exterminate vermin, insects, ants, roaches, etc., inside the Unit. This obligation includes the obligation to investigate, eradicate, and/or treat termites, dry rot and other wood-destroying organisms, as well as to repair damage to the Owner's separate interests, including Exclusive Use Common Area. Owners are also required to maintain decks, balconies, and wood patio enclosures (except for concrete piers, footings, slabs, and block walls) for all damage other than that caused by wood destroying organisms including but not limited to weathering, warpage, animal damage and rusting of fasteners and brackets.

(b) Maintain, repair, replace and restore the plumbing, air conditioning, electrical (including the electrical circuit breaker for the Unit) and heating systems, natural gas lines, cable television, internet and telephone service, sprinkler systems and alarm systems, fire place inserts and chimney flue and spark arrestor (including cleaning), water heaters and all other internal installations and utilities and any other equipment that is installed for the exclusive use and enjoyment in the Owner's Unit and which are located within the inside perimeter of the exterior bearing walls of said Unit; except, plumbing pipes which shall be maintained by the Owner to the point of the main shut-off valve outside the Unit, and all appliances and equipment located in said Unit.

(c) Maintain, repair, replace and restore all portions of the Owner's Unit, including, without limitation, the interior walls, ceilings, floors and doors, including front doors, back doors, sliding doors and garage doors and openers and screens and windows; damage caused by termites, dry rot or other wood destroying organisms provided, however, that no work shall be undertaken which involves entry into the roof or any exterior wall of a Unit without prior notice to, and approval of the Board or the Architectural Committee in accordance with Article V.

(d) Every Owner shall be responsible for the prompt performance of all maintenance, repair and restoration work within his or her Unit which, if omitted or unreasonably delayed, would

adversely affect the Project in its entirety or any portion of the Project inhabited by other Owners or residents.

Section 6.05. Owners' Rights and Duties Regarding Utilities. The rights and duties of the Owners of Condominiums within the Project with respect to sanitary sewer, water, electricity, gas and telephone lines and facilities shall be as follows:

(a) Whenever sanitary sewer, water, electricity, gas, television receiving, telephone lines or connections, are installed within the Property, which connections or any portion thereof lie in or upon Condominiums owned by other than the Owner of a Condominium served by such connections, the Owners of any Condominium served by such connections shall have the right, and are hereby granted an easement to the full extent necessary therefore, to enter upon the Condominiums or to have the utility company enter upon the Condominiums in or upon which such connections or any portion thereof lie, to repair, replace and generally maintain such connections, as and when necessary.

(b) Whenever sanitary sewer, water, electricity, gas or telephone lines or connections, are installed within the Property which connections serve more than one Condominium, the Owner of each Condominium served by such connection shall be entitled to the full use and enjoyment of such portions of such connections as service his or her Condominium.

(c) In the event of a dispute between Owners with respect to the repair or rebuilding of such connections, or with respect to the sharing of the cost thereof, then, upon written request of one or such Owners addressed to the Association, the matter shall be submitted to the Board of Directors who shall decide the dispute and the decision of the Board shall be final and conclusive on the parties.

Section 6.06. Association's Right to Recover Certain Maintenance and Repair Costs.

(a) Association Maintenance Necessitated by Owner Negligence. If the need for maintenance or repair which would otherwise be the Association's responsibility hereunder is caused through the willful or negligent act(s) of an Owner, or the Owner's family, guests or invitees, and is not covered or paid for by the Association insurance policies maintained by the Association or any personal liability insurance held by the responsible Owner, the cost of such maintenance or repairs shall be subject to recovery by the Association through the imposition of a Special Individual Assessment against the offending Owner in accordance with Section 4.04, above.

(b) Owner Defaults in Maintenance Responsibilities. If an Owner fails to undertake any maintenance, repair, replacement or restoration project enumerated herein in a timely fashion, the Association, its agents, contractors or delegates shall have the right to enter the Unit, at reasonable times, to effect such maintenance, repair, replacement or restoration and the cost thereof shall be charged to the Owner of the Unit and, if not paid in a timely fashion, shall be collected as a Special Individual Assessment. Any Association action hereunder shall be undertaken in strict compliance with the requirements and procedures regarding the Association's right to enter Units set forth in Section 3.06(b), above.

Section 6.07. Rights of City of San Luis Obispo. The City of San Luis Obispo shall have the right to maintain the Common Area if the Association fails to do so, and to assess the Association for expenses incurred. The City of San Luis Obispo shall have the rights to inspect the Common Area of the Project at mutually agreed upon times to assure that the conditions of the Project Documents and Map are being complied with. The Project shall be in compliance with all maintenance responsibilities for landscaping and other off-site improvements required by the conditions of map approval for Tract 1034. Representatives of the City of San Luis Obispo shall meet with representatives of the Association and establish standards for the maintenance of the Common Area. Prior a determination by the City of San Luis Obispo that the Association has failed to maintain the Common Area in accordance with the previously established standard, the City of San Luis Obispo shall provide the Association adequate notice and opportunity for a hearing before an appropriate body of the City of San Luis Obispo prior to the City's taking any action to maintain the Association and assess the Association for their cost of said maintenance.

## **ARTICLE VII USE OF PROPERTY AND RESTRICTIONS**

In addition to such restrictions as may be established by law or made a part of the Association Rules (consistent with this Declaration), the following restrictions are hereby imposed upon the use and enjoyment of the Property (including, without limitation, the individual Units):

Section 7.01. Residential Use. No Member Shall use or permit his/her Unit or any portion of it to be occupied or used for any purpose other than a private residential dwelling. Units shall not be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other nonresidential purpose. Notwithstanding the foregoing, Residents may use a room in their Unit home as a home office; provided that the primary use of the Unit is as a Residence and no advertising or signage is used in any manner in connection with the office use and package deliveries are kept to a minimum. and no customers, clients or patients frequent the Unit. The Board may adopt Rules regarding the use of such offices.

Section 7.02. Antennas. No antennas for transmitting or receiving radio signals or any other form of electromagnetic radiation may be installed, except as provided in the Association's Rules and Regulations, its Architectural Standards, and applicable law.

Section 7.03. Barbeques. There shall be no exterior fires whatsoever except for charcoal, natural gas, propane or electric barbeques and propane or natural gas fire pits and heaters in U.L.-approved confined receptacles designed for such purposes. The hours of operation, type of equipment, and rules regarding their operation shall be in the Rules and Regulations. Residents shall take reasonable precautions to minimize smoke from entering other Units.

Section 7.04. Drones. A "drone" is defined as a powered aerial vehicle that flies autonomously or is remotely piloted. The operation of drones in the Development is not allowed. No Person may operate, cause, allow or authorize the operation of a drone in the airspace above any portion of the Development in such a way as to invade the privacy and quiet enjoyment of Association members, guests, residents or vendors, whether equipped with a camera or otherwise. Prior written approval of the Board of Directors must be given for drone operations that fall outside

the Rules and must comply with such terms and conditions as the Board may deem appropriate under the circumstances.

Section 7.05. Flammable/Hazardous Materials. Under no circumstances may explosives, fireworks, or highly flammable or highly corrosive materials be stored or used by Members, Tenants, or their respective family, guests, or invitees in Parking Areas, Common Areas, Exclusive Use Common Areas, or Units.

Section 7.06. Health/Safety Hazards. Members shall not permit conditions which constitute a health, safety, or fire hazard to exist in or on their Units or Exclusive Use Common Areas.

Section 7.07. Spas and Hot Tubs. No spa or hot tub may be installed in any Unit without the written approval of the Board. Such installations shall meet the requirements specified in the Architectural Standards. Any damage to, or destruction of, any portion of the Common Area, Exclusive Use Common Area or the Common Facilities caused by the installation or use of a spa or hot tub shall be the sole responsibility of the Unit Owner and shall give rise to a special individual assessment under section 4.04 above.

Section 7.08. Laundry. No clothesline or drying rack may be erected, maintained or used in the exterior of the Development, except in an exclusive use area of a Member which is not visible from the street or any neighboring Unit. The Association may adopt reasonable rules and restrictions regarding the use of clotheslines and drying racks as allowed by law. No item may be draped over fences, trees or patio walls or railings.

