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**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
ESTABLISHING A PLAN OF CONDOMINIUM OWNERSHIP FOR
LE PARC**

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**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
ESTABLISHING A PLAN OF CONDOMINIUM OWNERSHIP
FOR LE PARC**

This Declaration is made December 15, 1982, by Le Parc, a California joint venture ("Declarant").

RECITALS:

Declarant is the Owner of the Property located in Orange County, California, described as Lot 1 of Tract No. 11847, as per Map recorded in Book 505, pages 49 through 50, inclusive, of Maps in the office of the County Recorder of said County. Declarant has improved or intends to improve the Property by constructing improvements on it containing 96 dwelling units and recreational and other facilities in accordance with plans and specifications on file with the County of Orange, California. By this Declaration, Declarant intends to establish a plan of condominium ownership and to provide for the annexation of additional real property to the Project.

DECLARATION:

Declarant declares that the Property is, and shall be, held, conveyed, hypothecated, encumbered, leased, rented, used and occupied subject to the following limitations, reservations, restrictions, easements, covenants, conditions, servitudes, liens and charges, all of which are declared and agreed to be in furtherance of a plan of condominium ownership as described in California Civil Code, Sections 1350-1360 for the subdivision, improvement, protection, maintenance, and sale of condominiums within the Property, and all of which are declared and agreed to be for the purpose of enhancing, maintaining and protecting the value and attractiveness of the Property. All of the limitations, restrictions, easements, reservations, covenants, conditions, servitudes, liens and charges shall run with the land, shall be binding on and inure to the benefit of all parties having or acquiring any right, title or interest in the Property, and shall be binding on and inure to the benefit of the successors in interest of such parties. Declarant further declares that it is the express intent that this Declaration satisfy the requirements of California Civil Code, Section 1355.

1. **DEFINITIONS**

1.1 The "Architectural Committee" means the committee of persons appointed and acting pursuant to Section 17.

1.2 The "Articles" mean the Association's articles of incorporation and their

amendments.

1.3 The “Association” means L’ASSOCIATION DES PROPRIATAIRES, a California nonprofit mutual benefit corporation, its successors and assigns.

1.4 The “Association Rules” mean the rules and regulations regulating the use and enjoyment of the Common Area adopted by the Board from time to time.

1.5 The “Board of Directors” or “Board” means the Board of Directors of the Association.

1.6 The “Bylaws” mean the Association’s bylaws and their amendments.

1.7 The “Common Area” means the entire Project, except the units as defined in this Declaration or as shown on the condominium plan, and shall include the Project Office.

1.8 A “condominium” means an estate in real property as defined in California Civil Code Section 783 consisting of an undivided interest as a tenant-in-common in the Common Area, together with a fee interest in a unit.

1.9 The “condominium plan” means a condominium plan recorded pursuant to California Civil Code, Section 1351 respecting the Project, and any amendments. A copy of the condominium plan is attached as Exhibit A.

1.10 The “County” means the County of Orange, the County in which the Project is located.

1.11 The “Declarant” means Le Parc, a California joint venture, and its successors and assigns, if such successors and assigns are assigned the rights of Declarant pursuant to Section 3.20 or if such successor or assign is a mortgagee acquiring Declarant’s interest in the Project by foreclosure or deed in lieu of foreclosure.

1.12 The “Declaration” means this Declaration of Covenants, Conditions and Restrictions, and any amendments and supplements.

1.13 A “member” means every person or entity who holds a membership in the Association.

1.14 A “mortgage” means a mortgage or deed of trust encumbering a condominium or other portion of the Project. A “mortgagee” shall include the beneficiary under a deed of trust and any governmental guarantor or insurer of a mortgage. An “institutional” mortgagee is a mortgagee that is a bank or savings and loan association or mortgage company or other entity chartered or licensed under federal or state laws

whose principal business is lending money on the security of real property or investing in such loans, or any insurance company or pension or profit sharing trust or any federal or state agency or instrumentality including, without limitation, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration and the Veterans Administration. A “first” mortgage or “first” mortgagee is one having priority as to all other mortgages or holders of mortgages encumbering the same condominium or other portions of the Project.

1.15 An “Owner” means each person or entity holding a record ownership interest in a condominium, including Declarant, and contract sellers under recorded contracts. “Owner” shall not include persons or entities who hold an interest in a condominium merely as security for the performance of an obligation.

1.16 The “Project” or “development” means the Property as subdivided, developed and improved.

1.17 The “Project Office” means the airspace and related structural components designated as the “Project Office” on the condominium plan. The use of the Project Office shall be as designated from time to time by the Association, including use by any manager engaged by the Association.

1.18 The “Property” means the real property described in the Recitals, and such additional real property as may hereafter be annexed hereto and become subject to the provisions of this Declaration pursuant to Section 16 and any Supplement to the Declaration recorded in accordance therewith.

1.19 The “Tract Map” means the tract map for Tract No. 11847, described in the Recitals.

1.20 A “unit” means the elements of a condominium that are not owned in common with the other Owners of condominiums in the Project, such units and their respective elements and boundaries being shown and particularly described in the condominium plan, deeds conveying condominiums and this Declaration. 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 its boundaries rather than the description expressed in the deed or plans, regardless of minor variance between boundaries shown on the plans or in the deed and those of the building and regardless of settling or lateral movement of the building. Whenever reference is made in this Declaration, in the condominium plan, in any deed or elsewhere to a unit it shall be assumed that such reference is made to the unit as a whole, including each of its component elements.

2. DESCRIPTION OF COMMON INTERESTS, PROPERTY RIGHTS, RIGHTS OF

ENJOYMENT AND EASEMENTS

4.1 Formation. The Association is a nonprofit mutual benefit corporation formed under the laws of California. On the close and recording of the first condominium sale to an Owner, the Association shall be charged with the duties and vested with the powers set forth in the Articles, the Bylaws and this Declaration, including, but not limited to, control and maintenance of the Common Area and any facilities on the Common Area.

2.1 Ownership of Condominium. Ownership of each condominium within the Project shall include a unit, an undivided interest in the Common Area or portion thereof (which undivided interest is set forth in Exhibit B and shall be specified in the deed from Declarant to each Owner and which undivided interest cannot be altered or changed as long as the prohibition against severability of component interests in a condominium remains in effect as provided in this Declaration), a membership in the Association, and any non-exclusive easements appurtenant to such unit or condominium over the Common Area as described in this Declaration or the deed to the condominium.

2.2 Owners Non-Exclusive Easements of Enjoyment; Association Rights. Every Owner of a condominium shall have a non-exclusive easement of use, enjoyment, ingress, egress and support in, to and throughout the Common Area and any improvements thereon or facilities thereof. Each such non-exclusive easement shall be appurtenant to and pass with the title to every unit or condominium, subject to the following rights and restrictions:

2.2.1 The right of the Association to limit the number of guests, and to adopt and to enforce the Association Rules.

2.2.2 Subject to the provisions of Section 14.4.4, the right of the Association to borrow money to improve, repair or maintain the Common Area.

2.2.3 The right of the Association to assign, rent, license or otherwise designate and control use of any unassigned parking and storage spaces within, and any recreational facility situated upon, the Common Area, and to charge reasonable fees for admission and use.

2.2.4 The right of the Association to suspend the right of an Owner to use any recreational or other facility upon the Common Area as provided in Section 4.3.1.2.

2.2.5 The right of the Association to consent to or otherwise cause the construction of additional improvements on the Common Area and to consent to or otherwise cause the alteration or removal of any existing improvements on the Common Area for the benefit of the members of the Association.

2.2.6 The right of the Association to adopt and enforce Association Rules concerning the control and use of any private streets, roadways and paving areas located upon or across the Common Area, including the right to regulate the kind of vehicles traveling thereon, the speed thereof and the parking of vehicles upon such private streets and roadways.

2.3 Entry or Use Rights.

2.3.1 Declarant or its designees shall have the right to enter on the Project to construct the Project and to make repairs and remedy construction defects. Such entry shall not interfere with the use or occupancy of any occupied unit unless authorized by the unit Owner which authorization shall not be unreasonably withheld.

2.3.2 The Association, or its agents, shall have the right to enter any unit to perform its obligations under this Declaration, including obligations with respect to construction, maintenance or repair for the benefit of the Common Area or the Owners in common. The right shall be immediate in case of an emergency originating in or threatening such unit, whether or not the Owner is present.

2.3.3 The Association, or its agents, shall have the right to enter any unit to cure any violation or breach of this Declaration or the Bylaws or the Association Rules, provided that at least thirty (30) days prior written notice of such violation or breach (except in cases of emergency) has been given to the Owner, and provided that, within said thirty (30) day period such Owner had not acted to cure such violation or breach. The Association shall be entitled to recover from such Owner its costs of effecting such cure. The rights of entry and cure shall be immediate in case of an emergency originating in or threatening any unit, whether or not its Owner is present.

2.3.4 Any Owner, or his representative, shall have the right to enter the unit of any other Owner to perform installations, alterations or repairs to mechanical or electrical services, including installation of television antennae and related cables, which are reasonably necessary for the use and enjoyment of his unit, provided that requests for entry are made in advance and such entry is at a time convenient to the Owner whose unit is being entered except that in case of an emergency such right of entry shall be immediate.

