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PETERSEN & PECKENPAUGH (SAN)
2030 Main Street, 12th Floor
Irvine, CA 92614

(Space Above for Recorder's Use)

**FIRST AMENDMENT TO
FIRST AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND RESERVATION OF EASEMENTS
FOR
BELLA TIERRA**

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This First Amendment to First Amended and Restated Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Bella Tierra (this "***First Amendment***") is made by SHEA LAGUNA HILLS, LLC, a Delaware limited liability company ("***Declarant***").

RECITALS

A. Declarant previously recorded that certain First Amended and Restated Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Bella Tierra ("***Original Declaration***") on October 19, 2005, as Instrument No. 2005000840849, in the Office of the Orange County Recorder ("***Official Records***"), encumbering the following property (the "***Phase 1***"):

Units A to L, inclusive, of Condominium Building No. 13, Units A to H, inclusive, of Condominium Building No. 14, Association Property and Common Area as shown on the Condominium Plan for Phase 1 of Bella Tierra (the "***Phase 1 Plan***") re-recorded on November 10, 2005, as Instrument No. 2005000908938 in Official Records; together with pedestrian and vehicular access easements over the private streets as they exist within the Properties and the Annexable Territory. The Phase 1 Plan covers a portion of Lot 1 of Tract No. 11608, as shown on a Subdivision Map, recorded on November 14, 1983, in Book 517, at Pages 14 to 16, inclusive, of Miscellaneous Maps, in the Office of the Orange County Recorder.

B. In addition, Declarant previously recorded (1) that certain Notice of Addition of Property And Supplemental Declaration of Covenants, Conditions and Restrictions for Bella Tierra (Phase 2), on October 25, 2005, as Instrument No. 2005000857094, (2) that certain Notice of Addition of Property And Supplemental Declaration of Covenants, Conditions and Restrictions for Bella Tierra (Phase 3), on October 25, 2005, as Instrument No. 2005000857095, (3) that certain Notice of Addition of Property And Supplemental Declaration of Covenants, Conditions and Restrictions for Bella Tierra (Phase 4), on January 11, 2006, as Instrument No. 2006000022820, (4) that certain Notice of Addition of Property And Supplemental Declaration of Covenants, Conditions and Restrictions for Bella Tierra (Phase 5), on January 27, 2006, as Instrument No. 2006000063204, (5) that certain Notice of Addition of Property And Supplemental Declaration of Covenants, Conditions and Restrictions for Bella Tierra (Phase 6), on January 27, 2006, as Instrument No. 2006000063205, and (6) that certain Notice of Addition of Property And Supplemental Declaration of Covenants, Conditions and Restrictions for Bella Tierra (Phase 7), on January 30, 2006, as Instrument No. 2006000067525,

all in Official Records (collectively, the "**Notices of Addition**"). The Notices of Addition encumber the property more particularly described on Exhibit A attached hereto (together with Phase 1, collectively, the "**Properties**").

C. According to Section 15.7 of the Original Declaration, as long as Declarant owns any portion of the Properties or Annexable Territory, Declarant may unilaterally amend the Original Declaration by Recording a written instrument signed by Declarant to conform the Original Declaration to the rules, regulations or requirements of VA, FHA, DRE, Fannie Mae, Ginnie Mae or Freddie Mac. As of the date hereof, Declarant still owns portions of the Properties and the Annexable Territory and now desires to amend the Original Declaration to conform to the rules, regulations and requirements of FHA and VA.

NOW, THEREFORE, Declarant hereby amends the Original Declaration as follows:

1. ARTICLE I – DEFINITIONS. The following are hereby added as new Sections to Article I of the Original Declaration:

Development Plan. Development Plan means Declarant's overall development plan for the Properties and the Annexable Territory, including building types, architectural style and Unit size, that Declarant has submitted to HUD, and all HUD approved amendments thereto.

FHA/VA Requirements. FHA/VA Requirements means the requirements applicable to the Properties set forth in (a) HUD Condominium Regulations (see Title 24 CFR 234) and (b) HUD Revised Legal Policy attached to Appendix 24 of HUD Handbook 4265.1, entitled Home Mortgage Insurance Condominium Units Section 234(c).

HUD. HUD means the Department of Housing and Urban Development.

Seventh Anniversary Date. Seventh Anniversary Date means the date which is the seventh (7th) anniversary of the first Close of Escrow in the Properties.

2. SECTION 1.1.53 – DEFINITION OF PROPERTIES. Section 1.1.53 of the Original Declaration is hereby deleted in its entirety and replaced with the following:

"1.1.53 Properties. Properties means (a) Phase 1 and (b) each Phase described in a Notice of Addition in which a Close of Escrow has occurred. The Properties are a "condominium project" as defined in California Civil Code Section 1351(f), and a "common interest development" as defined in California Civil Code Section 1351(c). Any references in this Declaration to the Properties are references to the Properties as a whole and to

portions thereof. If all Phases of the Properties are annexed as presently planned, the Properties will include one hundred forty (140) Condominiums constructed in accordance with the Development Plan. Additional information concerning the Condominiums and the Condominium Buildings in the Properties is set out in the Condominium Plan for each Phase, in the Declaration, and in the Development Plan.”

3. SECTION 1.2.6 – FHA/VA REQUIREMENTS. The following is hereby added to the Original Declaration as Section 1.2.6:

“1.2.6 **FHA/VA Requirements.** The FHA/VA Requirements shall control and prevail over all other provisions of the Declaration to the extent of any inconsistency between them.”

4. SECTION 4.5.3 – CLASSES OF MEMBERSHIP. Section 4.5.3 of the Original Declaration is hereby deleted in its entirety and replaced with the following:

“4.5.3 **Classes of Membership.** The Association classes of voting Membership are as follows:

Class A. Class A members are all Owners except Declarant for so long as a Class B Membership exists. Class A members are entitled to one (1) vote for each Condominium owned by such Class A members which is subject to Assessment. Declarant shall become a Class A member on conversion of Declarant’s Class B Membership as provided below. The vote for each Condominium shall be exercised in accordance with Section 4.5.3, but no more than one (1) Class A vote may be cast for any Condominium.

Class B. The Class B Member is Declarant. The Class B Member is entitled to three (3) votes per Condominium owned by it which is subject to Assessment. The Class B Membership shall convert to Class A Membership on the earlier to occur of the following events:

(1) The second anniversary of the first Close of Escrow in the most recent Phase,

(2) The fourth anniversary of the first Close of Escrow in Phase 1;

(3) The date that is 120 days after the date on which seventy-five percent (75%) of the Units in the Properties and Annexable Territory have been conveyed to Owners in transactions subject to Final Subdivision Public Reports issued by the DRE; or

(4) The Seventh Anniversary Date.”

5. SECTION 8.10 – INSURANCE REQUIREMENTS. The following is hereby added to the Original Declaration as Section 8.10:

“8.10 **INSURANCE REQUIREMENTS.** The insurance required under this Article VIII must, in addition to other requirements, satisfy at least the minimum requirements of HUD, FHA and VA, including blanket flood insurance if and when required.”