Section 7.09. Nuisance. No Member may cause or permit to be caused anything which constitutes a nuisance.

(a) Unreasonableness. To constitute a nuisance, the activity must be such that it causes an unreasonable disturbance or annoyance, be unreasonably injurious to health, be indecent, or be unreasonably detrimental to Persons or property.

(b) Secondhand Smoke. Any "exfiltration" (air flow outward through a Wall, building envelope, window, etc.) of any noxious odor or smoke, including tobacco smoke, from a Unit, whether through windows, doors, vents, or other means is prohibited. It is the responsibility of the Member causing such exfiltration of smoke to prevent such exfiltration.

(c) Allergies. Residents with allergies or sensitivities must, at their own expense take precautions to protect themselves against commonplace levels of noise, odors, dust, smoke, gases, pollen, or other environmental pollutants.

(d) Board Determination. Because a nuisance is largely subjective, the Association is not obligated to become involved in disputes where, in the opinion of the Board, the alleged disturbance does not constitute a nuisance. Despite the Board's determination, the parties retain the right to take appropriate legal action against each other without involving the Association.

Section 7.10. Occupancy Restriction. The maximum number of Persons who may reside in any Unit is two (2) Persons per bedroom plus one additional Person for the Unit. For purposes of this restriction, "reside" means the use, residency or occupancy of any Unit by any Person for

more than thirty (30) consecutive days or more than sixty (60) aggregate days, whether or not consecutive, in any one calendar year.

Section 7.11. Grandfathered Occupancy. In Units where the number of Persons residing in the Unit on the date of recordation of these CC&Rs is in violation of these CC&Rs, those Persons residing in excess of the maximum number of Persons permitted may continue to reside in the Unit; provided, however, once the current Residents in excess of the maximum number permitted cease to reside in the Unit, those Persons cannot be replaced. Along with other remedies provided for in this Declaration, the Board may impose a water usage surcharge per Person residing in a Unit in violation of the occupancy restriction.

Section 7.12. Obstruction of Common Areas. No Common Area shall be obstructed or used for other than its intended purpose, except as designated by the Board.

Section 7.13. Quiet Enjoyment. No one may engage in any abusive or harassing behavior or any form of intimidation or aggression, whether verbal or physical, against other Members, Residents, guests, invitees, members of the Board, or the Association's management, employees, Agents, or vendors. Because the breach of quiet enjoyment is largely subjective, the Board may choose to act only against egregious breaches. In the event the Association chooses not to act on a complaint of breach of quiet enjoyment, or the complaining party believes the Association's action is not sufficient, such party may take legal action to enforce this provision against other Residents, but specifically waives his/her right to take action against the Association and its Officers, Directors, employees, and agents in their handling of the party's complaint.

Section 7.14. Roof Restricted Access. Members and their families, Unit Residents, Guests, employees, vendors, and agents are prohibited from entering onto the Association's roofs without the prior written consent of the Board.

Section 7.15. Sale of Unit. Open houses, brokers' caravans and other matters relating to the sale of a Unit shall be provided for in the Rules and Regulations.

Section 7.16. Satellite Dishes. Satellite dishes may only be installed as provided for in the Rules and Regulations, Architectural Standards, and applicable law.

Section 7.17. Signs. Signs, posters, flags, banners, notices, nameplates, cards, and advertisements of any kind may only be displayed to the public view or from any Unit or any Exclusive Use Common Area as allowed by law. Owners may display one sign which is of reasonable dimensions and design advertising that the property is for sale or lease, as allowed by law and subject to any restrictions in the Rules and Regulations. Commercial signs may not be displayed. Notwithstanding the foregoing, no sign shall be permitted on the Project unless it complies with the applicable sign regulations of the City of San Luis Obispo.

Section 7.18. Use of Independent Contractors. Members may use independent contractors to perform work in their Unit subject to the Association's Construction Guidelines. Such contractors shall be licensed and insured as required by law. The Association may, but is not required to, and is specifically relieved of any responsibility or liability for policing this provision. Members shall be liable for any injury to persons or damage to the Common Areas, Exclusive Use Common Areas, Units and any personal property caused by the acts or omissions of such Member's contractor. The Association may in its discretion repair, restore or replace such damaged property and may impose a Reimbursement Special Assessment against the liable Member and that



Member's Unit for all costs, expenses and attorney fees incurred by the Association in connection with the damage. The Reimbursement Special Assessment may become a lien against the liable Member's Separate Interest enforceable by the sale of the Member's Unit under Civil Code sections 2924, 2924(b), and 2924(c).

Section 7.19. Window Coverings. The color of all window coverings shall be in harmony with the exterior of the structure. No window may be covered by paint, aluminum foil, Newspapers, bed sheets, cardboard, blankets, or other similar items.

Section 7.20. Drainage. No Owner shall do any act or construct any improvement which would interfere with the natural or established drainage systems or patterns within the Project without the written consent of the Board and the appropriate approval of the City of San Luis Obispo.

Section 7.21. Drilling and Exploration. No Units shall be used in any manner to explore for, remove, refine, or store any water, gasoline, oil, Hydrocarbons, minerals, gravel, earth or earth substances of any kind.

Section 7.22. Increased Insurance Rates. No Member shall permit anything be done or kept in or on any Unit or any Common Area which will increase the rate of insurance in or on any other Unit or the Common Area, or which would result in uninsurability or in the cancellation, suspension, modification or reduction of insurance in, on or covering any other Unit, Common Area or item of personal property within the Development. If, by reason of the occupancy or use of any portion of the Development by any Member, the rate of insurance on any policy held by the Association shall be increased, such Member shall become personally liable to the Association for any increase in insurance premiums caused thereby and the cost of the increase shall be assessed to such Member and his/her Unit as a Special Assessment.

Section 7.23. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Unit except such machinery or equipment as is usual and customary in connection with the use, maintenance or placement/removal of a Unit as a private Residence.

Section 7.24. Sanitary Conditions. Members shall maintain their Units and all Improvements in a clean and sanitary condition and not allow rubbish or debris of any kind to accumulate so as to render any Unit or portion of a Unit unsanitary, unsightly or, offensive.

Section 7.25. Trash; Storage of Materials. All garbage and trash shall be regularly removed from the Property and shall not be allowed to accumulate thereon. It shall be placed and kept in covered sanitary containers where it is not visible from any neighboring Unit except for a reasonable time prior to or after collection. All woodpiles or storage piles shall be kept screened and concealed from view of Units and Common Areas. Garbage and trash shall be placed for pick up as required by the disposal service and any rules adopted by the Association. There shall be no outside storage by owners except in designated storage areas.

Section 7.26. Solar Energy Panels. Members have the right to install solar energy panels on a Common Area roof of the building in which the Owner resides. Owner must (1) obtain the Association's approval; (2) provide for the maintenance, repair, or replacement of roofs or other building components damaged during installation of said system; (3) require installers to indemnify the Association; and (4) submit an ARC application pursuant to Article V above and

comply with any other conditions for approval required by the Association; and (5) disclose to prospective buyers the existence of the solar energy system. Owners are responsible for removal and reinstallation of solar panel and equipment upon maintenance or replacement of roofs.

Section 7.27. Household Pets. The following restrictions regarding the care and maintenance of pets within the Project shall be observed by each Owner and resident:

(a) A reasonable number of common household pets may be kept in each Unit so long as the same are not kept, bred or maintained for commercial purposes. No other animals or poultry of any kind shall be kept, bred or raised in any Unit. In any event, no more than a total combination of three dogs (including without limitation a service or companion dog) or cats shall be maintained or kept in each Unit within the project unless prior approval is obtained by the Board on a case-by-case basis.

(b) Dogs shall only be allowed on the Common Area when they are leashed and otherwise under the supervision and restraint of their Owners.

(c) No household pet shall be left chained or otherwise tethered in the Common Area. Pet owners shall be responsible for the prompt removal and disposal of pet wastes deposited by their pets within the Project.

(d) Each person bringing or keeping a pet on the Property shall be solely responsible for the conduct of such pets.

(e) The Association, its Board, officers, employees and agents shall have no liability (whether by virtue of this Declaration or otherwise) to any Owners, their family members, guests, invitees, tenants and contract purchasers for any damage or injury to persons or property caused by any pet.