2.4 Delegation of Use; Contract Purchasers; Tenants. Any Owner may delegate his rights of use and enjoyment in the Project, including any recreational facilities, to the members of his family, his guests, and invitees, and to such other persons as may be permitted by the Bylaws and the Association Rules, subject, however, to this Declaration. However, if an Owner of a condominium has sold his condominium to a contract purchaser or rented it, the Owner, members of his family, his guests and invitees shall not be entitled to use and enjoy the recreational facilities of the

Project while the Owner's unit is occupied by such contract purchaser or tenant. Instead, the contract purchaser or tenant, while occupying such unit, shall be entitled to use and enjoy the recreational facilities of the Project and can delegate the rights of use and enjoyment in the same manner as if such contract purchaser or tenant were an Owner during the period of his occupancy. Each Owner shall notify the secretary of the Association of the names of any contract purchasers or tenants of such Owner's condominium and all such notifications shall be made pursuant to and shall be subject to the provisions of Section 18.8. Each Owner, contract purchaser or tenant also shall notify the secretary of the Association of the names of all persons to whom such Owner, contract purchaser or tenant has delegated any rights of use and enjoyment in the development and the relationship that each such person bears to the Owner, contract purchaser or tenant. Any delegated rights of use and enjoyment are subject to suspension to the same extent as are those rights of Owners. No such delegation shall relieve an Owner from liability to the Association or to other Owners for payment of assessments or other monetary obligations to the Association or performance of the covenants, conditions and restrictions contained in this Declaration. Any lease, rental agreement or contract of sale entered into between an Owner and a lessee or tenant of a unit shall be subject to and shall incorporate by reference and shall require performance by the lessee, tenant or contract purchaser of all of the covenants, conditions and restrictions contained herein, which provision shall be for the express benefit of the Association and each Owner. The Association and each Owner shall have a right of action directly against any lessee, tenant or contract purchaser of an Owner, as well as against the Owner, for non-performance of any of the provisions of this Declaration to the same extent that such right of action exists against such Owner.

2.5 Minor Encroachments. If any portion of the Common Area encroaches on any unit or if any portion of a unit encroaches on the Common Area, regardless of the cause, a valid easement exists for such encroachment and for the maintenance of it as long as it remains, and all units and the Common Area are made subject to such easements. However, in no event shall a valid easement for encroachment exist in favor of an Owner if said encroachment occurred due to willful misconduct of said Owner or resulted from said Owner's noncompliance with any provision of this Declaration. If any structure containing a unit is partially or totally destroyed and then rebuilt and any encroachment on the Common Area results, a valid easement exists for such encroachment and for the maintenance of it as long as it remains, and all units and the Common Area are made subject to such easements.

2.6 Utility and Other common Area Easements. Declarant or the Association shall have the power to grant and convey to any person or entity easements and rights-of-way in, on, over or under the 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, and each Owner, in accepting a deed to a condominium, expressly consents to such easements and rights-of-way and authorizes and appointed the Association and Declarant (so long as Declarant owns one or more condominiums) as attorney-in-fact of such Owner to execute any and all instruments conveying or creating such easements of rights-of-way. However, no such easement can be granted if it would interfere with the use, occupancy or enjoyment by any Owner of his unit, or of the recreational facilities of the Project unless approved by the vote or written consent of the holders of not less than seventy-five percent (75%) of the voting rights of each class of members, or seventy-five percent (75%) of all members if only one class exists, and seventy-five percent (75%) of all first mortgagees.

3. **USE RESTRICTIONS AND COVENANTS**

3.1 **Residential Use.** Units shall be used for residential purposes only. However, for a period of three (3) years from the date of recordation of this Declaration or of any Supplement, whichever is later, units owned by Declarant may be used by Declarant or its designees as models, sales offices and construction offices for the purpose of developing, improving and selling condominiums in the Project. Nothing herein shall be deemed to restrict the Association in its designation of uses of the Project Office.

3.2 **Leasing.** Nothing in this Declaration shall prevent an Owner from leasing or renting his condominium. However, any lease or rental agreement shall be in writing and any tenant shall abide by and be subject to all provisions of this Declaration, the Articles, the Bylaws, and the Association Rules, and any lease or rental agreement must specify that failure to abide by such provisions shall be a default under the lease or rental agreement. Failure by Owner to take legal action, including the institution of proceedings in unlawful detainer against his lessee who is in violation of this Declaration, the Articles, the Bylaws or the Association Rules within ten (10) days after receipt of written demand so to do from the Association, shall entitle the Association to take any and all such action, including the institution of proceedings in unlawful detainer on behalf of such Owner against his lessee. Any expenses incurred by the Association, including attorneys fees and costs of suit, shall be paid by such Owner. Also, except for a mortgagee in possession of a condominium following a default in a first mortgage, a foreclosure proceeding or acceptance of a deed or other arrangement in lieu of foreclosure, no Owner shall rent, lease or let his condominium for transient or hotel purposes.

3.3 **Commercial Use.** Except as otherwise provided in this Declaration, including Section 3.1, no part of the Project shall be used or caused, allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or other such non-residential purpose.

3.4 Maintenance. Each Owner of a condominium shall be responsible for maintaining his unit, including the mechanical and other equipment (except heating and air conditioning equipment as provided in Section 4.3.2.2) and fixtures in the unit and its interior walls, ceilings, windows and doors in a clean, sanitary, workable and attractive condition. However, each Owner has complete discretion as to the choice of furniture, furnishings, and interior decorating; but windows can be covered only by drapes, shutters or shades and cannot be painted or covered by foil, cardboard, or other similar materials. Each Owner shall also be responsible for repair, replacement and cleaning of the windows and glass of his unit, both exterior and interior.

3.5 Oil Drilling. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted on or in the Project, and no oil wells, tanks, tunnels or mineral excavations or shafts shall be permitted on the surface of the Project or within five hundred (500) feet below the surface of the Project. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted on the Project.

3.6 Offensive Conduct; Nuisances. No noxious or offensive activities, including but not limited to, repair of automobiles or other motorized vehicles, shall be conducted within the Project. Nothing shall be done on or within the Project that may be or may become an annoyance or nuisance to the residents of the Project, or that in any way interferes with the quiet enjoyment of occupants of units. Unless otherwise permitted by the Association Rules, no Owner shall serve food or beverages, cook, barbecue, or engage in similar activities, except within such Owner's unit.

3.7 Parking Restrictions; Use of Garage. Unless otherwise permitted by the Association, no automobile shall be parked or left within the Project other than within a garage, carport, or assigned or appurtenant parking stall or space. No boat, trailer, recreational vehicle, camper, truck or commercial vehicle shall be parked or left within the Project other than in a parking area designated by the Association for the parking and storage of such vehicles. However, parking by commercial vehicles for the purpose of making deliveries shall be permitted in accordance with the Association Rules. Any garages and carports shall be used for parking automobiles only and shall not be converted for living or recreational activities. Any garage doors shall remain closed at all times except when being used to enter or exit and each Owner shall maintain in good operating condition an automatic garage door mechanism.

3.8 Signs. No sign of any kind shall be displayed to the public view on or from any unit or within the Common Area without the approval of the Association, except such signs as may be used by the Declarant or its designees for the purpose of developing, selling and improving condominiums within the Project for a period of time not to exceed (i) the date on which the last condominium is sold by Declarant or three

(3) years from the date of recordation of this Declaration, whichever is sooner, or if a Supplement to the Declaration is recorded, (ii) the date on which the last annexed condominium is sold by Declarant or three (3) years from the date of recordation of the Supplement, whichever is sooner. In exercising its rights under this Section, Declarant shall not unreasonably interfere with the use of the Common Area by any Owner. However, one sign of customary and reasonable dimensions advertising a condominium for sale or for rent may be placed within that portion of the Common Area as designated by the Association for such purpose or elsewhere to the extent required by law, and the location and design thereof shall be subject to approval by the Association.

3.9 Antennae and External Fixtures. No television or radio poles, antennae, flag poles, clotheslines, or other external fixtures other than those originally installed by Declarant or approved by the Architectural Committee and any replacements shall be constructed, erected or maintained on or within the Common Area or any structures on it. No wiring, insulation, air conditioning, or other machinery or equipment other than that originally installed by Declarant or approved by the Architectural Committee, and any replacements shall be constructed, erected or maintained on or within the Common Area, including any structures on it. Each Owner shall have the right to maintain television or radio antennae within completely enclosed portions of his unit. However, if cable television is or becomes available to an Owner, his right to maintain television antennae within completely enclosed portions of his unit may be terminated by the Association. The location of common antennae or connection facilities for cable television serving more than one unit shall be as designated by the Association or the Architectural Committee and each unit and its Owner shall be subject to the right of other Owners or the Association to install, use and maintain such common antennae or facilities.

3.10 Fences, Etc. No fences, awnings, ornamental screens, screen doors, sunshades or walls of any nature shall be erected or maintained on or around any portion of any structure or elsewhere within the Project, except those that are installed in accordance with the original construction of the Project, and their replacements or as are authorized and approved by the Architectural Committee.

3.11 Animals. No animals, reptiles, rodents, birds, fish, livestock or poultry shall be kept in any unit or elsewhere within the Project except that domestic dogs, cats, fish and birds inside bird cages may be kept as household pets within any unit, if they are not kept, bred or raised for commercial purposes or in unreasonable quantities. As used in this Declaration, "unreasonable quantities" shall be deemed to limit the total number of all dogs, cats and birds to two (2) per unit. The Board can prohibit maintenance of any animal that constitutes a nuisance to any other Owner in the sole and exclusive opinion of the Board. Each person bringing or keeping a pet upon the Project shall be liable to other Owners, their family members, guests, invitees, tenants and contract purchasers, and their respective family members, guests and invitees for

any damage to persons or property proximately caused by any pet brought upon or kept upon the Project by that person or by members of his family, his guests or invitees.

3.12 Restricted Use of Recreation Vehicles. No boat, truck, trailer, camper, recreational vehicle or tent shall be used as a living area while located within the Project. No truck, trailer, camper or recreational vehicle may be stored on the Project by any Owner unless it is that Owner's principal means of transportation. However, trailers or temporary structures for use incidental to the initial construction of the Project and any phase thereof or the initial sales of condominiums may be maintained within the Project, provided that such use does not unreasonably interfere with any Owner's use of the Common Area or Recreation Area. Such trailers or structures shall be promptly removed on completion of all initial construction and all initial sales.

3.13 Trash Disposal. Trash, garbage or other waste shall be kept only in sanitary containers. No Owner shall permit or cause any trash or refuse to be kept on any portion of the Project other than in the receptacles customarily used for it, which shall be located only in places specifically designated for such purpose except on the scheduled day for trash pickup.

3.14 Outside Drying and Laundering. No exterior clothesline shall be erected or maintained and there shall be no exterior drying or laundering of clothes on balconies, patios, porches or other areas.