6. SECTION 13.2.2 – MORTGAGEE CONSENT. Sections 13.2.2(g)(5), (6) and (13) of the Original Declaration are hereby deleted in their entirety and replaced as follows:

“(5) Redefinition of any Unit or Exclusive Use Area boundaries;

(6) Reallocation of interest in the Association Property or liability for Common Expenses appurtenant thereto, or rights to use the Association Property;

(13) Restoration or repair of the Properties (after damage or partial condemnation) in a manner (a) other than that specified in this Declaration or (b) that deviates from the Development Plan.”

7. SECTION 13.2.2 – MORTGAGEE CONSENT. The following are hereby added as Sections 13.2.2(h) and (i) to the Original Declaration:

“(h) Any amendment which would require a Mortgagee after it has acquired a Condominium through foreclosure to pay more than its proportionate share of any unpaid Assessment or Assessments accruing before such foreclosure.

(i) The termination of the legal status of the Community after substantial destruction or condemnation.”

8. SECTION 13.2.3 – TERMINATION APPROVAL. Section 13.2.3 of the Original Declaration is hereby deleted in its entirety and replaced as follows:

“13.2.4 **Termination Approval.** Termination of this Declaration or the Condominium regime requires approval of (a) sixty-seven percent (67%) of the first Mortgagees, (b) the Owners as provided in Section 13.2.1 above, and (c) Declarant.”

9. SECTION 15.1 – CONSTRUCTION RIGHTS. The following is hereby added to the end of Section 15.1 of the Original Declaration:

"For purposes of compliance with the FHA/VA Requirements described in Section 1.2.6 above, Declarant's right to change the overall Development Plan by electing not to construct planned Condominiums or Association Property Improvements, shall be exercised, if at all, only if all of the following are satisfied:

15.1.1 Declarant determines that continuing with the existing Development Plan is economically infeasible; and

15.1.2 Such determination shall be made no later than the Seventh Anniversary Date; and

15.1.3. The change concerns only those portions of the Properties or Annexable Territory that are still owned by Declarant; and

15.1.4. Declarant obtains all required approvals from the DRE prior to making such change."

10. SECTION 16.1 – ADDITIONS BY DECLARANT. Section 16.1 of the Original Declaration is hereby deleted in its entirety and replaced with the following:

"**16.1 ADDITIONS BY DECLARANT.** Declarant may, until the Seventh Anniversary Date, add any or all of the Annexable Territory to the Properties and bring such Annexable Territory under the general plan of this Declaration without the approval of the Association, the Board, or a majority of Owners, as long as Declarant owns the portion of the Annexable Territory to be added to the Properties. However, Declarant may not add Annexable Territory to the Properties and bring it under the general plan of this Declaration at any time unless:

(a) the quality of construction of the Improvements in the Annexable Territory will be consistent with the quality of construction of the Improvements in Phase 1 of the Properties;

(b) all Improvements in the Annexable Territory to be added to the Properties are substantially complete before they are added to the Properties;

(c) Declarant obtains the prior written approval of HUD, VA and Fannie Mae if they hold, insure or guarantee any Mortgage in any Condominium at the time Added Area is to be annexed, which consent will not be withheld if the Added Area to be annexed substantially conforms to a plan of expansion which has been fully described in the Declaration or equivalent document

and the other requirements of the FHA/VA Requirements have been met; and

(d) if Fannie Mae holds any Mortgage in the Properties when any Annexable Territory is added to the Properties, it is furnished with title evidence, in a form satisfactory to it, which discloses any lien, easement or other encumbrance affecting the Annexable Territory to be added to the Properties or which will affect such portion after such addition.

No amendment may be made to this Section 16.1 without the prior written approval of Declarant."

11. CONDOMINIUM PLAN AMENDMENTS. Any amendment or termination of a Condominium Plan must be approved by the Mortgagees of all Mortgages encumbering any of the Property covered by that Condominium Plan and certified as provided in California Civil Code Section 1351(e)(3)(D).

12. CONFLICTS OR INCONSISTENCIES. If there are any conflicts or inconsistencies between this First Amendment and the Articles, Bylaws, Rules and Regulations or a Supplementary Declaration, the provisions of this First Amendment shall prevail.

13. RATIFICATION; INTERPRETATION. Except as amended in this First Amendment, Declarant hereby ratifies and confirms the Original Declaration. Capitalized terms not defined herein shall have the meanings given to them in the Original Declaration.

[Signatures on Following Page]

EXHIBIT A

Legal Description of the Properties

Units M to X, inclusive, in Condominium Building No. 10, Units A to L, inclusive, in Condominium Building No. 11, Association Property and Common Area as shown on the Condominium Plan for Phase 2 of Bella Tierra (the "**Phase 2 Plan**"), re-recorded on January 5, 2006, as Instrument No. 2006000008496, in the Official Records. The Phase 2 Plan covers all or portions of Lots 1 and 2 of Tract No. 11608, as shown on the Subdivision Map (the "**Map**") filed on November 14, 1983, in Book 517, Pages 14 through 16 of Miscellaneous Maps in the Office of the Orange County Recorder;

Units M to X, inclusive, in Condominium Building No. 11, Units A to H, inclusive, in Condominium Building No. 12, Association Property and Common Area as shown on the Condominium Plan for Phase 3 of Bella Tierra (the "**Phase 3 Plan**"), recorded on November 10, 2005, as Instrument No. 2005000908940, in the Official Records. The Phase 3 Plan covers all or portions of Lot 1 of Tract No. 11608, as shown on the Map;

Units A to H, inclusive, in Condominium Building No. 9, Units A to L, inclusive, in Condominium Building No. 10, Association Property and Common Area as shown on the Condominium Plan for Phase 4 of Bella Tierra (the "**Phase 4 Plan**"), recorded on January 5, 2006, as Instrument No. 2006000008497, in the Official Records. The Phase 4 Plan covers all or portions of Lot 1 of Tract No. 11608, as shown on the Map;

Units A to H, inclusive, in Condominium Building No. 7, Units A to H, inclusive, in Condominium Building No. 8, Association Property and Common Area as shown on the Condominium Plan for Phase 5 of Bella Tierra (the "**Phase 5 Plan**"), recorded on January 5, 2006, as Instrument No. 2006000008498, in the Official Records. The Phase 5 Plan covers all or portions of Lot 2 of Tract No. 11608, as shown on the Map;

Units A to H, inclusive, in Condominium Building No. 4, Units A to H, inclusive, in Condominium Building No. 5, Units A to H, inclusive, in Condominium Building No. 6, Association Property and Common Area as shown on the Condominium Plan for Phase 6 of Bella Tierra (the "**Phase 6 Plan**"), recorded on January 5, 2006, as Instrument No. 2006000008499, in the Official Records. The Phase 6 Plan covers all or portions of Lots 1 and 2 of Tract No. 11608, as shown on the Map;

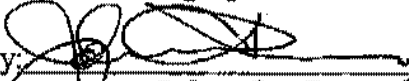
Units A to H, inclusive, in Condominium Building No. 1, Units A to H, inclusive, in Condominium Building No. 2, Association Property and Common Area as shown on the Condominium Plan for Phase 7 of Bella Tierra (the "**Phase 7 Plan**"), recorded on January 30, 2006, as Instrument No. 2006000066427, in the Official Records, and Lot 3 of Tract No. 11608, as shown on the Map. The Phase 7 Plan covers portions of Lot 1 of Tract No. 11608, as shown on the Map.