(f) The Board of Directors shall have the right to establish and enforce additional regulations: defining in a uniform and nondiscriminatory manner what constitutes a "reasonable number" of pets, depending on such criteria as size, disposition, maintenance requirements and/or noise and imposing standards for the reasonable control and keeping of household pets in, upon and around the Property to ensure that the same do not interfere with the quiet and peaceful enjoyment of the Property by the other Owners. The regulations adopted by the Board may, in the Board's sole discretion, limit the right to maintain dogs, cats and other pets that are likely to be within the Common Areas from time to time; provided, however, that any such rule shall not affect the rights of any lessee under a lease agreement in effect at the time the rule is adopted.

Section 7.28. No Exterior Maintenance by Owners. Except as to Owners responsibility to repair damage due to wood rot or termites (which shall be completed by Owners only with express approval of the Association) no planting or gardening shall be done on any Condominium, and there shall be no exterior painting or maintenance of building structures housing Units by or on behalf of the Owners thereof, or any person holding thereunder, nor repair or replacement of original roofs or utility laterals by said persons, it being the intention hereunder that such items be maintained and replaced by the Association in conjunction with latter's maintenance of the Common Areas in order to preserve the external harmony and uniform appearance of the Property.

Nothing herein shall be construed as preventing an Owner from maintaining common household plants located entirely within the Owner's Unit or the Exclusive Use Common Area or within the Common Area adjacent to an Owners Unit as long as the Association has pre-approved of such landscaping and such landscaping is properly maintained in an attractive condition.

Section 7.29. Interior Improvements. No Owner shall undertake any action or work on the interior of their Unit that will impair the structural soundness or integrity of the Owner's Unit or impair any easement or hereditament or do any act or allow any condition to exist which will adversely affect the other Condominiums or their Owners.

Section 7.30. Restriction on Alteration of Common Areas or Building Exteriors. In order to insure adequate aesthetic controls and to maintain the general attractive appearance of the Property, no Owner, resident or lessee shall construct fences, walls, or make any alterations, additions or modifications to or on any part or portion of the Common Area or exterior surfaces of the residential Units, except as authorized by the Association pursuant to Article V, above. No construction or alteration of structural Improvements may be undertaken on or within any Condominium Unit without approval of the Architectural Committee. Without limiting the foregoing, no Owner shall construct, install or use any external radio or television antenna system (including, without limitation, any television satellite reception dish) without prior Board approval under sections 7.02 and 7.16 above.

Section 7.31. Parking; Trailers, Boats and Motor Vehicles. Parking and the use, storage and operation of vehicles within the Property shall be subject to the following restrictions:

(a) Parking spaces are assigned by the Board and allowed within the designated spaces and garages only. No parking in the streets which are fire lanes. Exceptions are allowed for loading and unloading vehicles and vehicles providing a service to the Association or an Owner, and only for the duration reasonably necessary to fulfill such purpose.

(b) Garages are to be used for the parking of vehicles only and they are not to be converted for any type of living space or activities.

(c) No off-road vehicle, mobile home, trailer, motor home, boat, or oversized truck camper shall be parked or stored within the Property in a manner that impedes the flow of traffic or comfortable access of other vehicles to adjacent spaces; provided, however, that the temporary parking of any such vehicles, boats or trailers within the Common Area is allowed to load or unload such vehicles, boats or trailers but only for a duration reasonably necessary.

(d) No motor vehicle shall be constructed, reconstructed or repaired within the Property and no dilapidated or inoperable vehicle including vehicles without wheel(s) or an engine shall be stored within the Property; provided, however, that the provisions of this paragraph shall not apply to emergency vehicle repairs.

(e) The Board and the City shall have the right to tow any vehicle parked in an unauthorized place or unauthorized manner.

Section 7.32. Children. Each resident shall be accountable to the other Owners, their families, lessees, visitors, guests and invitees, for the conduct and behavior of their children and that of children temporarily residing in or visiting the Owner's Unit and for any property damage caused by such children.

Section 7.33. Sports Fixtures. No basketball standards, hoops or backboards or other fixed sports apparatus shall be located in the Common Area or attached to any Unit.

Section 7.34. Variances. The Board of Directors may allow reasonable variances and adjustments of the Property use restrictions contained in this Article in order to overcome practical difficulties and prevent unnecessary hardships in the application of the provisions contained herein; provided however, that any variance must be authorized in accordance with the procedures described in Section 5.06, above.

## **ARTICLE VIII EASEMENTS**

Section 8.01. Encroachment Easements. Each Unit is hereby declared to have an easement over adjoining Units and Common Area and the Common Areas and Improvements thereon are declared to have an easement over all Units for the purpose of accommodating any encroachment due to roof overhang and fences or walls which are built in accordance with the original design, plans and specifications of Declarant, and are encroachments due to engineering errors, errors in original construction, reconstruction repair, settlement or shifting of any portion of the Project, or similar causes. There shall be valid easements for the maintenance of these encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by the encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if the encroachment occurs due to the willful misconduct of the Owner or Owners. In the event a structure is partially or destroyed, and is repaired or rebuilt, the Owners of each adjoining Unit agree that minor encroachments over adjoining Units or Common Area shall be permitted and that there shall be valid easements for the maintenance of the encroachments so long as they shall exist.

Section 8.02. Utility Easements Granted by Association. The Association shall have the power to grant and convey to any third party easements and rights-of-way in, on, over or under the streets and Common Area for the purpose of constructing, erecting, operating or maintaining lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public Improvements or facilities, subject to prior written approval thereof by the City. Each Owner, in accepting a deed to a Condominium, expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact of such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. An easement is hereby created and reserved for installation, maintenance and use of horizontal and vertical utility lines, ducts and appurtenances thereto in areas adjoining ceilings, walls, columns and interior spaces between columns, within the Units. No removal, repair or modification of these lines is permitted without specific written authorization from the Association.

Section 8.03. Other Easements. Each Unit, it's Owner and the Association, as the case may be, is hereby declared to be subject to all the easements, dedications and rights-of-way granted or reserved in, on, over and under the Property and each Condominium as shown on the Condominium Plan.

## **ARTICLE IX INSURANCE**

Section 9.01. Insurance Coverage. The Association shall purchase, obtain and maintain the following types of insurance, if and to the extent they are available:

(a) Public Liability and Property Damage Insurance. A policy of comprehensive public liability insurance insuring the Association, each member of the Association Board of Directors, any Manager and the Owners and occupants of Units against any liability incident to the ownership or use of the Common Areas and including, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than the minimum amounts required by Civil Code §5805 or any replacement statute covering all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, liability for non-owned and hired automobiles, liability for property of others and any other liability or risk customarily covered with respect to projects similar in construction, location and use.

(b) Fire and Casualty Insurance. Except as provided in this section, the Association shall obtain and maintain a policy of fire and casualty insurance, written on all risk, replacement cost basis, on all on all Common Area and Common Facilities of the Association and the personal property of the Association. The insurance shall be kept in full force and effect at all times. Depending on the nature of the insured property and the requirements, if any imposed by institutional Mortgagees having an interest in such property, the policies maintained by the Association pursuant to this section shall contain an agreed amount endorsement or a contingent liability from operation of building laws endorsement or the equivalent, an extended coverage endorsement, vandalism, malicious mischief coverage, a special form endorsement and a clause to permit cash settlements for full insurable value in case of partial destruction. The policies required hereunder shall name as insured the Association, all Owners and all Mortgagees as their respective interests may appear. The policies may contain a loss payable endorsement in favor of the trustee described in Section 9.05, below.

(c) Director's and Officer's Liability Insurance. To the extent such insurance is reasonably obtainable the Association shall maintain individual liability insurance for its directors and officers providing coverage for negligent acts or omissions in their official capacities. The minimum coverage of such insurance shall not be less than the minimum amounts required under Civil Code §5800 or any replacement statute.