3.15 Structural Alterations; Patio Area Improvements. No structural alterations to the interior of or Common Area surrounding any unit, shall be made and no plumbing or electrical work within any bearing or common walls shall be performed by any Owner without the prior written consent of the Architectural Committee. Upon submission to and approval by the Architectural Committee of plans and specifications pursuant to Section 17, an Owner whose unit includes a patio area element (as shown and described on the Condominium Plan) may install landscaping, a decorative fountain, stonework, concrete work, a pool, a spa or a pond, and related plumbing and electrical connections, within such patio area element of the Owner's unit, provided that any such installation shall be strictly in accordance with all conditions of approval imposed by the Architectural Committee and all applicable laws. Written approval by the Architectural Committee to an Owner to make any such installation shall automatically give such Owner the right to encroach into the Common Area beneath such patio area to the extent necessary to accommodate such installation, which right shall terminate upon the removal of such installation.

3.16 Exterior Alterations. No Owner shall at his expense or otherwise make any alterations or modifications to the exterior of the buildings, fences, railings, or walls situated within the Project without the prior written consent of the Architectural Committee.

3.17 Insurance Rates and Compliance With Laws. Nothing shall be done or kept in any unit or in the Common Area that might increase the rate of, or cause the cancellation of, insurance for the Project, or any portion of the Project, without the prior written consent of the Association. No Owner shall permit anything to be done or kept in his unit that violates any law, ordinance, statute, rule or regulation of any local, county, state or federal body. No Owner shall allow his furniture, furnishings, or other personalty to remain within any portion of the Common Area except as may be permitted by the Association.

3.18 Indemnification. Each Owner shall be liable to the remaining Owners and the Association for any damage to the Common Area that may be sustained by reason of the negligence of that Owner, members of his family, his contract purchasers, tenants, guests or invitees, but only to the extent that any such damage is not covered by casualty insurance in favor of the Association or other Owner. Each Owner, by acceptance of his deed, agrees for himself and for the members of his family, his contract purchasers, tenants, guests or invitees, to indemnify each and every other Owner and the Association, and to hold them harmless from, and to defend them against, any claim of any person for personal injury or property damage occurring within the unit of that particular Owner, except to the extent (i) that such injury or damage is covered by liability insurance in favor of the Association or other Owner or (ii) the injury or damage occurred by reason of the willful or negligent act or omission of the Association or another Owner or person temporarily visiting in said unit.

3.19 Owner's Obligation For Taxes. To the extent allowed by law, all condominiums, including their pro rata undivided interest in the Common Area and the membership of an Owner in the Association, shall be separately assessed and taxed so that all taxes, assessments and charges which may become liens prior to first mortgages under local law shall relate only to the individual condominiums and not to the Project as a whole. Each Owner shall be obligated to pay any taxes or assessments assessed by the county assessor of the County against his condominium and against his personal property.

3.20 Future Construction. Nothing in this Declaration shall limit the right of Declarant, its successors and assigns, to complete construction of improvements to the Common Area and to condominiums owned by Declarant or to alter them or to construct additional improvements as Declarant deem advisable before completion and sale of the entire Project. The rights of Declarant in this Declaration may be assigned by Declarant to any successor to all or any part of any Declarant's interest in the Project, as developer, by an express assignment incorporated in a recorded deed that transfers any such interest to a successor.

3.21 Enforcement. The failure of any Owner to comply with any provision of this Declaration or the Articles or Bylaws, Association Rules or Board resolutions shall give rise to a cause of action in the Association and any aggrieved Owner for the recovery of damages or for injunctive relief, or both.

3.22 Adult Residence Only. To the extent permitted by law, the Project shall be an adult community. Each Owner, for himself, his successors and assigns, covenants and agrees that he will not permit anyone over the age of two (2) years and under the age of sixteen (16) years to reside for a period of time longer than thirty (30) consecutive days at any single time, and that such visits, regardless of length of such visit, shall not occur more often than once every six (6) months. The Association is and shall be empowered to, and shall take the necessary steps to enforce the provisions of this section, unless such enforcement shall then be unlawful.

3.23 Solar Heating. Subject to compliance with applicable zoning district regulations, the Uniform Building Code and associated ordinances and subject to review and prior written approval of the Architectural Committee, each Owner shall have the right to install a solar heating system servicing the residential structure and components of his unit, which system, when installed, shall be deemed to be the personal property of such Owner and shall be maintained and serviced by such Owner. Written approval by the Architectural Committee to an Owner to make such installation shall automatically give such Owner the right to encroach into the Common Area to the extent necessary to accommodate such installation, which right shall terminate upon the removal of such system.

4. THE ASSOCIATION

4.3 Powers and Duties of Association

4.3.1 Powers. The Association shall have all the powers of a nonprofit mutual benefit corporation organized under the General Nonprofit Mutual Benefit Corporation Law of California subject only to such limitations on the exercise of such powers as are set forth in the Articles, the Bylaws and this Declaration. It shall have the power to do any lawful thing that may be authorized, required, or permitted to be done by the Association under this Declaration, the Articles and the Bylaws, and to do and perform any act that may be necessary or proper for or incidental to, the exercise of any of the express powers of the Association, including, without limitation, the following:

4.3.1.1 Assessments. The Association shall have the power to establish, fix, and levy assessments against the Owners and to enforce payment of such assessments, in accordance with the provisions of this Declaration.

4.3.1.2 Rights of Enforcement. The Association in its own name

and on its own behalf, or on behalf of any Owner who consents, can commence and maintain actions to collect monetary obligations, for damages or to restrain and enjoin any actual or threatened breach of any provision of this Declaration or of the Articles or Bylaws, or of the Association Rules or any resolutions of the Board, and to enforce by mandatory injunction, or otherwise, all of these provisions. In addition, the Association can suspend the voting rights, can suspend use privileges of the Common Area or can assess monetary penalties against any Owner or other person entitled to exercise such rights or privileges for any violation of this Declaration or the Articles, Bylaws, Association Rules, or Board resolutions. However, any suspension of use privileges cannot exceed a period of thirty (30) days for any one violation (except that if such suspension is due to the failure to pay assessments, the suspension may continue until payment is made), and any monetary penalty cannot exceed Fifty Dollars (\$50) for any one violation, and no suspension or fine can be imposed unless accomplished in the manner provided for in the Bylaws. Except as provided in this section, the Association does not have the power or authority to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of his condominium if the Owner does not comply with provisions of this Declaration or of the Articles or Bylaws or the Association Rules or Board resolutions, except by judgment of a court or a decision arising out of arbitration or on account of a foreclosure, or sale under a power of sale based on the failure of the Owner to pay assessments duly levied by the Association.

4.3.1.3 Delegation of Powers; Professional Management. The Association acting by and through the Board can delegate its powers, duties and responsibilities to committees or employees, including a professional managing agent ("manager"), subject to the provisions of Sections 4.3.3 and 14.16.

4.3.1.4 Association Rules. The Board shall have the power to adopt, amend and repeal the Association Rules as it deems reasonable. The Association Rules shall, inter alia, govern the use of the Common Area by all Owners and tenants, and their respective family members, guests or invitees. However, the Association Rules shall not be inconsistent with or materially alter any provisions of this Declaration, the Articles or the Bylaws. A copy of the Association Rules as adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner and a copy shall be posted in a conspicuous place within the Project. In case of any conflict between any of the Association Rules and any other provisions of this Declaration, the Articles, or Bylaws, the conflicting Association Rule shall be deemed to be superseded by the provisions of this Declaration, the Articles or the Bylaws to the extent of any such inconsistency.

4.3.2 Duties of the Association. In addition to the powers delegated to it by its Articles or the Bylaws, and without limited their generality, the Association, acting by and through the Board, or persons or entities described in Section 4.3.1.3, has the obligation to conduct all business affairs of common interest to all Owners and to

perform each of the following duties:

4.3.2.1 Operation and Maintenance of Common Area. To operate, maintain, and otherwise manage or provide for the operation, maintenance and management of the Common Area, and all its facilities, improvements, and landscaping, including any private driveways, private streets, parking facilities, exterior lighting and any drainage devices or facilities located upon the Property, and any other property acquired by or subject to the control of the Association, including personal property, in a first-class condition and in a good state of repair. Any and all irrigation and drainage devices and equipment on the Property shall at all times be the personal property of the Association and shall not become part of the real estate upon or in which it is located.

4.3.2.2 Maintenance of Air Conditioning and Heating Equipment. To maintain in reasonable working condition and, if necessary, to repair and replace the mechanical components of the air conditioning and heating systems serving each unit, including heat pumps and fan coils, but excluding flues and other nonmechanical components of such systems and excluding any solar heating components of such system installed by an Owner in accordance with Section 3.23. The costs of maintenance, repair and replacement of the mechanical components serving each unit shall be billed by the Association to and paid by the Owner of the condominium of which such unit is a part and shall not be part of the Common Area maintenance expenses of the Association, except to the extent that such costs may be uncollectible. The Association shall have the right to recover such costs and expenses from an Owner for whom such costs and expenses were incurred by any lawful means and shall be entitled to recover interest at the maximum rate permitted by law plus all costs of collection, including reasonable attorneys fees.

4.3.2.3 Association Contracts. To enter into contracts for services or materials for the benefit of the Association or the Common Area, including contracts with Declarant, subject to Sections 4.3.3.4 and 14.16.

4.3.2.4 Taxes and Assessments. To pay all real and personal property taxes and assessments and all other taxes levied against the Common Area, personal property owned by the Association or against the Association. Such taxes and assessments may be contested or compromised by the Association; provided that they are paid or that a bond insuring payment is posted before the sale or the disposition of any property to satisfy the payment of such taxes.

4.3.2.5 Water and Other Utilities. To acquire, provide and pay for water, sewer, garbage disposal, refuse and rubbish collection, electrical, telephone, gas and other necessary utility services for the Common Area, and for condominiums when the condominiums are not separately billed.

4.3.2.6 Insurance. To obtain, from reputable insurance companies, and maintain the insurance described in Section 8.

4.3.2.7 Enforcement of Restrictions and Rules. To perform such other acts, whether or not expressly authorized by this Declaration, that may be reasonable necessary to enforce any of the provisions of this Declaration, the Articles and Bylaws, and the Association Rules and Board resolutions.