**[SIGNATURE PAGE TO
FIRST AMENDMENT TO FIRST AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR BELLA TIERRA]**

Neighborhood Builder has executed this First Amendment as of Feb. 6th,
2008.

SHEA LAGUNA HILLS LLC,
a Delaware limited liability company

By: SHEA PROPERTIES LLC,
a Delaware limited liability company
its Managing Member

By: 
Its: Officer John C. Danvers

By: 
Its: Officer Renee Trommler

"Declarant"

STATE OF CALIFORNIA

COUNTY OF _____

On _____, before me, _____
(here insert name and title of the officer)

personally appeared _____

who proved to me on the basis of satisfactory evidence to be the person whose name is
subscribed to the within instrument and acknowledged to me that he/she executed the same in
his/her authorized capacity, and that by his/her signature on the instrument the person, or the
entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature (Seal)

STATE OF CALIFORNIA

COUNTY OF ORANGE

On February 6, 2008, before me, Beth A. Hutchinson, Notary Public, personally appeared John C. Danvers and Renee Trommler, who proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

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

WITNESS my hand and official seal.



Beth A. Hutchinson
Notary Public
Commission #1577105
Comm. Expires May 8, 2009



California General Purpose Acknowledgment
For all documents executed in the State of California

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Tom Daly, Clerk-Recorder

FIDELITY TITLE COMPANY



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WHEN RECORDED, MAIL TO:

JACKSON|DeMARCO|TIDUS
PECKENPAUGH (FSJ)
2030 Main Street, Suite 1200
Irvine, CA 92614

(Space Above for Recorder's Use)

11608 KS

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DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR
BELLA TIERRA**

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AND RESERVATION OF EASEMENTS
FOR
BELLA TIERRA**

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**FIRST AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR
BELLA TIERRA**

This FIRST AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATION OF EASEMENTS is made by SHEA LAGUNA HILLS LLC, a Delaware limited liability company ("**Declarant**"). The capitalized terms used in the Preamble are defined in Article I.

P R E A M B L E:

A. Declarant is the owner of real property located in the City of Laguna Hills, Orange County, California, described as follows:

Units A to L, inclusive, of Condominium Building No. 13, Units A to H, inclusive, of Condominium Building No. 14, Association Property and Common Area as shown on the Condominium Plan for Phase 1 of Bella Tierra (the "**Phase 1 Plan**") recorded on October 19, 2005, as Instrument No. 2005000839706 in Official Records; together with pedestrian and vehicular access easements over the private streets as they exist within the Properties and the Annexable Territory. The Phase 1 Plan covers a portion of Lot 1 of Tract No. 11608, as shown on a Subdivision Map, recorded on November 14, 1983, in Book 517, at Pages 14 to 16, inclusive, of Miscellaneous Maps, in the Office of the Orange County Recorder.

B. On November 15, 2004, a Declaration of Covenants, Conditions and Restrictions and Reservation of Easements was Recorded against the Properties as Instrument No. 2004001021254 ("**Original Declaration**"). The Original Declaration is binding upon the Properties.

C. For purposes of accommodating phasing within the Properties, Declarant now wishes to amend and completely restate the Original Declaration with this superceding Declaration. Declarant is the sole owner of the Properties. Section 15.6 of the Original Declaration allows for the unilateral amendment of the Original Declaration by Declarant prior to the First Close of Escrow in the Properties. Declarant is the successor-in-interest to Declarant under the Original Declaration in accordance with Section 15.5 of the Original Declaration and Declarant is the assignee of all rights of Declarant under the Original Declaration. All conditions for the amendment or termination of the Original Declaration are satisfied by the act of Declarant signing and acknowledging and Recording this Declaration.

D. Declarant intends to create a "condominium project," as defined in Section 1351(f) of the California Civil Code, to subdivide the Properties as authorized by Section 66427 of the California Government Code into "condominiums" as defined in Section 783 of the California Civil Code and to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all the Condominiums created pursuant to the Davis-Stirling Common Interest Development Act. As part of this subdivision, portions of the Properties will be designated as Units, Common Area and Association Property.

E. The Properties are to be held, conveyed, encumbered, leased, used and improved subject to the limits, restrictions, reservations, rights, easements, conditions and covenants in this Declaration, all of which are in furtherance of a plan for subdividing, maintaining, improving and selling the Properties. All provisions of this Declaration are imposed as equitable servitudes on the Properties. All limits, restrictions, reservations, rights, easements, conditions and covenants in this Declaration shall run with and burden the Properties and shall be binding on and for the benefit of all of the Properties and all Persons acquiring any interest in the Properties.

F. Declarant and its successors and assigns covenant that each undivided interest in the Common Area, the appurtenant Membership in the Association, all easements conveyed therewith and fee title to the respective Unit conveyed therewith shall not be separated or separately conveyed, and each such undivided interest, Membership and easement shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit. This restriction on severability of the component interests of the Condominiums shall not extend beyond the period for which the right to partition the Properties is suspended in accordance with Section 1359 of the California Civil Code. Any conveyance by an Owner of a Condominium, or any portion thereof, shall be presumed to convey the entire Condominium together with a Membership in the Association.

ARTICLE I DEFINITIONS AND INTERPRETATION

1.1 **DEFINITIONS.** Unless otherwise expressly provided, the following words and phrases when used in this Declaration have the following meanings.

1.1.1 **Annexable Territory.** Annexable Territory means the real property described in *Exhibit A* which may be made subject to this Declaration pursuant to Article XVI. Any references in this Declaration to Annexable Territory are references to the Annexable Territory as a whole and to portions thereof.

1.1.2 **Annual Assessment.** Annual Assessment means a charge levied against the Owners and their Condominiums representing their share of Common Expenses. The Annual Assessment is a regular assessment as described in California Civil Code Section 1366.

1.1.3 **Articles.** Articles means the Articles of Incorporation of the Association as currently in effect. A copy of the Articles is attached as *Exhibit B*.

1.1.4 **Assessment.** Assessment means any Annual Assessment, Capital Improvement Assessment, Reconstruction Assessment and Special Assessment.

1.1.5 **Association.** Association means Bella Tierra Community Association, a California nonprofit corporation (formed pursuant to the California Nonprofit Mutual Benefit Corporation Law) and its successors-in-interest. The Association is an "association" as defined in Section 1351(a) of the California Civil Code, and a "Subassociation" under the Community Declaration (as defined in Article II thereof).

1.1.6 **Association Maintenance Funds.** Association Maintenance Funds means the accounts created for Association receipts and disbursements pursuant to Article VII.

1.1.7 **Association Property.** Association Property means real or personal property designated by the Declarant as Association Property and therefore made subject to the restrictions on Association Property established in the Restrictions. Any references in this Declaration to Association Property are references to the Association Property as a whole and to portions thereof. The Association Property in Phase 1 of the Properties includes the following:

(a) ***Association Property Owned in Fee Simple by the Association.*** A portion of Lot 1 of Tract No. 11608, excluding the Units and the Common Area, both as delineated on the Condominium Plan for Phase 1 of the Properties.