(d) Other Insurance. The Board may and, if required by any institutional Mortgagee, shall purchase and maintain demolition insurance in adequate amounts to cover demolition in case

of total or partial destruction and a decision not be rebuild, and a blanket policy of flood insurance. The Board also shall purchase and maintain workers' compensation insurance, to the extent that it is required by law, for all employees or uninsured contractors of the Association. The Board also shall purchase and maintain fidelity bonds or insurance (which shall be in an amount equal to three (3) months' operating expenses including contributions to reserves and shall contain an endorsement of coverage of any person who may serve without compensation) sufficient to meet the requirements of any Mortgagee.

Section 9.02. Coverage Not Available. In the event any insurance policy or any endorsement thereof, required by Section 9.01 is for any reason unavailable, then the Association shall obtain such other or substitute policy or endorsement as may be available which, at the discretion of the Board, provides, as nearly as possible, the coverage hereinabove described.

Section 9.03. Copies of Policies. Copies of all insurance policies (or certificates thereof showing the premiums thereon to have been paid) shall be retained by the Association and shall be available for inspection by Owners at any reasonable time.

Section 9.04. Individual Fire Insurance Limited. Except as provided in this section, no Owner can separately insure the Owner's Unit or any part of it against loss by fire or other casualty covered by insurance carried under Section 9.01, above. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable pursuant to the provisions of Section 9.01 that results from the existence of such other insurance will be chargeable to the Owner who acquired other insurance and the Owner will be liable to the Association to the extent of any such diminution. An Owner shall insure the Owner's personal property against loss. In addition, any Improvements made by an Owner within the Owner's Unit or the Owner's Exclusive use Common Area shall be separately insured by the Owner. All such insurance that is individually carried must contain a waiver of subrogation rights by the carrier as to other Owners, the Association and institutional first Mortgagees of such Condominium.

Section 9.05. Trustee. All insurance proceeds payable under Sections 9.01 and 9.02, above, may, in the discretion of the Board of Directors, be paid to a trustee, to be held and expended for the benefit of the Owners, Mortgagees and others, as their respective interests shall appear. Said trustee shall be a commercial bank within the City that agrees in writing to accept such trust. If repair or reconstruction is authorized, the Board shall have the duty to contract for such work as provided in this Declaration.

Section 9.06. Owner's Insurance. An Owner shall carry personal liability and property damage liability insurance with respect to the Owner's Unit, including all components of an Owner's Unit and Improvements installed by Owner on Owner's Exclusive Use Common Area. Such policy shall include a waiver of subrogation clause acceptable to the Board and to any first Mortgagee.

Section 9.07. Adjustment of Losses. The Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried pursuant to Sections 9.01 and 9.02, above. The Board is granted full right and authority to compromise and

settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

Section 9.08. Annual Insurance Review. The Board shall review the insurance carried by or on behalf of the Association at least annually, for determining if such insurance is adequate. Such responsibility may be performed and shall be deemed reasonably performed by the Board requesting the Association's insurance agent to verify that the insurance policies in existence meet the needs of the Association.

Section 9.09. Insurance Deductibles. The amount of the deductible portion of any insurance coverage maintained by the Association shall be established in the reasonable discretion of the Board. In the event that a loss is not the result of the negligent or willful misconduct of a particular Owner or a particular guest, tenant or invitee of an Owner, or if responsibility cannot clearly be established, the cost of the deductible shall be defrayed by the Association and, if necessary the deductible shall be recovered from the Owners through levy of a Special Assessment pursuant to Section 4.03(c)(ii), above. However, if a loss is established to be the result of the negligent or willful misconduct of a particular Owner or his or her guest, tenant or invitee, that Owner shall be charged with the deductible amount as a Special Individual Assessment pursuant to Section 4.04(a)(i), above. Before such a Special Individual Assessment may be imposed the Owner, who is alleged to be responsible for the loss shall be entitled to notice and a hearing in accordance with Article XV, below.

## **ARTICLE X DAMAGE OR DESTRUCTION**

Section 10.01. Destruction; Proceeds Equal or Exceed Eighty-Five Percent (85%) of the Reconstruction Costs. If there is a total or partial destruction of any Unit or Common Facility Improvements within the Property, and if the available proceeds of the insurance maintained pursuant to Article IX are sufficient to cover not less than eighty-five percent (85%) of the costs of repair and reconstruction, the Improvements shall be promptly rebuilt unless, within ninety (90) days from the date of destruction, a majority of "eligible Members" (as defined in Section 10.04, below), determine that such repair and reconstruction shall not take place. If repair and reconstruction is to take place, the Board shall be required to Record, not later than one hundred twenty (120) days from the date of such destruction, a certificate declaring the intention of the Members to rebuild.

Section 10.02. Destruction; Proceeds Less Than Eighty-Five Percent (85%) of Reconstruction Costs. If the proceeds of insurance are less than eighty-five percent (85%) of the cost of repair and reconstruction, repair and reconstruction of the damaged or destroyed Improvements may nevertheless take place, if, within ninety (90) days from the date of destruction, a majority of eligible Members, determine that such repair and reconstruction shall take place. If a meeting or written ballot is called to vote on the matter, the Association shall solicit and obtain bids from at least two reputable contractors to repair and reconstruct the Improvements in accordance with the original plans and shall present this information to the Owners at the meeting. If repair and reconstruction are to take place, the Association shall Record, not later than one

hundred twenty (120) days from the date of destruction, a certificate declaring the intention of the Owners to rebuild.

Section 10.03. Rebuilding Procedures. If a majority of eligible Members determine to rebuild, pursuant to Section 10.01 or 10.02, above, the Owners of all Units within the Property shall be obligated to contribute their proportionate share of that portion of the cost of reconstruction or restoration, damaged or destroyed structures which is over and above the available insurance proceeds. The Owners' proportionate share of the cost of reconstruction or restoration shall be levied as a Special Assessment pursuant to Section 4.03(c)(ii), above, with the allocation of the total uninsured cost varying depending on the ratio of the square footage of the floor area of each Unit within the Development owned by each Owner to the total square footage of floor area of all Units within the Development.

If any Owner disputes the amount of his or her proportionate share of the liability under this section, such Owner may contest the amount by submitting to the Board within ten (10) days after notice to the Owner of his or her share of the liability, written objections supported by cost estimates or other information that the Owner deems to be material. The Owner may also request a hearing before the Board at which the Owner may be represented by counsel. Following such hearing, the Board shall give written notice of its decision to all Owners, including any recommendation that adjustments be made with respect to the liability of any Owners. If such adjustments are recommended, the notice shall schedule a special meeting of Members for the purpose of acting on the Board's recommendation, including making further adjustments, if deemed by the Members to be necessary or appropriate. All adjustments shall be affirmed or modified by a majority of the eligible Members. If no adjustments are recommended by the Board, the decision of the Board shall be final and binding on all Owners, including any Owner filing objections.

Section 10.04. Definition of "Eligible Members" Entitled to Vote. For purposes of any vote pursuant to this Article, the Members eligible to vote shall be: (a) the requisite percentage of the total voting power of the membership in the case of any damage to or destruction of Common Facilities other than buildings containing Units; and (b) in the case of any damage to, or destruction of, buildings containing Units, the requisite percentage shall be of the voting power of those Members whose Units are located in the damaged or destroyed structure(s). Any membership vote required hereunder shall be conducted either at a duly convened meeting at which a quorum is present or by written ballot conducted in accordance with Section 4.04 of the Bylaws.

Section 10.05. Rebuilding Contract. If the Eligible Members determine to rebuild, the Board shall reconstruct the damaged or destroyed portions of the Property substantially in accordance with the original plan. The Board or its authorized representative shall obtain bids from at least three reputable contractors and shall award the repair and reconstruction work to the bidder the Association Board determines to be the most qualified (which need not be the lowest bidder). The Board shall have the authority to enter into a written contract with the contractor for such repair and reconstruction on terms deemed reasonable by the Board. The insurance proceeds held by the trustee shall be disbursed to the contractor according to the terms and conditions of the agreement. It shall be the obligation of the Board to take all steps which are necessary or



appropriate to assure the commencement and completion of authorized repair and reconstruction at the earliest possible date.