4.3.2.8 Bonded Obligations.

(a) Enforcement. If the Association is the obligee under a bond or other arrangement ("bond") to secure performance of a commitment of the Declarant or its successors or assigns to complete Common Area or other improvements in the Project, not completed at the time the California Commissioner of Real Estate issues a final subdivision public report for the latest phase of the Project, the Board shall consider and vote on the question of action by the Association to enforce the obligations under the bond with respect to any improvement for which a notice of completion has not been filed within sixty (60) days after the completion date specified for that improvement in the "planned construction statement" appended to the bond. However, if the Association has given an extension in writing for the completion of any Common Area improvement, the Board shall consider and vote on the action to enforce the obligations under the bond only if a notice of completion has not been filed within thirty (30) days after the expiration of the extension. If the Board fails to consider and vote on the action to enforce the obligations under the bond, or if the Board decides not to initiate action to enforce the obligations under the bond, then on the petition in writing to the Board signed by members of the Association representing not less than five percent (5%) of the total voting power of the Association, the Board shall call a special meeting of members for the purpose of voting to override the decision of the Board not to initiate action or to compel the Board to take action to enforce the obligations under the bond. The meeting shall be called by the Board by fixing a date not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of said petition and by giving written notice to all Owners entitled to vote in the manner provided in this Declaration or in the Bylaws for notices of special meetings of members of the Association. At the meeting, the vote in person or by proxy of a majority of the Owners entitled to vote (other than Declarant) in favor of taking action to enforce the obligations under the bond shall be deemed to be the decision of the Association and the Board shall then implement this decision by initiating and pursuing appropriate action in the name of the Association.

(b) Exoneration. The Association shall act in a reasonably prompt manner to exonerate Declarant and its surety under any bond

in favor of the Association, provided such exoneration is appropriate.

4.3.3 Limitations on Authority. Except with the vote or written assent of members of the Association holding (i) fifty-one percent (51%) of the voting rights of each class of members, if two classes exist, or (ii) fifty-one percent (51%) of the voting rights of all members and fifty-one percent (51%) of the voting rights of members other than Declarant, if only one class exists, the Board acting on behalf of the Association shall not take any of the following actions.

4.3.3.1 Incur aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year; or

4.3.3.2 Sell during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year; or

4.3.3.3 Pay compensation to members of the Board or to officers of the Association for services performed in the conduct of the Association's business. However, the Board may cause a member of the Board or an officer to be reimbursed for expenses incurred in carrying on the business of the Association.

4.3.3.4 Entering into a contract with a third person wherein the third person will furnish goods or services for the Common Area or the Association for a term longer than one year with the following exceptions:

(a) A management contract, the terms of which have been approved by the Federal Housing Administration or Veterans Administration.

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

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

(d) Lease agreements for laundry room fixtures and equipment of not to exceed five years duration, provided that the lessor under the agreement is not an entity in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

4.4 Personal Liability. No member of the Board, or of any committee of the Association, or any officer of the Association, or Declarant, or any agent of Declarant, shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of any such person or entity if such person or entity has, on the basis of such information as may be possessed by him or it, acted in good faith without willful or intentional misconduct.

4.5 Organizational Meeting. An organizational meeting or action by written consent in lieu thereof shall occur as soon as practicable after incorporation of the Association, and the directors selected then shall hold office until the first annual meeting. All offices of the Board of Directors shall be filled at the organizational meeting or by such written consent.

4.6 Regular Meetings of Members and Notice; Specially Elected Directors.

4.6.1 The first annual meeting of members of the Association shall be held within forty-five (45) days after the closing of the sale of the condominium that represents the fifty-first (51st) percentile interest authorized for sale under the first final subdivision public report issued for the Project by the California Commissioner of Real Estate, but in no case later than six (6) months after the closing and recording of the sale of the first condominium. Thereafter, regular meetings of members of the Association shall be held at least once in each year at a time and place within the Project as prescribed in the Bylaws or as selected by the Board. Special meetings may be called as provided for in the Bylaws. Notice of all members' meetings, regular or special, shall be given by regular mail, personal delivery or telegram to all Owners and to any mortgagee who has requested in writing that such notice be sent to it and shall be given not less than ten (10) days nor more than ninety (90) days before the time of the meeting and shall set forth the place, date, and hour of the meeting, and the nature of the business to be undertaken. Any mortgagee, through its designated representative, shall be entitled to attend any such meeting but shall not be entitled to vote at the meeting. The presence at any meeting in person or by proxy of members entitled to cast at least fifty percent (50%) of the total votes of all members of the Association shall constitute a quorum. If any meeting cannot be held because a quorum is not present, members representing a majority of the votes present, either in person or by proxy, may adjourn the meeting to a time not less than five (5) days nor more than thirty (30) days from the date the original meeting was called, at which adjourned meeting the quorum requirement shall be at least twenty-five percent (25%) of the total votes. If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to members in the manner prescribed for regular meetings. Any

meeting of members at which a quorum is present may be adjourned for any reason to a time not less than forty-eight (48) hours nor more than thirty (30) days from the time of such meeting by members representing a majority of the votes present in person or by proxy.

4.6.2 As long as a majority of the voting power of the Association resides in the Declarant, or as long as there are two outstanding classes of membership in the Association, the election of twenty percent (20%) of the directors (the “specially elected directors”) shall be determined at a special election held immediately before the regular election of directors (except in the case of the election of a specially elected director following removal, death or resignation of his predecessor). At the duly constituted meeting of members, nominations for the specially elected director shall be made from the floor. When nominations have been closed, the special election shall take place. Declarant shall not have the right to participate in or vote in such special election (although Declarant or Declarant’s representatives may be present), and the candidates receiving the highest number of votes up to the number of specially elected directors to be elected shall be deemed to be the specially elected directors, and their term shall be the same as that of any other director. Unless members (excluding Declarant) holding a majority of all voting rights (excluding any voting rights held by Declarant) assent by vote or written consent, such specially elected directors cannot be removed. In case of the death, resignation or removal of a specially elected director, his successor shall be elected at a special meeting of members, and the provisions set forth in this Section respecting the election of a specially elected director shall apply as to the election of a successor. Except as otherwise provided in this Declaration, the provisions of this Declaration and of the Articles and Bylaws applicable to directors, including their election and removal, shall apply to a specially elected director.

4.7 Financial Statements of the Association.

4.7.1 The Association shall prepare, or cause to be prepared, a balance sheet and operating statement for the Association. The balance sheet shall be rendered as of the last day of the month closest in time to six (6) months from the date of closing of the first sale of a condominium. The operating statement shall be rendered for the period commencing with the date of closing of the first sale of a condominium and ending on the balance sheet date. Said operating statement shall include a schedule of assessments received or receivable, itemized by unit number and by the name of the person or entity assessed. The balance sheet and operating statement shall be distributed to each Owner within sixty (60) days after the date they are rendered.

4.7.2 The Association shall prepare, or cause to be prepared, for each fiscal year subsequent to the six (6) months accounting period described in Section 4.7.1, an annual report. The annual report shall consist of a balance sheet rendered as

of the last day of each fiscal year, an operating statement and statement of changes in financial position rendered for the fiscal year they cover, and any information required to be reported under Section 8322 of the California Corporations Code. The annual report shall be distributed to all Owners within one hundred twenty (120) days after the close of the fiscal year. In any fiscal year in which the gross receipts of the Association exceed seventy-five thousand dollars (\$75,000.00), the annual report shall be prepared by an independent public accountant. If not prepared by an independent public accountant, the report shall be accompanied by the certificate of an officer of the Association that the report was prepared without audit from the books and records of the Association.

4.7.3 A pro forma operating statement or budget shall be prepared in accordance with Section 6.4.1.1.

4.7.4 Copies of each of the above financial statements for the Association shall be mailed to any mortgagee who has requested their receipt in writing.

4.8 Inspection of Association Books and Records.

4.8.1 Any membership register, books of account and minutes of meetings of the members, the Board and committees of the Board of the Association, shall be made available for inspection and copying by any member of the Association, or his duly appointed representative, or any mortgagee, at any reasonable time and for a purpose reasonably related to his interest as a member, at the office of the Association or at such other place within the Project as the Board prescribes.

4.8.2 The Association shall establish by resolution of the Board reasonable Rules with respect to:

4.8.2.1 Notice to be given to the custodian of the records of the Association by the member, representative or mortgagee desiring to make an inspection.

4.8.2.2 Hours and days of the week when an inspection may be made.

4.8.2.3 Payment of the cost or reproducing copies of documents requested by a member or by a representative or mortgagee.

4.8.3 Every director of the Association shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extracts and copies of documents.

5. **ASSESSMENTS**

6.1

6.2 **Personal Obligations.** Each assessment or installment, together with any late charge, interest, collection costs and reasonable attorneys fees, shall be the personal obligation of the person or entity who was an Owner at the time such assessment, or installment became due and payable. If more than one person or entity was the Owner of a condominium, the personal obligation to pay such assessment or installment respecting such condominium shall be both joint and several. The personal obligation for delinquent assessments, or delinquent installments and other such sums, shall not pass to an Owner's successors in interest unless expressly assumed by them. No Owner may exempt himself from payment of assessments or installments by waiver of the use or enjoyment of all or any portion of the Common Area or by waiver of the use or enjoyment of, or by abandonment of, his condominium.

6.3 **Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the members of the Association, the improvement, replacement, repair, operation and maintenance of the Common Area and the performance of the duties of the Association as set forth in this Declaration.

6.4 **Assessments.**

6.4.1 **Regular Assessments.**

6.4.1.1 Not less than ninety (90) days before the beginning of each fiscal year of the Association, the Association shall prepare or cause to be prepared, and distribute to each Owner, a proposed pro forma operating statement or budget for the forthcoming fiscal year. Any Owner or mortgagee may make written comments to the Association with respect to said pro forma operating statement. The pro forma operating statement shall be prepared consistently with the prior fiscal year's operating statement and shall include adequate reserves for contingencies and for maintenance, repairs and replacement of the Common Area improvements and other improvements or personal property likely to need maintenance, repair or replacement, which reserves shall be sufficient to satisfy the requirements of any institutional mortgagee.