(b) ***Association Property Owned in Fee Simple by Owners but Maintained by the Association.*** Association Property includes the following portions of the Units: the portions of all gas, water and waste pipes, all sewers, all ducts, chutes, conduits, wires and other utility installations (except the electrical outlets in the Units) that extend into the Units. Association Property does not include any windows or sliding glass doors in the Units.

1.1.8 **Board or Board of Directors.** Board or Board of Directors means the Association's Board of Directors.

1.1.9 **Budget.** Budget means a written, itemized estimate of the Association's income and Common Expenses prepared pursuant to the Bylaws.

1.1.10 **Bylaws.** Bylaws means the Bylaws of the Association as currently in effect. A copy of the Bylaws as initially adopted by the Board is attached as ***Exhibit C***.

1.1.11 **Capital Improvement Assessment.** Capital Improvement Assessment means a charge levied against the Owners and their Condominiums representing their share of the Association's cost for installing or constructing capital Improvements on the Common Property. Capital Improvement Assessments shall be levied in the same proportions as Annual Assessments. Capital Improvement Assessments are special assessments as described in California Civil Code Section 1366.

1.1.12 **City.** City means the City of Laguna Hills, California, and its various departments, divisions, employees and representatives.

1.1.13 **Close of Escrow.** Close of Escrow means the date on which a deed is Recorded conveying a Condominium pursuant to a transaction requiring the issuance of a Final Subdivision Public Report by the DRE.

1.1.14 **Common Area.** Common Area means those certain volumes of airspace described in the Condominium Plans which shall be owned by the Owners in each Phase as tenants-in-common. Any references in this Declaration to Common Area are references to the Common Area as a whole and to portions thereof. Common Area as defined herein, is a portion of the "common area" as defined in Section 1351(b) of the California Civil Code.

1.1.15 **Common Expenses.** Common Expenses means those expenses for which the Association is responsible under this Declaration. Common Expenses include the actual and estimated costs of and reserves for maintaining, managing and operating the Common Property (including amounts incurred for maintenance imposed on the Association by this Declaration), including:

(a) Association Property and Improvements thereon, which includes controlled access gates, trash pick-up, pool, clubhouse, spa and all clustered mailboxes and address identification signs;

(b) The cost of all services benefiting the Association Property;

(c) The cost of all utilities metered to more than one (1) Condominium, the cost of reading and billing any submetered utilities, the cost of other commonly metered charges for the Properties, trash collection and removal (as applicable);

(d) The costs and fees attributable to managing and administering the Association, compensating Managers, accountants, attorneys and employees, all premiums for insurance covering the Properties and covering the directors, officers and agents of the Association and bonding the members of the Board;

(e) Unpaid Special Assessments, Reconstruction Assessments and Capital Improvement Assessments;

(f) Taxes paid by the Association;

(g) Amounts paid by the Association for the discharge of any lien or encumbrance levied against the Properties; and

(h) All other expenses incurred by the Association for the Properties, for the common benefit of the Owners.

1.1.16 **Common Property.** Common Property means the Common Area and the Association Property. Any references in this Declaration to Common Property are references to the Common Property as a whole and to portions thereof.

1.1.17 **Community Assessments.** Community Assessments means the Community Assessments payable by the Owner to the Master Association and defined as the "Assessment" in Article II of the Community Declaration.

1.1.18 **Community Association.** Community Association means the Aliso Viejo Community Association, a nonprofit public benefit corporation, its successors and assigns. All Owners in the Properties will be members of the Community Association.

1.1.19 **Community Declaration.** Community Declaration means that certain Declaration of Covenants, Conditions and Restrictions for Aliso Viejo Community Association, Recorded April 6, 1982, as Instrument No. 82-118353 of Official Records. The Properties are subject to the Community Declaration.

1.1.20 **Condominium.** Condominium means an estate in real property as defined in California Civil Code Section 1351(f). A Condominium consists of an undivided fee simple ownership interest in the Common Area in a Phase, together with a separate ownership interest in fee in a Unit and all easements appurtenant thereto. Subject to the provisions of Article X, the undivided fee simple interest in the Common Area appurtenant to each Unit in Phase 1 shall be an undivided one twentieth (1/20) interest in the Common Area to be held by the Owners as tenants-in-common. A Condominium is a "Condominium" under the Community Declaration as is defined in Article II thereof.

1.1.21 **Condominium Plan or Plan.** Condominium Plan means the Recorded plan, as currently in effect, for all or a portion of a Phase, consisting of (a) a description or survey map of the Phase or portion thereof, which shall refer to or show monumentation on the ground, (b) a three-dimensional description of the Phase or portion thereof, one or more dimensions of which may extend for an indefinite distance upwards or downwards in sufficient detail to identify the Association Property, Common Area and each Unit, and (c) a certificate consenting to the Recordation thereof signed and acknowledged by the record owner of fee title to the Phase or portion thereof, and by either the trustee or the Mortgagee of each Recorded Mortgage encumbering the Phase or portion thereof.

1.1.22 **Condominium Building.** Condominium Building means any building in the Properties containing multiple Units as shown on the Condominium Plan.

1.1.23 **County.** County means Orange County, California, and its various departments, divisions, employees and representatives.

1.1.24 **Declarant.** Declarant means SHEA LAGUNA HILLS LLC, a Delaware limited liability company, its successors, and any Person to which it shall have assigned any of its rights under this Declaration by an express written assignment. As used in this Section, "successor" means a Person who acquires Declarant or substantially all of Declarant's assets by sale, merger, reverse merger, consolidation, sale of stock or assets, operation of law or otherwise. Unless otherwise expressly provided in this Declaration, all actions that may be taken by Declarant may be chosen by Declarant in its sole discretion.

1.1.25 **Declaration.** Declaration means this instrument as currently in effect.

1.1.26 **Design Guidelines.** Design Guidelines means the rules or guidelines setting forth procedures and standards for submission of plans for Design Review Committee approval.

1.1.27 **Design Review Committee or Committee.** Design Review Committee or Committee means the committee formed pursuant to Article V.

1.1.28 **DRE.** DRE means the California Department of Real Estate and any department or agency of the California state government which succeeds to the DRE's functions.

1.1.29 **Exclusive Use Area.** Exclusive Use Area means the Association Property over which exclusive easements are reserved for the benefit of specified Owners, including for balcony and patio purposes as shown and assigned on the Plan, for air conditioner compressor pads and internal and external telephone wiring as originally installed and assigned to the Condominium served thereby, and for carport spaces as shown and numbered in the Plan and assigned in the Owner's deed.

1.1.30 **Family.** Family means natural individuals, related or not, who live as a single household in a Condominium.

1.1.31 **Fannie Mae.** Fannie Mae means the Federal National Mortgage Association, a government-sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968 and its successors.

1.1.32 **FHA.** FHA means the Federal Housing Administration of the United States Department of Housing and Urban Development and its successors.

1.1.33 **Fiscal Year.** Fiscal Year means the fiscal accounting and reporting period of the Association elected by the Board.

1.1.34 **Freddie Mac.** Freddie Mac means the Federal Home Loan Mortgage Corporation created by Title II of the Emergency Home Finance Act of 1970 and its successors.

1.1.35 **Ginnie Mae.** Ginnie Mae means the Government National Mortgage Association administered by the United States Department of Housing and Urban Development and its successors.