Section 10.06. Rebuilding Not Authorized. If the Eligible Members determine not to rebuild, then any insurance proceeds then available for rebuilding shall be used or distributed as follows:

(a) If, prior to the expiration of one hundred twenty (120) days from the date of destruction, a majority of Owners and institutional first Mortgagees with Mortgages encumbering the affected Units within the Property consent by vote or in writing, the Board acting on behalf of the Association shall have the right to purchase the Units which were rendered uninhabitable by such damage or destruction at the fair market value thereof immediately prior to the damage or destruction (as determined by an appraiser in accordance with Section 10.08, below), using the available proceeds of insurance for such purpose. Any shortage of insurance proceeds shall be made up by a Special Assessment levied against all remaining Owners (but without the consent or approval of Owners, despite any contrary provisions of this Declaration). The Board's decision as to whether or not a Unit is uninhabitable shall be final and binding on all parties. Any payment of the purchase price shall be made jointly to the selling Owner and all Mortgagees of his or her Unit and each Owner by accepting a deed to a Condominium agrees to be bound by these provisions and to sell his or her Condominium by grant deed to the Association as provided herein.

(b) Concurrently with such purchase, the Board or individuals authorized by the Board, acting as attorney-in-fact of all Owners shall amend the Subdivision Map and this Declaration to eliminate from the Property the Condominiums so purchased and to adjust the undivided ownership interest of the remaining Owners to reflect the reduced number of Condominiums in the Project. Immediately thereafter the Association shall convey to each remaining Owner a proportionate share of the undivided interests in the Common Area represented by the Condominiums purchased. This proportion shall be in the ratio that each remaining Owner's undivided interest in the Common Area bears to all remaining Owner's undivided interests in the Common Area.

(c) Notwithstanding the determination of eligible Members not to rebuild pursuant to Section 10.01 or 10.02, above, any Units which are not rendered uninhabitable shall be repaired and restored to a condition as near as possible to their condition immediately before such damage or destruction. Such repair and restoration shall be paid first, from the insurance proceeds remaining after the purchase of Condominiums pursuant to subparagraph (a) of this section, if any, and second, from a Special Assessment levied against all remaining Owners in the manner described in Section 4.03(c)(ii), above, (but without the consent or approval of Owners, despite any contrary provisions of this Declaration).

(d) If the required majority of the Owners and institutional first Mortgagees do not consent to purchase the Condominiums which were rendered uninhabitable, an appraiser shall determine the relative fair market values of all Condominiums in the Property, as of a date prior to any damage or destruction and the proceeds of insurance shall be apportioned among all Owners, and their respective Mortgagees, in proportion to such relative values. The Board shall have the duty, within one hundred twenty (120) days from the date of destruction, to Record a certificate

declaring the intention of the Members not to rebuild. On recordation of the Association's certificate, the right of any Owner to partition through legal action as described in Article XII shall revive immediately.

Section 10.07. Minor Repair and Reconstruction. In any case, the Board shall have the duty to repair and reconstruct Improvements owned by the Association or Improvements it is obligated to repair and maintain, 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 \$20,000. Any amounts paid by the Board up to and including \$20,000 which are not covered by insurance shall be assessed to all Owners in accordance with Section 4.03(c)(ii).

Section 10.08. Appraiser. Wherever in this Article or Article XI (condemnation) reference is made to a determination of the value or fair market value of one or more Condominiums by an appraiser, this shall mean an appraisal by an independent appraiser selected by the Board, who shall be a member of the Society of Real Estate Appraisers (SREA) or other nationally recognized appraiser organization and who shall apply its or such other organization's standards in determining the value or fair market value of each Condominium. The costs of such appraisals shall be paid from the sale or insurance proceeds, as the case may be.

## **ARTICLE XI CONDEMNATION**

Section 11.01. Sale by Unanimous Consent or Taking. If an action for condemnation of all or a portion of the Property is proposed or threatened by any governmental agency having the right of eminent domain, then, on unanimous written consent of all of the Owners and all institutional Mortgagees, the Property, or a portion thereof may be sold and conveyed to the condemning authority by the Board or its designees acting as the attorney-in-fact of all Owners under an irrevocable power of attorney, which each Owner by accepting a deed to a Unit hereby grants and which shall be coupled with the interest of all other Owners, for a price deemed fair and equitable by the Board. If the requisite number of Owners or institutional Mortgagees do not consent to a sale of all or a portion of the Property, and the condemning authority institutes condemnation proceedings, the court shall fix and determine the condemnation award.

Section 11.02. Distribution and Sale Proceeds of Condemnation Award.

(a) Total Sale or Taking. A total sale or taking of the Property means a sale or taking: (i) that renders more than fifty percent (50%) of the Condominiums uninhabitable (such determination to be made by the Board in the case of a sale and by the court in the case of a taking); or (ii) that renders the Property as a whole uneconomical as determined by the vote or written consent of a majority of the eligible Owners and their respective institutional Mortgagees. However, any determination that a sale or taking is total must be made before the proceeds from any sale or award are distributed. The proceeds of any such total sale or taking of the Property, after payment of all expenses relating to the sale or taking, shall be paid to all Owners and to their respective Mortgagees in the proportion that the fair market value of each Condominium bears to

the fair market value of all Condominiums on the Property. The fair market value of Units shall be determined in the condemnation action, if such be instituted, or by a state certified appraiser.

(b) Partial Sale or Taking. In the event of a partial sale or taking of the Property, meaning a sale or taking that is not a total taking as determined in Section 11.02(a), above, the proceeds from the sale or taking shall be paid or applied in the following order of priority and any judgment of condemnation shall include the following provisions as part of its terms:

(i) To the payment of expenses of the Association in effecting the sale or to any prevailing party in any condemnation action to whom such expenses are awarded by the Court to be paid from the amount awarded; then

(ii) To Owners and to their respective Mortgagees, as their interests may appear, of Condominiums on the Property whose Condominiums have been sold or taken, an amount up to the fair market value of such Condominiums as determined by the court in the condemnation proceeding or by an appraiser, less such Owners' share of expenses paid pursuant to Section 11.02(b)(i) (which share shall be in proportion to the ratio that the fair market value of each Owner's Condominium bears to the fair market value of all Condominiums). After such payment, the recipient shall no longer be deemed an Owner and the Board or individuals authorized by the Board, acting as attorney-in-fact of all Owners shall amend the Subdivision Map and this Declaration to eliminate from the Property the Units so sold or taken; then

(iii) To any remaining Owner(s) and to his or her Mortgagees, as their interests may appear, whose Condominium has been diminished in value as a result of the sale or taking disproportionate to any diminution in value of all Condominiums, as determined by the Court in the condemnation proceeding or by an appraiser, an amount up to the total diminution in value; then

(iv) To all remaining Owners and to their respective Mortgagees, as their interests may appear, the balance of the sale proceeds or award in proportion to the ratio that the fair market value of each remaining Owner's Condominium bears to the fair market value of all remaining Owners' Condominiums as of a date immediately prior to commencement of condemnation proceedings, as determined by the Court in the condemnation proceeding or by an appraiser.

## **ARTICLE XII PARTITION OF COMMON AREA**

Section 12.01. Suspension or Right of Partition. Except as expressly provided in this Article, an Owner shall have no right to partition or divide his or her ownership of the Common Area. Partition of the Common Area can be had on a showing that the conditions to such partition as stated in Section 10.06, (relating to damage or destruction) or in Article XI (relating to condemnation) or in California Civil Code section 4610 have been met. Nothing in this Declaration shall prevent partition of a co-tenancy in a Condominium.

Section 12.02. Distribution of Proceeds Upon Partition. Proceeds of the sale of property resulting from a partition shall be distributed to and among the respective Owners and their Mortgagees as their interests appear in proportion to the ratio that the fair market value of each Owner's Condominium bears to the fair market value of all Owners' Condominiums determined by appraisal as provided in Section 10.08, but as of a date immediately prior to the event giving rise to the right of Owners to partition the Common Area.

Section 12.03. Power of Attorney. Pursuant to California Civil Code section 4610 each of the Owners irrevocably appoints the Association as attorney-in-fact and irrevocably grants to the Association full power in the name and stead of such Owner to sell the entire Project, and to execute deeds and conveyances to it, in one or more transactions, for the benefit of all Owners when partition of the Project may be had under California Civil Code section 4610 and under the circumstances authorizing partition under this Declaration. The power of attorney shall: (i) be binding on all Owners, whether they assume the obligations under this Declaration or not; (ii) 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 seventy-five percent (75%) of the Owners and seventy-five percent (75%) of all institutional first Mortgagees; and (iii) 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 section 4610 of the California Civil Code. This certificate shall be conclusive evidence of proper exercise in favor of any person relying on it in good faith.