6.4.1.2 Not more than ninety (90) days nor less than sixty (60) days before the beginning of each fiscal year of the Association, the Board shall meet

for the purpose of establishing the regular annual assessment for the forthcoming fiscal year. At such meeting, the Board shall review the proposed pro forma operating statement or budget, and written comments received and any other information available to it and, after making any adjustments that the Board deems appropriate, without a vote of the members of the Association, shall establish the regular assessment for the forthcoming fiscal year; provided, however, that the Board may not establish a regular assessment for any fiscal year of the Association which is more than one hundred twenty percent (120%) of the regular assessment of the prior fiscal year of the Association (except the first such fiscal year of the Association if it should be less than twelve (12) months) without the approval by vote or written consent of (i) members holding fifty-one percent (51%) of the voting rights of each class of members, if two classes exist, or (ii) members holding fifty-one percent (51%) of the voting rights of all members and fifty-one percent (51%) of the voting rights of members other than Declarant, if only one class exists. Not less than sixty (60) days before the beginning of each fiscal year of the Association, the Association shall distribute to each Owner a final copy of the pro forma operating statement or budget for the forthcoming fiscal year.

6.4.1.3 Unless the Association or its assessment income shall be exempt from federal or state income taxes, to the extent possible, all reserves shall be accounted for and handled as contributions to the capital of the Association and as trust funds segregated from the regular income of the Association or in such other manner authorized by law or regulations of the Internal Revenue Service and the California Franchise Tax Board as will prevent such funds from being taxed as income of the Association.

6.4.2 Special Assessments. If the Board determines that the estimated total amount of funds necessary to defray the common expenses of the Association for a given fiscal year is or will become inadequate to meet expenses for any reason, including, but not limited to, unanticipated delinquencies, costs of construction, unexpected repairs or replacements of capital improvements on the Common Area, the Board shall determine the approximate amount necessary to defray such expenses, and if the amount is approved by a majority vote of the Board, it shall become a special assessment. The Association may, in the discretion of the Board, pro rate such special assessment over the remaining months of the fiscal year or levy the assessment immediately against each condominium. As used herein, the term "special assessments" shall not include charges to or obligations of an Owner or group of Owners incurred as a result of action by the Association to bring the Owner or group of Owners or their condominiums into compliance with the provisions of this Declaration, the Articles, the Bylaws or the Association Rules, but such term shall include assessments levied pursuant to Section 9 (for repair or reconstruction). Unless exempt from federal or state income taxation, all proceeds from any special assessment shall be segregated and deposited into a special account and shall be used solely for the purpose or purposes for which it was levied or it shall be otherwise handled and used in

a manner authorized by law or regulations of the Internal Revenue Service or the California Franchise Tax Board in order to avoid, if possible, its taxation as income of the Association.

6.4.3 Limitation Respecting Special Assessments. The foregoing notwithstanding, except for special assessments levied pursuant to Section 9 (for repair or reconstruction), any special assessment which, singly or in the aggregate with previous special assessments for the fiscal year in which such special assessment is levied, would amount in excess of five percent (5%) of the budgeted gross expense of the Association for the fiscal year, shall require approval by vote or written consent of (i) members holding fifty-one percent (51%) of the voting rights of each class of members, if two classes exist, or (ii) members holding fifty-one percent (51%) of the voting rights of all members and fifty-one percent (51%) of the voting rights of members other than Declarant, if only one class exists.

6.5 Rate of Assessments. Regular and special assessments must be fixed at a uniform rate for all condominiums, determined as follows:

6.5.1 All regular or special expenses and reserves of the Association, except those relating to insurance, water and replacement of exterior paint and replacement of roofs, shall be aggregated and the total shall be divided by the number of condominiums then subject to assessment. The quotient shall be assessed against each condominium and its Owner equally.

6.5.2 All regular or special expenses and reserves of the Association relating to insurance, water and replacement of exterior paint and replacement of roofs shall be aggregated and the total shall be multiplied by the assessment ratio applicable to each condominium (based upon the approximate square footage of the living area element of each unit relative to the total approximate square footage of the living area elements of all units of condominiums then subject to assessment) as set forth in Exhibit C attached hereto.

6.5.3 In the event that additional real property is annexed to the Project pursuant to Section 16 hereof, the assessment ratios shall be modified as provided in Section 16. Such modification shall not be deemed to be an amendment of the provisions relating to assessments or a change in the method of determining assessments requiring the consent of Owners or mortgagees under Sections 14.3 or 14.4 hereof.

6.6 Assessment Period. The regular assessment period shall commence on January 1 of each year and shall terminate on December 31 of such year, and regular assessments shall be payable in equal monthly installments unless the Association adopts some other basis for collection. However, the initial regular assessment period

as to all units shall commence on the first day of the calendar month following the date on which the sale of the first condominium to a purchaser is closed and recorded and shall terminate on December 31 of the year in which the initial sale is closed and recorded. The initial regular assessment period shall commence as to all condominiums in any annexed phase of the Project on the first day of the calendar month following the date on which the sale of the first condominium in that phase is closed and recorded. The first regular assessment and all special assessments shall be adjusted according to the number of months remaining in the fiscal year and shall be payable in equal monthly installments unless the Association adopts some other basis for collection.

6.7 Notice and Assessment Installment Due Dates. A single ten (10) day prior written notice of each annual regular assessment and each special assessment shall be given to any Owner of every condominium subject to assessment in which the due dates for the payments of installments shall be specified. The due dates for the payment of installments normally shall be the first day of each month unless some other due date is established by the Association. Each installment of regular assessments and special assessments shall become delinquent if not paid within fifteen (15) days after its due date. There shall accrue with each delinquent installment a late charge of Fifteen Dollars (\$15), together with interest at the then prevailing rate fixed from time to time by the Association (but not to exceed the maximum rate permitted by law) or, if no rate has been fixed by the Association, at the rate of ten percent (10%) per annum calculated from the due date to and including the date full payment is received by the Association.

6.8 Estoppel Certificate. The Board or manager, on not less than twenty (20) days prior written request, shall execute, acknowledge and deliver to the party making such request a statement in writing stating whether or not to the knowledge of the Association, a particular Owner is in default as to his condominium under the provisions of this Declaration and further stating the dates to which installments of assessments, regular or special, have been paid as to such condominium. Any such certificate may be relied on by any prospective purchaser or mortgagee of the condominium, but reliance on such certificate may not extend to any default not involving the payment of assessments of which the signer had no actual knowledge.

6. COLLECTION OF ASSESSMENTS: LIENS

7.1 Right to Enforce. The right to collect and enforce assessments is vested in the Association. The Association or its authorized representative, including any manager, can enforce the obligations of the Owners to pay assessments provided for in this Declaration by commencement and maintenance of a suit at law or in equity, or the Association may foreclose by judicial proceedings or through the exercise of the power of sale pursuant to Section 7.2 to enforce the lien rights created. Suit to recover a

money judgment for unpaid assessments together with all other amounts described in Section 6.2 shall be maintainable without foreclosing or waiving the lien rights.

7.2 Creation of Lien. If there is a delinquency in the payment of any assessment, or installment on a condominium, as described in Section 6.7, any amounts that are delinquent together with the late charge and interest described in that section, and all costs that are incurred by the Association or its authorized representative in the collection of the amounts, including reasonable attorneys fees, shall be a lien against that condominium upon the recordation in the office of the County Recorder of the County of a notice of assessment as provided in California Civil Code, Section 1356. The notice of assessment shall not be recorded unless and until the Association or its authorized representative has delivered to the delinquent Owner or Owners, not less than fifteen (15) days before the recordation of the notice of assessment, a written notice of default and a demand for payment, and unless the delinquency has not been cured within said fifteen (15) day period. The lien shall expire and be void unless, within one (1) year after recordation of the notice of assessment, the Association or its authorized representative either records a notice of default as provided hereinafter or institutes judicial foreclosure proceedings with respect to the lien, or extends the lien for one (1) year as provided by California Civil Code Section 1356.

7.3 Notice of Default; Foreclosure. Not more than one (1) year nor less than fifteen (15) days after the recording of the notice of assessment, the Association or its authorized representative can record a notice of default and can cause the condominium with respect to which a notice of default has been recorded to be sold in the same manner as a sale is conducted under California Civil Code, Sections 2924, et. seq., or through judicial foreclosure. However, as a condition precedent to the holding of any such sale under Section 2924c, appropriate publication shall be made. In connection with any sale under Section 2924c, the Association is authorized to appoint its attorney, any officer or director, or any title insurance company authorized to do business in California as trustee for purposes of conducting the sale. If a delinquency is cured before sale, or before completing a judicial foreclosure, the Association or its authorized representative shall cause to be recorded in the office of the County Recorder of the County a certificate setting forth the satisfaction of such claim and release of such lien upon payment of actual expenses incurred, including reasonable attorneys fees. The Association, acting on behalf of the Owners, shall have the power to bid upon the condominium at foreclosure sale and to acquire, hold, lease, mortgage and convey the condominium.

7.4 Waiver of Exemptions. Each Owner, to the extent permitted by law, waives, to the extent of any liens created pursuant to this Section 7, the benefit of any homestead or exemption laws of California in effect at the time any assessment or installment becomes delinquent or any lien is imposed.

7. **INSURANCE**

8.1 **Liability Insurance.** The Association shall obtain and maintain comprehensive public liability insurance insuring the Association, any manager, the Declarant and the Owners and occupants of condominiums, and their respective family members, guests, invitees, and the agents and employees of each, against any liability incident to the ownership or use of the Common Area 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 \$1,000,000 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.