1.1.36 **Include; Including.** Whether capitalized or not, include and including mean "include without limitation" and "including without limitation," respectively.

1.1.37 **Improvement.** Improvement means any structure and any appurtenance thereto, including a building, walkway, irrigation system, carport, recreational facilities, road, driveway, parking area, fence, any type of wall, awning, stairs, deck, any type of landscaping and planting, antenna, windbreak, the exterior surface of any visible structure and the paint on such surface, pole, sign, exterior air conditioning and water softener fixture or equipment. The Design Review Committee may identify additional items that are Improvements. The Design Review Committee may identify additional items that are Improvements.

1.1.38 **Maintain; Maintenance.** Whether capitalized or not, maintain and maintenance mean "maintain, repair and replace" and "maintenance, repair and replacement," respectively; provided however, that maintain or maintenance shall not include repair and

replacement where the context or specific language of this Declaration provides another meaning.

1.1.39 Maintenance Requirements. Maintenance Requirements means the written maintenance procedures, standards and requirements for the maintenance and operation of Association Property by the Association and the Units by the Owners, provided to the Association and to each Owner by Declarant, the Association or any governmental agency. Maintenance Requirements include the Maintenance Manual initially prepared at Declarant's direction and containing recommended frequency of inspections and maintenance activities for components of the Association Property and the Maintenance Recommendations prepared by Declarant pertaining to a Residence or Unit.

1.1.40 Manager. Manager means the person or company retained by the Association to perform management functions of the Association as limited by the Restrictions and the terms of the agreement between the Association and the Person.

1.1.41 Membership. Membership means the voting and other rights, privileges and duties established in the Restrictions for members of the Association.

1.1.42 Mortgage. Mortgage means any Recorded conveyance of a Condominium or other portion of the Properties is hypothecated to secure the performance of an obligation.

1.1.43 Mortgagee. Mortgagee means a Person to whom a Mortgage is made or the assignee of the Mortgagee's rights under the Mortgage by a recorded instrument. For purposes of this Declaration, the term Mortgagee shall include a beneficiary under a deed of trust.

1.1.44 Mortgagor. Mortgagor means a Person who Mortgages his property to another. For purposes of this Declaration, the term Mortgagor shall include a trustor under a deed of trust.

1.1.45 Notice and Hearing. Notice and Hearing means written notice and a hearing before the Board, as provided in the Bylaws.

1.1.46 Notice of Addition. Notice of Addition means an instrument Recorded pursuant to Article XVI to annex additional real property to the Properties.

1.1.47 Operating Fund. Operating Fund means that portion of the Common Expenses allocated to the daily operation of the Association.

1.1.48 Original Declaration. Original Declaration means the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Las Colinas Condominiums recorded on November 15, 2004, as Instrument No. 2004001021254. The Original Declaration is entirely amended and restated and superceded by this Declaration.

1.1.49 Owner. Owner means the Person or Persons, including Declarant, holding fee simple interest to a Condominium. Each Owner has a Membership in the

Association. The term "Owner" includes sellers under an executory contracts of sale but excludes Mortgagees. The term "Owner" may be expanded in a Supplemental Declaration to include other Persons. Owner is an "Owner" under the Community Declaration (as defined in Article II thereof).

1.1.50 **Person.** Person means a natural individual or any entity recognized under California law. When the word "person" is not capitalized, the word only refers to natural persons.

1.1.51 **Phase.** Phase means each of the following: (a) Phase 1 and (b) all the real property covered by a Notice of Addition for which a Final Subdivision Public Report has been issued by DRE, unless "Phase" is otherwise defined in such Notice of Addition.

1.1.52 **Phase 1.** Phase 1 means all real property described in Paragraph A of the Preamble of this Declaration.

1.1.53 **Properties.** Properties means (a) Phase 1 and (b) each phase described in a Notice of Addition to this Declaration. The Properties are a "condominium project" as defined in Section 1351(f) of the California Civil Code. The Properties are a "common interest development" as defined in Section 1351(c) of the California Civil Code. Any references in this Declaration to the Properties are references to the Properties as a whole and to portions thereof.

1.1.54 **Reconstruction Assessment.** Reconstruction Assessment means a charge levied against the Owners and their Condominiums, representing their share of the Association's cost to reconstruct any Improvements on the Common Property. Such charge shall be levied among all Owners and their Condominiums in the same proportions as Annual Assessments. Reconstruction Assessments are special assessments as described in California Civil Code Section 1366.

1.1.55 **Record or File.** Record or File means, with respect to any document, entry of such document in official records of the County Recorder.

1.1.56 **Reserve Fund.** Reserve Fund means that portion of the Common Expenses allocated (a) for the future repair and replacement of, or additions to, structural elements, mechanical equipment, and other major components of Association-maintained Improvements, and (b) amounts necessary to cover the deductibles under all insurance policies maintained by the Association.

1.1.57 **Residence.** Residence means the living element of the Unit.

1.1.58 **Restrictions.** Restrictions means this Declaration, the Articles, Bylaws, Design Guidelines, Rules and Regulations, and Supplemental Declarations.

1.1.59 **Rules and Regulations.** Rules and Regulations means the current rules and regulations for the Properties.

1.1.60 **Special Assessment.** Special Assessment means a charge against an Owner and his Condominium representing a reasonable fine or penalty, including reimbursement costs and related Common Expenses, as provided for in this Declaration.

1.1.61 **Supplemental Declaration.** Supplemental Declaration means an instrument executed, acknowledged and Recorded by Declarant which imposes conditions, covenants or restrictions or reserves easements in addition to the conditions, covenants, restrictions and easements established under this Declaration. Declarant may Record a Supplemental Declaration if Declarant owns all of the property to be encumbered by the Supplemental Declaration. A Supplemental Declaration may modify this Declaration as it applies to the property encumbered by the Supplemental Declaration.

1.1.62 **Telecommunication Facilities.** Telecommunication Facilities means Improvements constructed in the Properties, including cables, conduits, ducts, vaults, connecting hardware, wires, poles, transmitters, towers, antennae and other devices now existing or that may be developed in the future to provide Telecommunication Services to the Properties.

1.1.63 **Telecommunications Services.** Telecommunications Services means the reception, distribution or transmission of video, audio, data, telephony, all related vertical services, and any other similar services now existing or that may be developed in the future. Declarant may expand this definition in any Supplemental Declaration.

1.1.64 **Unit.** Unit means a separate interest in space as defined in Section 1351(f) of the California Civil Code. Each Unit is a separate freehold estate, as separately shown, numbered and assigned in the Condominium Plan. Each Unit in the Properties includes a residential element and may include a storage element as depicted on the Condominium Plan. Each Unit includes the entry doors, frames, hardware, and glass portions of the windows and sliding glass doors that are constructed at Unit boundaries. The boundaries of the Unit are approximately depicted in the Condominium Plan. In interpreting deeds, this Declaration and the Condominium Plan, the actual boundaries of each Unit shall be deemed to extend to the interior unfinished surfaces of the walls, floors, and ceilings encompassing the residential element of the Unit, as constructed or reconstructed in substantial accordance with the original plans for the Unit. The foregoing interpretation shall apply notwithstanding any description expressed in the deed, the Condominium Plan or the Declaration, regardless of settling or lateral movements of Improvements, and regardless of variances between Unit boundaries shown in the Condominium Plan or deed and those of the Improvement.