### **ARTICLE XIII NONSEVERABILITY OR COMPONENT INTERESTS**

Section 13.01. Severance Prohibited. An Owner shall not be entitled to sever his or her Unit in any Condominium from his or her membership in the Association and shall not be entitled to sever his or her Unit and his or her membership from the Owner's undivided interest in the Common Area for any purpose. None of the component interests in a Condominium can 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 his or her Unit over the Common Area from the Owner's condominium, and any attempt to do so shall be void. The suspension of such right of severability will not extend beyond the period set forth in Article XII respecting the suspension of partition.

Section 13.02. Limitation on Interests Conveyed. After the initial sales of the Condominiums, unless otherwise expressly stated, any conveyance of a Unit or any portion of it by an Owner shall be presumed to convey the entire Condominium. However, nothing contained in this section shall preclude the Owner of any Condominium estate, such as by creating an estate for life or an estate for years, or from creating a cotenancy or joint tenancy in the ownership of the Condominium with any other person or persons.

**ARTICLE XIV  
MORTGAGEE PROTECTIONS**

Section 14.01 Mortgages Permitted. Any Owner may encumber his Unit with Mortgages.

Section 14.02 Priority of Mortgage. Notwithstanding any other provision of this Declaration, it is hereby provided that a breach of any of the conditions contained in the Project Documents by any Owner or of any re-entry by reason of such breach, shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to said Unit or any part thereof. Any lien which the Association may have on any Unit in the Project for the payment of common expense assessments attributable to such Unit will be subordinate to the lien or equivalent security interest of any first mortgage on the Unit recorded prior to the date any such common expense assessments became due.

Section 14.03 Payment of Taxes or Premiums by Mortgages. Mortgagees may, jointly or singly, pay taxes or other charges which are in default, and which may or have become a charge against the Common Area, unless such taxes or charges are separately assessed against the Owners, in which case the rights of Mortgagees shall be governed by the provisions of their Mortgages. Mortgagees may, jointly or singly, also pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Common Area and Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of any Mortgagee which requests the same to be executed by the Association.

Section 14.04 Effect of Breach. No breach of any provision of this Declaration shall invalidate the lien of any Mortgage made in good faith and for value, but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through foreclosure sale, trustee's sale, or otherwise.

Section 14.05 Mortgagee's Rights. A First Mortgagee's rights shall include, but not be limited to, the following:

a. Attend Meetings. Any First Mortgagee, upon written request, shall receive written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

b. Furnish Information. Any Mortgagee may furnish information to the Board concerning the status of any Mortgage.

c. Inspect Books and Records. Association shall make available to Owners, prospective purchasers and First Mortgagees current copies of the Project Documents and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours.

In addition, if the project contains 50 or more Units, the Association must provide an audited financial statement for the Immediately preceding fiscal year if the First Mortgagee submits a written request for it. Said financial statement shall be furnished by the Association

within a reasonable time following such request. If the project contains fewer than 50 Units and there is no audited financial statement available, any First Mortgagee should be allowed to have an audited financial statement prepared at its own expense.

Section 14.06 No Restrictions on Owners Right to Ingress and Egress. There shall be no restriction upon any Owner's right to ingress and egress to his Unit, which right shall be perpetual and appurtenant to his Unit ownership.

Section 14.07 Notices of Mortgagees. Upon written request to the Association, any first Mortgagee shall be entitled to timely written notice of the following:

- a. Any proposed amendment to the Project Documents effecting a change in:
  - (i) The boundaries of any Unit or the exclusive use rights appurtenant thereto, if any;
  - (ii) The interests in the general or exclusive use Common Areas, if any, appurtenant to any Unit or the liability for common expenses appurtenant thereto;
  - (iii) The number of votes in the Association appurtenant to any Unit; or
  - (iv) The purposes to which any Unit or the Common Area are restricted.
- b. Any proposed termination of the legal status of the Project as a condominium.
- c. Any condemnation or casualty loss which affects either a material portion of the Project or any Unit on which there is a First Mortgage held, insured or guaranteed by such requesting party.
- d. Any 60-day delinquency in the payment of Assessments or Individual Charges owed by an Owner subject to a First Mortgage held, insured or guaranteed by such requesting party.
- e. Any default in the performance by the affected Owner of any obligation under the Project Documents which is not cured within 60 days.
- f. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.
- g. Any proposed action which requires the consent of a specified percentage of First Mortgagees as specified in Section 14.08.

Section 14.08. FNMA, FHLMC, FHA, VA Mortgages.

a. Conditions When This Section Applicable. The provisions of this Section 14.08 shall apply if any of the following conditions exist pertaining to First Mortgages on any of the Units:

- (i) Any First Mortgage is sold or transferred to FNMA;
- (ii) First Mortgage is sold or transferred to FHLMC; or
- (iii) Any First Mortgage is FHA insured or a Veterans Administration (VA) mortgage.

b. Approval of Material Amendments. The approval of 67% of the total voting power of the Association and 51% or more of the Eligible First Mortgagees (based upon one vote for each first mortgage owned) must be obtained for amendments of a material nature to the Project Documents. A change to any of the following would be considered as material:

- (i) Voting rights;
- (ii) Assessments, assessment liens, or subordination of assessment liens;
- (iii) Reserves for maintenance, repair and replacement of common areas or any other portions of the Project which the Association has a duty to maintain, repair and replace.
- (iv) Responsibility for maintenance and repairs;
- (v) Reallocation of interests in the general or exclusive use common areas, if any, or rights to their use;
- (vi) Boundaries of any Unit;
- (vii) Convertibility of Units into common areas or vice-versa;
- (viii) Expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project;
- (ix) Insurance or fidelity bonds;
- (x) Leasing of Units;
- (xi) Imposition of any right of first refusal or similar restriction on a Unit Owner's right to sell, transfer or convey his Unit;
- (xii) A decision by the Owner's Association to establish self-management when professional management has been required previously by a First Mortgagee;

(xiii) Restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner than that specified in the Project Documents;

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

(xv) Any provisions that expressly benefit First Mortgagees, insurers or guarantors.

An addition or amendment to the Project Documents shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only.

If an addition or amendment is not considered as a material change, approval will be implied when a First Mortgagee fails to submit a response to any written proposal for an amendment within 30 days after the proposal is submitted.

c. Termination of Legal Status. Except as provided above, any election to terminate the legal status of the Project as a condominium must be approved by at least 67% of the voting power of the Association and 67% of the Eligible First Mortgagees based upon one vote for each First Mortgage owned.

d. Relocation of Interests in the Common Area. No reallocation of interests in the Common Area resulting from a partial condemnation or partial destruction of the Project shall be affected without the approval of 51% of the Eligible First Mortgagees based upon one vote for each First Mortgage owned.

e. Restrictions on Certain Changes. Unless at least 66-2/3% of the First Mortgagees (based on one vote for each First Mortgage owned) or 66-2/3% of the Owners other than Declarant have given their prior written approval, the Association shall not:

(i) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area (the granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area by the Association shall not be deemed a transfer within the meaning of this clause); or

(ii) Change the method of determining the Assessments, or other charges which may be levied against a Unit Owner; or

(iii) By act or omission change, waiver or abandon any scheme of regulations or enforcement thereof, pertaining to the architectural design or the exterior appearance of Units, the exterior maintenance of Units, the maintenance of any Common Area party walls or common fences and driveways, or the upkeep of lawns and plantings in the Project; or

(iv) Fail to maintain fire and extended coverage on insurable Common Area and other portions of the Project which the Association has a duty to insure on a current



replacement cost basis in an amount not less than 100% of the insurable value (based on current replacement cost); or

(v) Use hazard insurance proceeds for losses to any Common Area or other Project improvements for other than the repair, replacement or reconstruction of such Common Area or improvements.

f. No Right of First Refusal. The right of an Owner to sell, transfer or otherwise convey his Unit shall not be subject to any "right of first refusal or similar restriction.