8.2 **Fire and Extended Coverage Insurance.** The Association also shall obtain and maintain a master or blanket policy of fire insurance for the full insurable value of all of the improvements within the Project. The form, content and term of the policy and its endorsements and the issuing company must be satisfactory to all institutional first mortgagees. If more than one institutional first mortgagee has a loan of record against a condominium in the Project, the policy and endorsements shall meet the maximum standards of the various institutional first mortgagees represented in the Project. The policy shall contain an agreed amount endorsement or its equivalent, an increased cost of construction endorsement or a contingent liability from operation of building laws endorsement or their equivalent, an extended coverage endorsement, vandalism, malicious mischief coverage, a special form endorsement and a determinable cash adjustment clause or a similar clause to permit cash settlement covering full value of the improvements in case of partial destruction and a decision not to rebuild. The policy shall provide amounts of coverage as shall be determined by the Association. The policy shall name as insured the Association, the Owners and Declarant, as long as Declarant is the Owner of any condominium, and all mortgagees as their respective interests may appear, and may contain a loss payable endorsement in favor of the trustee described in Section 8.4.

8.3 **Individual Fire Insurance Limited.** Except as provided in this Section, no Owner shall separately insure his unit against loss by fire or other casualty covered by any insurance carried under Section 8.2. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable under policies described in Section 8.2 that results from the existence of such other insurance will be chargeable to the Owner who acquired other insurance, and such Owner will be liable to the Association to the extent of any such diminution. Any improvements made by an Owner within his unit may be separately insured by the Owner, but the insurance is to be limited to the

type and nature of coverage commonly known as “tenant’s improvements”. All such insurance that is individually carried must contain a waiver of subrogation rights by the carrier as to other Owners, the Association, Declarant and institutional first mortgagee of such condominium.

8.4 Trustee. All fire and casualty insurance proceeds payable under Section 8.2, subject to the rights of mortgagees under Section 8.8, may 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 in the County that agrees in writing to accept such trust, If repair or reconstruction is authorized, the Association shall have the duty to contract for such work as provided for in this Declaration.

8.5 Other Insurance. The Association may and, if required by any institutional first mortgagee, shall purchase and maintain demolition insurance in adequate amounts to cover demolition in case of total or partial destruction of the development and a decision not to rebuild, and a blanket policy of flood insurance. The Association also shall purchase and maintain worker’s compensation insurance, to the extent that it is required by law, for all employees or uninsured contractors of the Association. The Association also shall purchase and maintain fidelity bonds or insurance (which shall be in an amount not less than 150% of each year’s estimated annual operating expenses and reserves and shall contain an endorsement of coverage of any person who may serve without compensation) sufficient to meet the requirements of any institutional first mortgagee. The Association shall purchase and maintain such insurance on personal property owned by the Association, and any other insurance that it deems necessary or that is required by any institutional first mortgagee.

8.6 Owner’s Liability and Personal Property Insurance. An Owner may carry whatever personal injury liability, property damage liability and personal property casualty insurance with respect to his condominium that he desires. However, any such policy shall include a waiver of subrogation clause acceptable to the Association and to any institutional first mortgagee.

8.7 Adjustment of Losses. The Association 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 Section 8.1, 8.2 and 8.5. The Association is granted full right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

8.8 Distribution to Mortgagees. Subject to the provisions of Section 14.4 hereof, any mortgagee has the option to apply insurance proceeds payable thereunder in reduction of the obligation secured by the mortgage of such mortgagee.

8.9 Officer and Director Insurance. Upon and in the event of the determination by the Board to purchase such insurance, the Association shall purchase and maintain insurance in an amount up to Five Hundred Thousand Dollars (\$500,000) on behalf of any director, officer, or member of a committee of the Association (collectively the “agents”) against any liability asserted against or incurred by the agent in such capacity or arising out of the agent’s status as such, whether or not the Association would have the power to indemnify the agent against such liability under applicable law.

8. DESTRUCTION OF IMPROVEMENTS

9.1 Destruction; Proceeds Exceed 85% of Reconstruction Costs. If there is a total or partial destruction of any of the improvements in the Project, and if the available proceeds of the insurance carried pursuant to Section 8 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, members then holding at least seventy-five percent (75%) of the total voting power of each class of members present and entitled to vote, in person or by proxy, at a duly constituted meeting, determine that repair and reconstruction shall not take place. If repair and reconstruction is to take place, the Association shall be required to execute, acknowledge and record in the office of the County Recorder of the County not later than one hundred twenty (120) days from the date of destruction, a certificate declaring the intention of the members to rebuild.

9.2 Destruction; Proceeds Less Than 85% of Reconstruction Costs. If the proceeds of insurance carried pursuant to Section 8 are less than eighty-five percent (85%) of the costs of repair and reconstruction, repair and reconstruction shall take place unless, within ninety (90) days from the date of destruction, members then holding at least sixty-six and two-thirds percent (66 2/3%) of the total voting power of each class of members present and entitled to vote, in person or by proxy, at a duly constituted meeting, determine that repair and reconstruction shall not take place. If repair and reconstruction is to take place, the Association shall execute, acknowledge and record in the office of the County Recorder of the County not later than one hundred twenty (120) days from the date of destruction a certificate declaring the intention of the members to rebuild.

9.3 Rebuilding Procedures. If the members determine to rebuild, pursuant to Sections 9.1 or 9.2, each Owner shall be obligated to contribute his proportionate share of the cost of repair or reconstruction over and above the available insurance proceeds. The proportionate share of each Owner shall be based upon the ratio the square footage of the floor area of his unit bears to the total square footage of the floor area of all units. If any Owner fails or refuses to pay his proportionate share, the Association may levy a special assessment against the condominium of such Owner which may be

enforced under the lien provisions contained in Section 7 or in any other manner provided in this Declaration.

9.4 Rebuilding Contract. If the members determine to rebuild, the Association or its authorized representative shall obtain bids from at least two reputable contractors and shall award the repair and reconstruction work to the lowest bidder. The Association shall have the authority to enter into a written contract with the contractor for the repair and reconstruction, and the insurance proceeds held by the trustee shall be disbursed to the contractor according to the terms of the contract. It shall be the obligation of the Association to take all steps necessary to assure the commencement and completion of authorized repair and reconstruction at the earliest possible date.

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

9.5.1 Purchase by Association.

9.5.1.1 If, prior to the expiration of one hundred twenty (120) days from the date of destruction, seventy-five percent (75%) of all Owners and institutional first mortgagees with mortgages encumbering condominiums in the Project consent by vote or in writing, the Board acting on behalf of the Association shall have the right to purchase the condominiums of which the units were rendered uninhabitable by such damage or destruction at the fair market value thereof immediately prior to the damage or destruction (as determined pursuant to Section 9.7), using the available proceeds of insurance for such purpose. 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 condominium and each Owner by accepting a deed to a condominium agrees to be bound by these provisions and to sell his condominium by grant deed to the Association as provided herein. Concurrently with such purchase, the Association, acting as attorney-in-fact of all Owners shall amend this Declaration to eliminate from the Project 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 and the Association shall convey to each remaining Owner a proportionate share of the undivided interests in the Common Area represented by the condominiums purchased, which proportion shall be in the ratio that each remaining Owner's undivided interest in the Common Area bears to all remaining Owners' undivided interest in the Common Area.

9.5.1.2 Notwithstanding the determination not to rebuild pursuant to Sections 9.1 or 9.2, any units which are not rendered uninhabitable shall be repaired and reconstructed to a condition as near as possible to their condition immediately before such damage or destruction. Such repair and reconstruction shall be paid for

first, from the insurance proceeds remaining after the purchase of units pursuant to Section 9.5.1.1, if any, and second, from a special assessment levied against all remaining Owners in the Project in the manner described in Section 9.3 (but without the consent or approval of members, despite any contrary provisions in the Declaration).

9.5.2 Procedure if Purchase Not Authorized. If the required seventy-five percent (75%) of all Owners and institutional first mortgagees do not consent to purchase of the condominiums of which the units were rendered uninhabitable, the proceeds of insurance shall be apportioned among all Owners, and their respective mortgagees, in proportion to the relative fair market value of their condominiums determined pursuant to Section 9.7. The Association shall have the duty, within one hundred twenty (120) days from the date of destruction, to execute, acknowledge and record in the office of the County Recorder of the County, a certificate declaring the intention of the members not to rebuild. On recordation of the certificate, the right of any Owner to partition through legal action as described in Section 11 shall revive immediately.

9.6 Minor Repair and Reconstruction. The Association shall have the duty to repair and reconstruct improvements, without the consent of members and irrespective of the amount of available insurance proceeds, in all cases of partial destruction when the estimated cost of repair and reconstruction does not exceed Two Thousand Dollars (\$2,000) in the case of improvements to a unit and Twenty Thousand Dollars (\$20,000) in the case of Common Area improvements. The Association is expressly empowered to levy a special assessment for the cost of repairing and reconstructing improvements to the extent insurance proceeds are unavailable, such assessment to be levied as described in Section 9.3 (but without the consent or approval of members, despite any contrary provisions in this Declaration).

9.7 Fair Market Value. Wherever in this Section 9 reference is made to a determination of the relative fair market value of one or more condominiums, it shall mean the relative fair market value of each such condominium as of a date immediately prior to any damage or destruction as determined by an appraisal by an independent appraiser selected by the Association, who shall be a member of the Society of Real Estate Appraisers or other nationally recognized appraiser organization and who shall apply its or such other organization's standards in determining the relative fair market value of each such condominium. The cost of such appraisal shall be paid from the insurance proceeds.

9. CONDEMNATION

10.1 Sale by Unanimous Consent or Taking. If an action for condemnation of all or a portion of the Project 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 Project, or a portion of it may be sold and conveyed to the condemning authority by the Association 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 condominium in the Project 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 Project, and the condemning authority institutes condemnation proceedings, the court shall fix and determine the condemnation award.

10.2 Distribution of Sale Proceeds or Condemnation Award.

10.2.1 Total Sale or Taking. In the event of a total sale or taking of the Project, meaning a sale or taking (i) that renders more than fifty percent (50%) of the units 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 Project as a whole uneconomic as determined by the vote or written consent of sixty six and two-thirds percent (66 2/3%) of those Owners and their respective institutional mortgagees whose units will remain habitable after the taking; the right of any Owner to partition through legal action as described in Section 11 shall revive immediately. 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 Project, together with the proceeds of any sale pursuant to a partition action, after payment of all expenses relating to the sale, taking or partition action, 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 in the Project. The fair market value of condominiums shall be determined pursuant to Section 10.3.