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

1.2 INTERPRETATION.

1.2.1 **General Rules.** This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for creating and operating a residential condominium development and maintaining the Common Property. As used in this Declaration, the singular

includes the plural and the plural the singular. The masculine, feminine and neuter each includes the other, unless the context dictates otherwise.

1.2.2 Articles, Sections and Exhibits. The Article and Section headings have been inserted for convenience only and may not be considered in resolving questions of interpretation or construction. Unless otherwise indicated, any references in this Declaration to articles, sections or exhibits are to Articles, Sections and Exhibits of this Declaration. *Exhibits D and E* attached to this Declaration is incorporated herein by this reference. The locations and dimensions of any Improvements depicted on the Exhibits attached hereto are approximate only and the as-built location and dimension of any such Improvements shall control.

1.2.3 Priorities and Inconsistencies. If there are conflicts or inconsistencies between this Declaration and the Articles, Bylaws, Rules and Regulations, a Supplementary Declaration, or Condominium Plan, the provisions of this Declaration shall prevail. If there are any conflicts or inconsistencies between this Declaration and any Notice of Addition, the provisions of the Notice of Addition shall prevail. If there is any conflict between the provisions of the Restrictions and the provisions of the Community Association's documents, the provisions of the Community Association's documents shall control, except the maintenance and repair provisions in Section 4.7 and *Exhibit D* shall control. The Restrictions shall be interpreted to be consistent with the Community Association's documents, applicable laws and regulations, including ordinances and regulations of the appropriate local governing agencies.

1.2.4 Severability. The provisions of this Declaration are independent and severable. A determination of invalidity, partial invalidity or unenforceability of any one provision of this Declaration by a court of competent jurisdiction does not affect the validity or enforceability of any other provisions of this Declaration.

1.2.5 Statutory References. All references made in this Declaration to statutes are to those statutes as currently in effect or to subsequently enacted replacement statutes.

ARTICLE II USE RESTRICTIONS

The Properties shall be held, used and enjoyed subject to the following restrictions and subject to the exemptions and rights of Declarant set forth in the Restrictions.

2.1 SINGLE FAMILY RESIDENCES. The Residences shall be used as a dwelling for a single Family and for no other purpose. Subject to any Owner occupancy requirements that may be separately imposed by Declarant, an Owner may rent his Condominium to a single Family provided that the Condominium is rented pursuant to a lease or rental agreement which is (a) in writing and (b) subject to all of the provisions of this Declaration. The Common Property, including parking spaces and other amenities contemplated as a part of the Properties, will not be leased by Declarant to the Owners or the Association. Owners may also rent Condominiums to Declarant for use as sales offices, model homes and parking areas. Any failure by a tenant who is leasing or renting a Condominium from an Owner to comply with the Restrictions constitutes a default under the lease or rental agreement.

2.2 BUSINESS AND COMMERCIAL ACTIVITIES.

2.2.1 **Generally.** No Owner or other occupant of the Properties may undertake any activity on any Condominium or on any portion of the Common Property for business or commercial purposes including manufacturing, mercantile, storage, vending, auctions, transient occupancy (such as vacation rental, hotel or time-share), vehicle or equipment repair, or other non-residential purposes. Such activities are prohibited whether they are engaged in full- or part-time, whether they are for-profit or non-profit, and whether they are licensed or unlicensed.

2.2.2 **Exceptions.** This Section shall not be interpreted to prohibit any of the following:

(a) The hiring of employees or contractors to provide maintenance, construction or repair of any Improvement consistent with this Declaration or any Supplemental Declaration;

(b) Exercise by Declarant of any rights reserved to it under Article XV;

(c) The operation of small home-based service businesses that comply with all of the following:

(1) The operator of the business lives in the Residence on a permanent, full-time basis;

(2) When conducted in the Properties, business activities take place solely inside the Residence;

(3) The activity does not generate in-person visits by suppliers or clientele;

(4) The activity complies with all laws, regulations and ordinances applicable to the Properties, including zoning, health and licensing requirements;

(5) The activity otherwise complies with the Declaration and is consistent with the residential character of the Properties;

(6) The operator of the business posts no signage anywhere in the Properties;

(7) There is no visible evidence in the Properties of the activity;

(8) The activity does not generate noise or odors that are apparent outside the Residence; and

(9) The business does not increase the Association's liability or casualty insurance obligation or premium.

(d) The provision of in-home health care or assisted-living services to any resident of the Properties; or

(e) The provision of family home child care services as defined in California Health and Safety Code Section 1597.40, et seq. so long as such services comply with all applicable zoning requirements and state law.

2.3 NUISANCES. Noxious or offensive activities are prohibited in the Properties and on any public street abutting or visible from the Properties. The Board is entitled to determine if any device, noise, odor or activity constitutes a nuisance.

2.3.1 Nuisance Devices. Nuisance devices may not be kept or operated in the Properties or on any public street abutting the Properties, or exposed to the view of other Condominiums or Association Property. Nuisance devices include the following:

(a) All horns, whistles, bells or other sound devices (except security devices used exclusively to protect the security of a Residence or a vehicle and its contents);

(b) Noisy or smoky vehicles, power equipment (excluding lawn mowers and other equipment used in connection with ordinary landscape maintenance), and Prohibited Vehicles (defined below);

(c) Devices that create or emit loud noises or noxious odors;

(d) Construction or demolition waste containers (except as permitted in writing by the Design Review Committee);

(e) Devices that unreasonably interfere with television or radio reception to a Condominium;

(f) Plants or seeds infected with noxious insects or plant diseases; or

(g) The presence of any other thing in the Properties which may (i) increase the rate of insurance in the Properties, (ii) result in cancellation of the insurance, (iii) obstruct or interfere with the rights of other Owners or the Association, (iv) violate any law or provisions of this Declaration or the Rules and Regulations, or (v) constitute a nuisance or other threat to health or safety under applicable law or ordinance.

2.3.2 Nuisance Activities. Nuisance activities may not be undertaken in the Properties or on any public street abutting the Properties, or exposed to the view of other Condominiums or Common Property without the Board's prior written approval. Nuisance activities include the following:

(a) Hanging, drying or airing clothing, fabrics or unsightly articles in any place that is visible from other Condominiums, Common Property or public streets;

(b) The creation of unreasonable levels of noise from parties, recorded music, radios, television or related devices, or live music performance;

- (c) Repair or maintenance of vehicles or mechanical equipment;
- (d) Outdoor fires, except in barbecue grills and fire pits designed and used in such a manner that they do not create a fire hazard;
- (e) Outdoor storage of bulk materials or waste materials except in temporary storage areas designated by the Design Review Committee; or
- (f) Any activity which may (i) increase the rate of insurance in the Properties, (ii) result in cancellation of the insurance, (iii) obstruct or interfere with the rights of other Owners, (iv) violate any law or provisions of this Declaration or the Rules and Regulations, or (v) constitute a nuisance or other threat to health or safety under applicable law or ordinance.