g. Foreclosure Eliminates Unpaid Assessments. Each holder of a first mortgage lien on a Unit who comes into possession of the Unit by virtue of foreclosure of the mortgage or any purchaser at a foreclosure sale, will take the Unit free of any claims for unpaid Assessments and charges against the Unit which accrue prior to the time such holder comes into possession of the Unit, except for claims for a pro rata share of such Assessments or charges resulting from a pro rata reallocation of such Assessments or charges of all Project Units, including the mortgaged Unit.

h. Mortgage Priority in Case of Distribution. No provision in any Project Document will entitle a Unit Owner or other party to priority over any rights of the First Mortgagee on the Unit pursuant to its Mortgage in the case of a distribution to such Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of the Unit and/or Common Area.

i. Working Capital Fund. If required by FHA, VA, FNMA or FHLMC, as a condition of qualifying the Project for any mortgage purchase, guarantee or other related program, a working capital fund shall be established for the Project by the contribution to such fund, by the Owners and Declarant, of a sum not to exceed the amount of 2 months Regular Assessments for each Unit owned. Any amounts paid into this fund should not be considered as advance payments of regular assessments. Each Unit's share of the working capital fund should be collected at the time the sale of the Unit is closed and then should be transferred to the Association for deposit to a segregated fund. Within 60 days after closing has been held for the first Unit, the developer shall pay each unsold Unit's share of the working capital fund to the Association. The developer shall then reimburse itself for this payment from the funds collected at closing when the unsold Units are sold.

j. Leasing Restrictions. No Owner shall be permitted to lease his Unit for transient or hotel purposes. Any lease or rental agreement must be in writing and be subject to the provisions of the Project Documents. No Unit may be leased or rented for less than 30 days.

k. Taxes Relate Only to Individual Units. All taxes, assessments and charges which may become liens prior to the first under local law shall relate only to the individual Units and not to the Project as a whole.

Section 14.09 Waivers. A Mortgagee may waive any requirement contained in this Declaration as they pertain to such Mortgagee, provided that such waiver shall be in writing.

Section 14.10 Conflicts. In the event of a conflict between any of the provisions of Section 14 and any other provisions of this Declaration, the provisions of this Section 14 shall control.

## **ARTICLE XV BREACH OR DEFAULT**

Section 15.01. Remedy at Law Inadequate. Except for the nonpayment of any Assessment, it is hereby expressly declared and agreed that the remedy at law to recover damages for the breach, default or violation of any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration is inadequate and that the failure of any Owner, tenant, occupant or user of any Condominium Unit or any portion of the Common Area or Common Facilities, to comply with any provision of any of the Governing Documents, as amended from time to time, may be enjoined by appropriate legal proceedings instituted by any Owner, the Association, its officers or Board of Directors, or by their respective successors in interest.

Section 15.02. Nuisances. Without limiting the generality of the foregoing Section 15.01, above, the result of every act or omission whereby any of the land use regulations contained in Article VII, above, is violated in whole or in part is hereby declared to be a nuisance, and every remedy against nuisance, either public or private, shall be applicable against every such act or omission.

Section 15.03. Costs and Attorneys' Fees. In any action initiated on account of any alleged breach or default of any Owner or other party hereto under this Declaration, the court may award to the prevailing party in any such action such attorneys' fees and other costs of suit as the court may deem just and reasonable.

Section 15.04. Cumulative Remedies. The respective rights and remedies provided by this Declaration or by law shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude or affect the exercise, at the same or at different times, of any other such rights or remedies for the same or any different default or breach or for the same or any different failure of any Owner or others to perform or observe any provision of this Declaration.

Section 15.05. Failure Not a Waiver. The failure of any Owner or of the Association or its Board of Directors, officers or agents to enforce any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter, nor shall such failure result in or impose any liability upon the Association or the Board, or any of its officers or agents.

Section 15.06. Enforcement Rights and Remedies of the Association; Limitations Thereon.

(a) Rights Generally. In the event of a breach or violation of any Association Rule or of any of the restrictions contained in any Governing Document by an Owner, the Owner's Family, guests, employees, invitees, licensees or tenants, the Board, for and on behalf of all other Owners, shall enforce the obligations of each Owner to obey such Rules or restrictions through the use of such remedies as are deemed appropriate by the Board and available in law or in equity, including but not limited to appropriate hiring of legal counsel, the imposition of fines and monetary penalties in accordance with subparagraph (b) below, the pursuit of legal action, the suspension of the Owner's right to use Common Facilities or the suspension of the Owner's voting rights as a Member of the Association; provided, however, the Association's right to undertake disciplinary action against its Members shall be subject to the conditions set forth in this section.

The decision of whether it is appropriate or necessary for the Association to initiate enforcement or disciplinary action in any particular instance shall be within the sole discretion of the Association's Board or its duly authorized enforcement committee. If the Association declines to take action in any instance, any Owner shall have such rights of enforcement as exist by virtue of section 5975 of the California Civil Code or otherwise by law.

(b) Schedule of Fines. The Board may implement schedules of reasonable fines and penalties for particular offenses that are common or recurring in nature and for which a uniform fine schedule is appropriate (such as fines for late payment of assessments or illegally parked vehicles). Once imposed, a fine or penalty may be collected as a Special Individual Assessment.

(c) Definition of "Violation". A violation of the Governing Documents shall be defined as a single act or omission occurring on a single day. If the detrimental effect of a violation continues for additional days, discipline imposed by the Board may include one component for the violation and, according to the Board's discretion, a per diem component for so long as the detrimental effect continues. Similar violations on different days shall justify cumulative imposition of discipline. The Association shall take reasonable and prompt action to repair or avoid the continuing damaging effects of a violation or nuisance occurring within the Common Area at the cost of the responsible Owner.

(d) Limitations of Disciplinary Rights.

(i) The Association shall have no power to cause a forfeiture or abridgment of an Owner's right to the full use and enjoyment of his or her Unit due to the failure by the Owner (or his or her family members, tenants, guests or invitees) to comply with any provision of the Governing Documents or of any duly enacted Association Rule except where the loss or forfeiture is the result of the judgment of a court of competent jurisdiction, a decision arising out of arbitration or a foreclosure or sale under a power of sale for failure of the Owner to pay Assessments levied by the Association, or where the loss or forfeiture is limited to a temporary suspension of an Owner's rights as a Member of the Association or the imposition of monetary penalties for failure to pay Assessments or otherwise comply with any Governing Documents so long as the Association's actions satisfy the due process requirements of subparagraph (iii), below.

(ii) Monetary penalties imposed by the Association: (A) for failure of a Member to comply with the Governing Documents; (B) as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to the Common Area or Common Facilities allegedly caused by a Member; or (C) in bringing the Member and his or her Unit into compliance with the Governing Documents, may not be characterized nor treated as an Assessment which may become a lien against the Member's Unit enforceable by a sale of the Unit in nonjudicial foreclosure; provided, however, that this limitation on the Association's lien rights shall not apply to charges imposed against an Owner consisting of reasonable late payment penalties to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in the Association's efforts to collect delinquent Assessments.

(iii) No disciplinary action, penalty or temporary suspension of rights shall be imposed pursuant to this Article unless the Owner alleged to be in violation is given at least ten (10) days prior notices by personal delivery or first-class mail, that the Board of Directors will be meeting to consider imposing such discipline. The notice shall contain at a minimum, the date, time, and place of the meeting, the nature of the alleged violations for which the Owner may be disciplined, and a statement that the Owner has a right to attend and address the Board at the hearing. The Board shall meet in executive session if requested by the Owner.

If disciplinary action is taken, the Board shall notify the accused Owner, in writing, either by personal delivery or first-class mail, of the Board's decision within fifteen (15) days following conclusion of the hearing.

In accordance with Civil Code section 5855, disciplinary action shall not be effective against an Owner unless the Board fulfills the requirements of this section.