10.2.2 Partial Sale or Taking. In the event of a partial sale or taking of the Project, meaning a sale or taking that is not a total taking as described in Section 10.2.1, 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:

10.2.2.1 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

10.2.2.2 To Owners and to their respective mortgagees, as their interests may appear, of condominiums in the Project whose units have been sold or taken, an amount up to the aggregate fair market value of each such condominium as determined pursuant to Section 10.3, less such Owners' share of expenses paid pursuant to Section 10.2.2.1 (which share shall be in proportion to each Owner's undivided interest in the Common Area). After such payment, the recipient shall no

longer be deemed an Owner and the Association or individuals authorized by the Association, acting as attorney-in-fact of all Owners, shall amend the condominium plan, the Tract Map (if necessary) and this Declaration to eliminate from the Project the condominiums so sold or taken and to adjust the undivided ownership interest of the remaining Owners in the Common Area based upon the ratio that each remaining Owner's undivided interest bears to all the remaining Owners' undivided interest in the Common Area; then

10.2.2.3 To any remaining Owner and to his mortgagees, as their interest may appear, whose condominium has been diminished in fair market value as a result of the sale or taking disproportionate to any diminution in fair market value of all condominiums, as determined pursuant to Section 10.3, but as of a date immediately after any announcement of condemnation, an amount up to the total diminution in value; then

10.2.2.4 To all remaining Owners and to their respective mortgagees, as their interest 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 determined pursuant to Section 10.3.

10.3 Fair Market Value. Wherever in this Section 10 reference is made to a determination of the relative fair market value of one or more condominiums, it shall mean the relative fair market value of each such condominium as of a date immediately prior to any announcement of condemnation as determined by an appraisal by an independent appraiser selected by the Association, who shall be a member of the Society of Real Estate Appraisers 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 such condominium. The cost of such appraisal shall be paid from the sale proceeds.

10. **PARTITION**

11.1 Suspension. Except as expressly provided herein, an Owner shall have no right to partition or divide his 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 9.5.2 (relating to damage or destruction) or in Section 10.2.1 (relating to condemnation) or in Civil Code, Section 1354(b), have been met. Nothing in this Declaration shall prevent partition of a cotenancy in a condominium.

11.2 Distribution of Proceeds. Proceeds or property resulting from a partition shall be distributed to and among the respective Owners and their mortgagees, as their interests may appear, in proportion to the ratio that the fair market value of all Owners'

condominiums determined as provided in Section 10.3, but as of a date immediately prior to the event giving rise to the right of Owners to partition the Common Area.

11.3 Power of Attorney. Pursuant to California Civil Code, Section 1355(b)(9), each of the Owners hereby 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 thereto, in one or more transactions, for the benefit of all Owners when partition of the Project may be had under Section 1354 of the Civil Code and under the circumstances authorizing partition under this Declaration. Said power of attorney shall (i) be binding upon 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 said power of attorney that said power of attorney is properly exercisable under said Section 1355(b)(9) of the Civil Code, which certificate shall be conclusive evidence of proper exercise in favor of any person relying thereon in good faith.

12. NON-SEVERABILITY OF COMPONENT INTERESTS IN A CONDOMINIUM

12.1 Prohibition Against Severance. An Owner shall not be entitled to sever his unit in any condominium from his membership in the Association, and shall not be entitled to sever his unit and his membership from his 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, any violation or attempted violation of this provision shall be void. Similarly, no Owner can sever any easement appurtenant to his unit over the Common Area or Recreation Area from his 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 Section 11 respecting the suspension of partition. It is intended hereby to restrict severability pursuant to California Civil Code, Section 1355(g).

12.2 Conveyances. After the initial sales of the condominiums, any conveyance of a condominium by an Owner shall be presumed to convey the entire condominium. However, nothing contained in this section shall preclude the Owner of any condominium from creating a cotenancy or joint tenancy in the ownership of the condominium with any other person or persons.

13. TERM OF DECLARATION

This Declaration shall continue in full force and effect until the Project is

partitioned as authorized in Section 11 hereof, or until this Declaration is revoked pursuant to Section 15 hereof.

14. **PROTECTION OF MORTGAGEES**

14.1 **Mortgage Permitted.** Any Owner may encumber his condominium with a mortgage.

14.2 **Subordination.** Any lien created or claimed under the provisions of this Declaration is expressly made subject and subordinate to the rights of any first mortgage that encumbers all or a portion of the Project, or any condominium, made in good faith and for value, and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of such mortgage unless the mortgagee expressly subordinates his interest, in writing, to such lien. If any condominium is encumbered by a first mortgage made in good faith and for value, the foreclosure of any lien created by any provision set forth in this Declaration for assessments, or installments of assessments, shall not operate to affect or impair the lien of the mortgage. On foreclosure of the mortgage, the lien for assessments, or installments, that has accrued up to the time of foreclosure shall be subordinate to the lien of the mortgage, with the foreclosure-purchaser taking title to the condominium free of the lien for assessments or installments, that has accrued up to the time of the foreclosure sale. On taking title to the condominium the foreclosure-purchaser shall only be obligated to pay assessments or other charges levied or assessed by the Association after the foreclosure-purchaser acquired title to the condominium. The subsequently levied assessments provided all Owners, including the foreclosure-purchaser, and his successors and assigns are required to pay their proportionate share as provided in this Section.

14.3 **Amendment or Revocation.** In addition to the requirements of Section 15 and unless a greater percentage is expressly required by this Declaration, the Articles, the Bylaws or by law, the prior written consent (or deemed consent as provided hereinafter) of first mortgagees of condominiums which have at least fifty-one percent (51%) of the votes of all condominiums encumbered by the first mortgages shall be required to add or amend any material provisions of the Declaration, the Articles, the Bylaws, the Condominium Plan or the Tract Map, which establish, provide for, govern or regulate any of the following:

14.3.1 Voting;

14.3.2 Assessments, collection of assessments, assessment liens or subordination of such liens;

14.3.3 Reserves for maintenance, repair and replacement of Common Area or improvements thereon;

14.3.4 Casualty and liability insurance or fidelity bonds;

14.3.5 Rights to use the Common Area;

14.3.6 Responsibility for maintenance and repair of condominiums and Common Area and the improvements thereon;

14.3.7 Expansion or contraction of the Project or the addition, annexation or withdrawal of real property to or from the Project;

14.3.8 Boundaries of any condominium;

14.3.9 The interest or rights of the Association or Owners in and to the Common Area;

14.3.10 The convertibility of condominiums into Common Area or of Common Area into condominiums;

14.3.11 The leasing of condominiums;

14.3.12 Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey his or her condominium; or

14.3.13 Any provisions which are for the express benefit of first mortgagees or insurers or governmental guarantors of first mortgages.

For purposes of this Section, an addition or amendment shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. Any first mortgagee who receives a written request to consent to additions or amendments requiring consent under this Section who does not deliver or post to the requesting party a negative response within thirty (30) days after such receipt shall be deemed to have consented to such request.

14.4 Restrictions on Certain Changes. Unless at least sixty-seven percent (67%) of first mortgagees of condominiums have given their prior written approval, neither the Association nor the Owners shall be entitled:

14.4.1 By act or omission to seek to abandon or terminate the condominium Project, except for abandonment provided by statute in case of substantial loss to the units and Common Area;

14.4.2 To change the method of determining the obligations, assessments dues or other charges which may be levied against an Owner, or to

change the pro rata interest or obligations of any condominium for purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards or for determining the pro rata share of ownership of each Owner in the Common Area;

14.4.3 To partition or subdivide any unit;

14.4.4 By act or omission to 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 the Common Area by the Association or the Owners shall not be deemed to be a transfer within the meaning of this clause;

14.4.5 To use hazard insurance proceeds for losses to units or Common Area improvements in the development or to any other Association owned real property, for other than the repair, replacement or reconstruction of such improvements or property;

14.4.6 By act or omission to change, waive or abandon the provisions of this Declaration, or the enforcement thereof, pertaining to architectural design or control of the exterior appearance of structures in the development, the maintenance of the Common Area, walks or fences and driveways, or the upkeep of lawns and plantings in the development.

14.4.7 To fail to maintain fire and extended coverage insurance on insurable Association property, including any Common Area improvements, on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost).

14.5 Right to Examine Books and Records. Institutional first mortgagees can examine the books and records of the Association or the Project and can require the submission of financial data concerning the Association or the Project, including annual audit reports and operating statements as furnished to the Owners.

14.6 Distribution of Insurance and Condemnation Proceeds. No Owner, or any other party, shall have priority over any right of institutional first mortgagees of condominiums pursuant to their mortgages in case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of units or Common Area. Any provision to the contrary in this Declaration or in the Bylaws or other documents relating to the Project is to such extent void. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses acceptable to the affected institutional first mortgagees naming the mortgagees, as their interests may appear.

14.7 Amenities. All amenities (such as parking, recreation and service areas) and Common Area shall be available for use by Owners and all such amenities with respect to which regular or special assessments for maintenance or other uses may be levied shall constitute Common Area. All such amenities shall be owned (i) in fee by the Owners in undivided interests or (ii) by the Association free of encumbrances except for any easements granted for public utilities or for other public purposes consistent with the intended use of such property by the Owners or by the Association.

14.8 Notices to Mortgagees of Record. If any Owner is in default under any provision of this Declaration or under any provision of the Bylaws or the Association Rules, which default is not cured within thirty (30) days after written notice to that Owner, the Association shall give to the mortgagee of record of such Owner written notice of such default and of the fact that said thirty (30) day period has expired.

14.9 Payments by Mortgagees. Mortgagees of condominiums may, jointly or singularly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, covering any Common Area improvements or other insured property of the Association and, upon making any such payments, such mortgagees shall be owed immediate reimbursement therefor from the Association. This provision shall constitute an agreement by the Association for the express benefit of all mortgagees and upon request of any mortgagee the Association shall execute and deliver to such mortgagee a separate written agreement embodying the provisions of this Section 14.9.