2.4 **SIGNS.** Subject to Civil Code Sections 712, 713, 1353.5 and 1353.6, no sign, advertising device or other display of any kind shall be displayed in the Properties or on any public street in or abutting the Properties except for the following signs, so long as they comply with law:

- (a) entry monuments, identification signs, and traffic or parking control signs maintained by the Association;
- (b) for each Condominium, one (1) nameplate or similar Owner name or address identification sign which complies with Design Review Committee rules;
- (c) for each Condominium, one (1) sign advising of the existence of security services protecting a Condominium which complies with Design Review Committee rules;
- (d) for each Condominium, one (1) sign advertising the Condominium for sale or lease that complies with the following requirements:
 - (1) the sign is not larger than eighteen inches (18") by thirty inches (30") in size;
 - (2) the sign is attached to the ground by a conventional, single vertical stake which does not exceed two inches (2") by three inches (3") in diameter (i.e. posts, pillars, frames or similar arrangements are prohibited);
 - (3) the top of the sign is not more than three feet (3') in height above the ground level; and
 - (4) the sign is of a color and style and is in a location authorized by the Design Review Committee; and
 - (e) other signs or displays authorized by the Design Review Committee.

2.5 PARKING AND VEHICULAR RESTRICTIONS.

2.5.1 **Definitions.** The following definitions shall apply to parking and vehicular restrictions set forth in this Declaration:

2.5.2 **Authorized Vehicle.** An "Authorized Vehicle" is an automobile, a passenger van designed to accommodate ten (10) or fewer people, a motorcycle, or a pickup truck having a manufacturer's rating or payload capacity of one (1) ton or less. The Association has the power to identify additional vehicles as Authorized Vehicles in the Rules and Regulations in order to adapt this definition to other types of vehicles that are not listed above.

2.5.3 **Prohibited Vehicles.** The following vehicles are "Prohibited Vehicles": (a) recreational vehicle (e.g., motorhomes, travel trailers, camper vans and boats); (b) large commercial-type vehicles (e.g., stakebed trucks, tank trucks, dump trucks, step vans and concrete trucks), (c) buses, limousines or vans designed to accommodate more than ten (10) people, (d) inoperable vehicles or parts of vehicles, (e) aircraft, (f) any vehicle or vehicular equipment deemed a nuisance by the Association, and (g) any other vehicle not classified as an Authorized Vehicle. If a vehicle qualifies as both an Authorized Vehicle and a Prohibited Vehicle, then the vehicle is presumed to be a Prohibited Vehicle, unless the vehicle is expressly authorized in writing by the Association. The Association has the power to identify additional vehicles as Prohibited Vehicles in the Rules and Regulations to adapt this restriction to other types of vehicles that are not listed above.

2.5.4 **Parking Restrictions.**

(a) ***Streets and Driveways.*** If an Authorized Vehicle will not fit in an assigned carport of an Owner, it may be parked in an open parking space on a first-come first-served basis, or the street.

(b) ***Prohibited Vehicles.*** No Prohibited Vehicle may be parked, stored or kept in the Properties except for brief periods during loading, unloading, or emergency repairs.

(c) ***Road Obstructions.*** No obstructions, such as speed bumps/humps, control gates or other modifications, are permitted within the streets in the Properties, unless prior written approval from the Fire Chief is granted.

(d) ***No Parking Areas.*** No parking is permitted in the fire lanes in the Properties.

2.5.5 **Repair, Maintenance and Restoration.** No person may repair, maintain or restore any vehicle in the Properties.

2.5.6 **Enforcement.** The Board has the right and power to enforce all parking and vehicle use regulations applicable to the Properties, including the removal of violating vehicles from the alleys, streets and other portions of the Properties in accordance with California Vehicle Code Section 22658.2 or other applicable laws. The City may, but is not

required to, enforce such restrictions, rules and regulations, in addition to applicable laws and ordinances.

2.5.7 Regulation and Restriction by Board. The Board has the power to: (a) establish additional rules and regulations concerning parking in the Common Property, including designating "parking," "guest parking," and "no parking" areas; (b) prohibit any vehicle repair, maintenance or restoration activity in the Properties if it determines in its sole discretion that such activity is a nuisance; and (c) promulgate rules and regulations concerning vehicles and parking in the Properties as it deems necessary and desirable. In addition, the local fire department has the power to enforce parking regulations in the Properties.

2.5.8 Guest Parking. Owners and other residents of the Properties are prohibited from parking in any area designated as "Guest Parking" by the Association except for temporary purposes, not to exceed thirty (30) minutes in any twenty-four (24) hour period.

2.6 ANIMAL REGULATIONS. Up to two (2) domestic dogs, cats, birds or other customary household pets may be kept in each Condominium, provided that they are not kept, bred, or maintained for commercial purposes or in unreasonable quantities. Small household pets such as fish and caged birds may be kept in reasonable numbers so long as there is no external evidence of their presence in the Properties. Animals belonging to Owners, tenants, residents or guests in the Properties must be kept in the Unit; provided, however, when outdoors, animals must be kept under the control of a Person capable of controlling the animal either on a leash or other appropriate restraint when outside the Unit or Exclusive Use Area. Furthermore, each Owner shall be absolutely liable to each and all remaining Owners, their Families, tenants, residents and guests, for damages or injuries caused by any animals brought or kept on the Properties by an Owner, by members of the Owner's Family, or by the Owner's guests, tenants or invitees. Each Owner shall immediately remove any excrement or clean other unsanitary conditions caused by such Owner's animals on any portion of the Properties.

2.7 ANTENNA RESTRICTIONS. No Person may install anywhere outside the Unit any antenna or over-the-air receiving device except for an "**Authorized Antenna.**" An Authorized Antenna is (a) an antenna designed to receive direct broadcast satellite service, including direct-to-home satellite service, that is one (1) meter or less in diameter, or (b) an antenna designed to receive video programming service, including multichannel multipoint distribution service, instructional television fixed service, and local multipoint distribution service, and is one (1) meter or less in diameter or diagonal measurement, (c) an antenna designed to receive television broadcast signals, or (d) an antenna used to receive and transmit fixed wireless signals. An Authorized Antenna may be mounted on a mast to reach the height needed to receive an acceptable quality signal, subject to local governmental agency permitting requirements for safety purposes.

2.7.1 Restrictions on Installation. The Design Review Committee may adopt reasonable restrictions on installation and use of an Authorized Antenna as part of its Design Guidelines in order to minimize visibility of the Authorized Antenna from other Condominiums. Such restrictions may designate one (1) or more preferred installation locations, or require camouflage such as paint (subject to the antenna manufacturer's recommendations) or screening vegetation or other Improvements. However, no restriction imposed by the Design Review

Committee may (a) unreasonably delay or prevent the installation, maintenance or use of an Authorized Antenna, (b) unreasonably increase the cost of installation, maintenance or use of an Authorized Antenna, or (c) preclude acceptable quality reception.

2.7.2 Prohibitions on Installation. The Design Review Committee may prohibit the installation of an Authorized Antenna in a particular location if, in the Design Review Committee's opinion, the installation, location or maintenance of such Authorized Antenna unreasonably affects the safety of the Owners or any other Person, or for any other safety-related reason established by the Design Review Committee. The Design Review Committee may prohibit an Owner from installing an Authorized Antenna on any real property which such Owner does not own or is not entitled to exclusively use or control under the Restrictions. The Design Review Committee also has the power to prohibit or restrict the installation of any antenna or other over-the-air receiving device that does not meet the definition of an Authorized Antenna above.