Notwithstanding the foregoing, under circumstances involving conduct that constitutes: (A) an immediate and unreasonable infringement of, or threat to, the safety or quiet enjoyment of neighboring Owners; (B) a traffic or fire hazard; (C) a threat of material damage to, or destruction of, the Common Area or Common Facilities; or (D) a violation of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether a violation has occurred (such as late payment of Assessments or parking violations), the Board of Directors, or its duly authorized agents, may undertake immediate corrective or disciplinary action and, upon request of the offending Owner (which request must be received by the Association, in writing, within five (5) days following the Association's disciplinary action), or on its own initiative, conduct a hearing as soon thereafter as reasonably possible.

If the Association acts on its own initiative to schedule a hearing, notice of the date, time and location of the hearing shall accompany the notice of disciplinary action. If the accused Owner desires a hearing, a written request therefor shall be delivered to the Association no later than five (5) days following the date when the fine is levied.

The hearing shall be held no more than fifteen (15) days following the date of the disciplinary action or fifteen (15) days following receipt of the accused Owner's request for a

hearing, whichever is later. Under such circumstances, any fine or other disciplinary action shall be held in abeyance and shall only become effective if affirmed at the hearing.

At the hearing, the accused shall be given the opportunity to be heard, including the right to present evidence and to present or question witnesses. The Board shall notify the accused Owner, in writing, of the Board's decision within five business days following conclusion of the hearing. In no event shall the effective date of any disciplinary action commence sooner than five (5) days following conclusion of the hearing unless: (i) the hearing merely affirms summary disciplinary action initiated pursuant to the immediately preceding paragraph; or (ii) earlier commencement is necessary to preserve the quiet enjoyment of other residents or to prevent further damage to, or destruction of, the Properties or any portion thereof.

(iv) The notice and hearing procedures set forth in this Section 15.06 shall not apply to any actions by the Association or its duly authorized agents to collect delinquent assessments. Assessment collections shall be subject to Section 4.10, above, and any other notice, hearing and/or dispute resolution requirements or procedures as may be specifically applicable by law to Association assessment collection.

(e) Rules Regarding Disciplinary Proceedings. The Board shall be entitled to adopt rules to elaborate further on the procedures and forms to be utilized in the disciplinary hearing process. Such rules shall form a part of the Association Rules.

Section 15.07. Court Actions. Court actions to enforce the Governing Documents may only be initiated on behalf of the Association by resolution of the Board. Prior to the filing of any court action seeking declaratory or injunctive relief to interpret or enforce the Governing Documents (including such action coupled with a claim for monetary damages not in excess of \$5,000), the Association shall first comply with the provisions of Civil Code section 5975 relating to alternative dispute resolution. The Association's own notice and hearing procedures may be drafted to satisfy these statutory requirements.

## ARTICLE XVI NOTICES

Section 16.01. Mailing Addresses. Any communication or notice of any kind permitted or required herein shall be in writing and may be served, as an alternative to personal service, by mailing the same as follows:

If to any Owner: To the street address of his or her Condominium or to such other address as the Owner may from time to time designate in writing to the Association as the Owner's mailing address, including by electronic transmission if the Owner has consented to such notice and such notice is allowed by law.

If to the Association: Leland Terrace Condominium Association, at the principal office of the Association or to such other address as the Association may from time to time designate in writing to the Owner.

Section 16.02. Personal Service Upon Co-Owners and Others. Personal service of a notice or demand to one of the co-Owners of any Condominium, to any general partner of a partnership which is the Owner of Record of any Condominium, or to any officer or agent for service of process of a corporation which is the Owner of Record of any Condominium, shall be deemed delivered to all such co-Owners, to such partnership, or to such corporation, as the case may be.

Section 16.03. Deposit in United States Mail. All notices and demands served by mail shall be by first-class or certified mail, with postage prepaid, and shall be deemed delivered 72 hours after deposit in the United States mail in the County.

## **ARTICLE XVII NO PUBLIC RIGHTS IN THE PROPERTY**

Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any portion of the Property to the general public or for any public use or purpose whatsoever.

## **ARTICLE XVIII AMENDMENT OF DECLARATION**

Section 18.01. Restatements. This section describes the methods for restating the Declaration after an amendment.

(a) General. The Board has the right, by resolution without the necessity of consent by the Owners, to restate this Declaration when it has been properly amended pursuant to its requirements for amendment. Such restatement shall be effective upon execution of the restatement by any two (2) officers of the Association and its Recordation. Upon Recordation of the restatement, the restatement shall supersede the prior declaration and its amendments in their entirety, without, however, affecting the priority of the Declaration in the chain of title to all properties that are subject to the Declaration as established by the Declaration initial date of Recordation.

(b) Form of Restatement. The restatement shall restate the entire text of the original document, with these exceptions: (i) changes incorporating all amendments approved by the Owners; (ii) changes made to rearrange or delete the text for consistency with the approved amendments; (iii) changes made to delete material no longer legally effective or legally required, such as the provisions that are for the exclusive benefit of the Declarant; (iv) the addition of a statement that the Board has authorized the restatement pursuant to this section; (v) changes made to delete any provision declared illegal by constitutional or statutory enactment, by regulation, or by controlling judicial opinion; and (vi) changes needed to distinguish the restatement from the original document, such as title, section, or subsection numbering changes.

Section 18.02. Amendment of the Declaration, Generally. This Declaration may be amended or revoked in any respect upon compliance with the following provisions:

(a) Member Approval Requirements. Any amendment shall be approved by the vote or assent by written ballot of the holders of a majority of the Voting Power of Members.

Notwithstanding the foregoing, the percentage of the voting power necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause.

(b) Additional Approvals for Amendments to Particular Provisions:

(i) **Mortgagee Approvals.** Mortgagee approvals shall be required to amend any of the provisions described in Article XIV, above.

(ii) **City of San Luis Obispo.** City of San Luis Obispo review and approval shall be required for amendment of sections 7.35 (formerly 4.13), 7.18 (formerly 4.04), 7.28 (formerly 4.06), Article V (formerly 4.09), 7.23 (formerly 4.13), Article VI (formerly 5.01 and 5.02), 3.07 (formerly 6.12) and this 18.02(b)(ii) (formerly 15.06).

(iii) **Unanimous Consent for Specific Amendments.** The consent of all Owners shall be required for any amendment of Project Documents effecting a change in the following:

- (A) The boundaries of any Unit;
- (B) the undivided interest in the common elements pertaining to the Unit or the liability for Common Expenses appertaining thereto; and
- (C) the number of votes in the Owners Association appertaining to the Unit; or
- (D) the fundamental purposes to which any Unit or the common elements are restricted.

**ARTICLE XIX  
GENERAL PROVISIONS**

Section 19.01. **Term.** The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges and equitable servitudes contained in this Declaration shall run with, and shall benefit and burden the Condominiums and the Common Area as herein provided, and shall inure to the benefit of and be binding upon the Owners, the Association, its Board of Directors, officers and agents, and their respective successors in interest, for the term of thirty (30) years from the date of recordation of this Declaration. After the expiration of the initial term, the term of this Declaration shall be automatically extended for successive periods of ten (10) years each unless, within six (6) months prior to the expiration of the initial 30-year term or any such 10-year extension period, a written instrument, approved by Owners entitled to vote and holding at least a majority of the voting power of the Association, terminating the effectiveness of this Declaration, is Recorded.

Section 19.02. Construction.

(a) Restrictions Construed Together. All of the covenants, conditions and restrictions of this Declaration shall be liberally construed together to promote and effectuate the fundamental concepts of the development of the Property as set forth in the recitals of this Declaration. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce that provision in a subsequent application or any other provision hereof.

(b) Restrictions Severable. Notwithstanding the provisions of subparagraph (a) above, the covenants, conditions and restrictions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

(c) Gender and Number. As used in this Declaration, the singular shall include the plural and the plural the singular, unless the context requires the contrary, and the masculine, feminine or neuter gender shall each be deemed to include the others whenever the context so indicates.

(d) Captions. All captions or titles used in this Declaration are intended solely for convenience of reference and shall not affect the interpretation or application of that which is set forth in any of the terms or provisions of the Declaration.

(e) Exhibits. All exhibits attached hereto, and the Condominium Plan recorded together with the Declaration shall be deemed to be incorporated herein by reference.

LELAND TERRACE CONDOMINIUM  
ASSOCIATION, California nonprofit mutual benefit  
corporation

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
\_\_\_\_\_, President

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
\_\_\_\_\_, Secretary