14.10 Effect of Breach. No breach of any provision of this Declaration shall invalidate the lien of any mortgage 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.

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

14.12 Loan to Facilitate. Any first mortgage given to secure a loan to facilitate the resale of a condominium after acquisition by foreclosure or by a deed in lieu of foreclosure or by an assignment in lieu of foreclosure shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protections of this Section 14.

14.13 Appearance at Meetings. Because of its financial interest in the Project, any mortgagee may appear (but cannot vote) at meetings of the members and the Board to draw attention to violations of this Declaration that have not been corrected or made the subject of remedial proceedings or assessments.

14.14 Right to Furnish Information. Any mortgagee can furnish information to the Board concerning the status of any mortgage.

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

14.16 Contracts with Declarant and Managers. Any agreement between the Association and Declarant pursuant to which the Declarant agrees to provide services, and any agreement for professional management by a manager shall provide for termination by either party without cause or payment of a termination fee on thirty (30) days written notice and shall have a maximum contract term of one (1) year; provided that the Board can renew any such contract on a year-to-year basis. If the Project is professionally maintained or managed, the Board shall not terminate professional management and assume self-management without the consent of sixty-seven percent (67%) of the voting rights of each class of members, or of all members if only one class exists, and of fifty-one percent (51%) of first mortgagees.

15. AMENDMENT OR REVOCATION

15.1 This Declaration may be amended in any respect or revoked by the vote or written consent of the holders of not less than seventy-five percent (75%) of the voting rights of each class of members, or if a single class of members is then in effect, by the vote or written consent of not less than (i) seventy-five percent (75%) of all the votes including Declarant and (ii) fifty-one percent (51%) of the votes excluding Declarant. However, if any provision of this Declaration requires a greater or lesser percentage of the voting rights of any class of members in order to take affirmative or negative action under such provision, the same percentage of such class or classes of members shall be required to amend or revoke such provision. Also, if the consent or approval of any governmental authority, mortgagee or other person, firm, agency or entity is required under this Declaration with respect to any amendment or revocation of any provision of this Declaration, no such amendment or revocation shall become effective unless such

consent or approval is obtained. Any amendment or revocation subsequent to the close of such first sale shall be evidenced by an instrument certified by the Secretary or other duly authorized officer of the Association and shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the office of the County Recorder of the County.

15.3 Conflict With Section 14 or Other Provisions of This Declaration. To the extent any provisions of this Section 15 conflict with the provisions of Section 14 or any other provision of this Declaration, except those contained in Section 15.4, the provisions of Section 14 or the other provisions shall control.

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

15.5 Reliance on Amendments or Revocation. Any amendments or revocation made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith.

15.6 Amendments to Conform with Mortgagee Requirements. It is the intent of Declarant that this Declaration and the Articles and Bylaws of the Association, and the Project in general shall now and in the future meet all requirements necessary to purchase, guarantee, insure or subsidize any mortgage of a condominium in the Project by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Federal Housing Administration and the Veterans Administration. The Association and each Owner shall take any action or shall adopt any resolutions required by Declarant or any mortgagee to conform this Declaration or the Project to the requirements of any of said entities or agencies.

15.7 Consent of County of Orange. Amendments of this Declaration (i) which would reduce or eliminate the duties of the Association set forth in Section 4.3.2.1 to manage and maintain the landscaping, off-street parking facilities, exterior lighting utilities and other common facilities of the Project, except pursuant to a partition of the Project under circumstances described in Section 11, or (ii) which would modify the provisions of Section 3.23 (relating to solar heating), shall not be valid unless first approved in writing by the County of Orange through its Director of Planning or other designated representative.

16. ANNEXATION OF ADDITIONAL PROPERTY

The real property described in Exhibit D or any portion thereof may be annexed to the Project and made subject to this Declaration at the written election of the Declarant (or by the successors in title to such real property) made at any time and from

time to time within three (3) years following the original issuance of a final subdivision public report by the California Commissioner of Real Estate for the most recent phase of the Project. Such election shall be made by the recording of a supplement to this Declaration (the "Supplement"). The Supplement shall describe the real property to be annexed, shall state that it is being effected pursuant to the terms of this Declaration for the purpose of annexing the property described in the Supplement to the Project. Any Supplement recorded in accordance with the terms of this Section shall be conclusive in favor of all persons who relied on it in good faith. Upon filing the Supplement in accordance with the provisions of this Declaration, the real property described in the Supplement shall be part of the Project and subject to the provisions of this Declaration, and to the rights and powers of the Association pursuant to the terms of this Declaration, the Articles and the Bylaws, and thereafter all of the Owners of condominiums constituting a portion of said annexed real property shall automatically be members of the Association, with voting rights commencing on the date regular assessments commence. Regular and special assessments with respect to said annexed real property shall commence at the time and to the extent described in Sections 6.5 and 6.6 hereof and the assessment ratios described in Section 6.5 hereof and set forth in Exhibit C hereto shall be modified to take into account the greater number of condominiums in the Project using the same method of calculating such ratios (relative square footage of living area elements of units) as is described in Section 6.5. Declarant in such Supplement shall expressly reserve for the benefit of all property which may from time to time be covered by this Declaration, reciprocal easements of use, enjoyment, access, ingress and egress. Such easements may be used by Declarant, its successors, purchasers and all Owners of condominiums, their guests, tenants and invitees for sidewalks, walkways, vehicular access and such other purposes reasonably necessary to the use and enjoyment of all condominiums in the Project. The Supplement may contain such complementary additions, amendments and modifications to this Declaration as may be necessary to reflect the different character, if any, of the real property being annexed as are not inconsistent with the general scheme of this Declaration or which are required by any institutional first mortgagee to make condominiums in the development eligible for mortgage purchase, guarantee or insurance as described in Section 15.6. Notwithstanding the foregoing, unless approved by the California Department of Real Estate, no Supplement may (a) cause a substantial increase in the Common Area or Recreation Area costs and expenses then being borne by Owners which was not disclosed in the final subdivision public report for the phase of the development in which an Owner purchased his condominium, or (b) otherwise materially adversely affect the rights of Owners, without the prior affirmative vote or written consent of at least sixty-six and two-thirds percent (66 2/3%) of each class of members entitled to vote and their first mortgagees.

17. **ARCHITECTURAL CONTROL**

17.1 **Architectural Approval.** Except as to construction of improvements by

Declarant in any phase of the Project, no building, fence, wall or other structure shall be commenced, erected or maintained on the Property, nor shall any exterior addition to or change or alteration in any such structures or the Property, including solar heating systems, pools, spas, ponds, fountains, landscaping, stonework, concrete work or related mechanical plumbing or electrical facilities, awnings or antennae, be made until the plans and specifications showing the nature, kind, shape, materials and location of the same have been submitted to and approved in writing as to harmony of design and location in relation to surrounding structures and topography by the Architectural Committee provided for in Section 17.2. Whenever in this Declaration the prior consent or approval of the Association is required as a condition to any action by an Owner affecting any alterations, changes, additions or modifications of the Common Area, or such Owner's unit, the Association through the Board may delegate to the Architectural Committee the right and duty to grant or withhold such consent or approval. In the event the Architectural Committee or its designated representatives fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required, and this Section will be deemed to have been complied with in full.

17.2 Appointment of Architectural Committee. The Declarant shall appoint all of the original members of the Architectural Committee, consisting of not less than three (3) nor more than five (5) persons who need not be members of the Association, and any replacements thereof. The number of members initially appointed shall constitute the number of authorized members of the Committee until increased or decreased by the vote or written consent of the holders of at least fifty-one percent (51%) of the voting rights of each class of members of the Association. The initial appointees (and any replacements) shall hold office until the first anniversary of the original issuance of a Final Subdivision Public Report for the first phase of the Project by the California Commissioner of Real Estate. Thereafter, Declarant may appoint a majority of the members of the Architectural Committee, and any replacements thereof, until ninety percent (90%) of the units in all phases of the Project have been sold and deeds thereto recorded in favor of Owners or until the fifth anniversary of the original issuance of a Final Subdivision Public Report for the first phase of the Project, whichever shall first occur. After one (1) year from the date of the original issuance of a Final Subdivision Public Report for the first phase, the Board shall have the power to appoint one member of the Architectural Committee, which power shall continue until ninety percent (90%) of the units have been sold and deeds thereto recorded in favor of Owners or until the fifth anniversary of the original issuance of a Final Subdivision Public Report for the first phase of the Project. Thereafter, the Board shall have the power to appoint all of the members of the Architectural Committee. Members appointed to the Architectural Committee by the Board shall be members of the Association.

18. GENERAL PROVISIONS

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

18.2 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision or provisions shall not invalidate any other provisions.

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

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

18.5 No Discriminatory Restriction. No Owner shall execute or cause to be recorded any instrument which imposes a restriction upon the sale, leasing or occupancy of his unit on the basis of race, sex, marital status, national ancestry, color or religion.

18.6 Access to Books. Any Owner may, at any reasonable time and upon reasonable notice to the Board or manager at his own expense, cause an audit or inspection to be made of the books and financial records of the Association.

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

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

requested, at the mailing address above specified. Notices shall also be deemed received twenty-four (24) hours after having been sent by telegram or upon personal delivery to any occupant of a condominium over the age of twelve (12) years.

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

18.10 Exhibits. All exhibits referred to are attached to this Declaration and incorporated by reference.

18.11 Easements Reserved and Granted. Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in a deed to any condominium.

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

18.13 Unsegregated Real Estate Taxes. Until such time as real property taxes have been segregated by the County Assessor of the County, they shall be paid by the respective Owners of condominiums. The proportionate share of the taxes for a particular condominium shall be determined by dividing the initial sales price or offered initial sales price of the condominium by the total initial sales prices and offered initial sales prices of all condominiums within the Project (the term "offered initial sales price" means the price at which an unsold condominium is then being offered for sale by Declarant). If, and to the extent, that taxes are not paid by any Owner of a condominium and are allowed to become delinquent they shall be collected from the delinquent Owner by the Association.