2.7.3 Review after Installation. The Design Review Committee may review the location and installation of an Authorized Antenna after it is installed. After its review, the Design Review Committee may require that the Authorized Antenna be moved to a preferred location (if one has been designated) for safety reasons or to comply with reasonable restrictions subject to this Section 2.7 and applicable law. The Association may, at its own expense, relocate an Authorized Antenna installed by an Owner.

2.7.4 Restatement of Applicable Law. This Section is intended to be a restatement of the authority granted to the Design Review Committee under the law. All amendments, modifications, restatements and interpretations of the law applicable to the installation, use or maintenance of an antenna or other over-the-air receiving device shall be interpreted to amend, modify, restate or interpret this Section.

2.8 TRASH. Trash shall be disposed of in containers designated by the Association. Storage of building materials, refuse or any other materials in the Properties is prohibited. No trash may be left or stored outdoors. The cost of regular trash collection and removal and trash bin rentals shall be borne by the Association and shall constitute a portion of the Common Expenses.

2.9 IMPROVEMENTS.

2.9.1 Outdoors. No Person may construct or install any of the following without the prior written consent of the Design Review Committee: (a) clotheslines, balcony, patio or deck covers, wiring, air conditioning equipment, water softeners, sound systems, other machines and other similar Improvements, (b) Improvements protruding through the walls or roofs of buildings, and (c) other exterior additions or alterations to any Condominium. Outdoor patio, deck or lounge furniture, plants and barbecue equipment may be kept pursuant to the Rules and Regulations. No clothing, fabrics or unsightly articles may be hung or air dried in any location visible from the Association Property. Articles which are unsightly may be defined in the Rules and Regulations. Owners are prohibited from installing hot tubs or spas in the Exclusive Use Areas.

2.9.2 **Indoors.** No Owner or other resident of the Properties may paint or place foil in any window in the Residence. Nothing may be done in any Condominium or in, on or to the Common Property which may impair the structural integrity of any building in the Properties or which structurally alters any such building, except as otherwise expressly provided in this Declaration. No Owner may pierce or otherwise modify any wall separating attached Units. There shall be no storage of hazardous or flammable materials in the Exclusive Use Area attics which are designed to accommodate gas heaters.

2.9.3 **Noise Mitigation in Attached Residences.** No Owner may take any actions that may interfere with structural noise mitigation Improvements installed in the Units by Declarant. Owners are further prohibited from (a) puncturing, piercing or otherwise altering any walls shared with another Unit, if any, and (b) installing any sound system, stereo speakers or other entertainment system in any walls or ceiling of an attached Unit, without the prior written approval of the Design Review Committee. Declarant may have installed noise mitigating floor materials in upper floors or wall Improvements in walls shared with an adjoining Unit. No Owner shall replace any Declarant-installed noise mitigation Improvements unless the replacement offers the same or substantially similar noise mitigation as the Improvements originally installed by Declarant. Prior to installation, the Owner shall present the Design Review Committee with written evidence that the proposed material is the same or substantially similar to the material installed by Declarant.

2.9.4 **No Liability.** Neither the Declarant nor the Association shall be liable or responsible for any damage that results from Improvements installed, constructed or modified by or at the direction of an Owner. Owners are advised to consult and use qualified consultants and contractors when installing, constructing or modifying Improvements in the Owner's Unit.

2.10 **MECHANIC'S LIENS.** No Owner may cause or permit any mechanic's lien to be filed against the Common Property or another Owner's Condominium for labor or materials alleged to have been furnished or delivered for such Owner and any Owner who permits a mechanic's lien to be so filed shall cause the lien to be discharged within five (5) days after notice to the Owner from the Board. If any Owner fails to remove such mechanic's lien, the Board may discharge the lien and levy a Special Assessment against the violating Owner's Condominium to recover the cost of discharge.

2.11 **FURTHER SUBDIVISION.** Except as otherwise provided in this Declaration, no Owner may physically or legally subdivide a Condominium in any manner, including dividing such Owner's Condominium into time-share estates or time-share uses. This provision does not limit the right of an Owner to (a) rent or lease all such Owner's Condominium by a written lease or rental agreement subject to this Declaration; (b) sell such Owner's Condominium; or (c) transfer or sell any Condominium to more than one (1) Person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or as community property. Any failure by the tenant of the Condominium to comply with the Restrictions constitutes a default under the lease or rental agreement. Except as provided in this Declaration, there shall be no judicial partition of the Common Area, or any part thereof, for the term of this Declaration; nor may Declarant, any Owner or any other Person acquiring any interest in any Condominium in the Properties seek any such judicial partition. No Condominium in the Properties may be

partitioned or subdivided without the written approval of the Mortgagee of any first Mortgage on that Condominium.

2.12 **DRAINAGE.** No one may interfere with or alter the established drainage pattern over the Properties unless an adequate alternative provision is made for proper drainage with the Board's written approval. For the purpose of this Section, "established" drainage means the drainage which (a) exists at the time of the first Close of Escrow in the Properties, or (b) is shown on any plans approved by the Board.

Each Owner, by accepting a grant deed to his Condominium, acknowledges and understands that in connection with the development of the Properties, Declarant may have installed one (1) or more "sub-drains" beneath the surface of land, excluding the portion thereof covered by the patios, in the Condominiums. The sub-drains and all appurtenant improvements constructed or installed by Declarant ("**Drainage Improvements**"), if any, provide for subterranean drainage of water from and to the Properties. Drainage Improvements, if any, shall not be altered, removed, blocked or replaced without first making alternative drainage arrangements approved by the Board.

2.13 **WATER SUPPLY SYSTEM.** No individual water supply, sewage disposal or water softener system is permitted in any Condominium unless such system is designed, located, constructed and equipped in accordance with the requirements, standards, and recommendations of any water district having jurisdiction, the City, the Design Review Committee and all other governmental authorities with jurisdiction.

2.14 **VIEW OBSTRUCTIONS.** Each Owner acknowledges that (a) Declarant has made no representations, warranties or other assurances regarding protected views in the Properties, and no Condominium is assured the existence or unobstructed continuation of any particular view, and (b) any construction, landscaping (including the growth of landscaping), or other installation of Improvements by Declarant, other Owners or owners of other property in the vicinity of the Properties may impair the view from any Condominium, and the Owners consent to such view impairment.

2.15 **HARD SURFACE FLOORING.** Owners are prohibited from installing hard surface flooring on any floor in a Unit in the Properties that is constructed over another Residence, except in the floor areas depicted on **Exhibit E** attached hereto. The Association may require the Owners of a Unit in which hard surface flooring has been installed in violation of this Section to remove such flooring, at the Owner's sole expense, within thirty (30) days of notification to the Owner of the violation.

2.16 **RIGHTS OF DISABLED.** Subject to Article V, each Owner may modify the Owner's Residence and the route over the Common Property leading to the front door of the Residence, at its sole expense, to facilitate access to the Residence by persons who are blind, visually impaired, deaf or physically disabled, or to alter conditions which could be hazardous to such persons in accordance with California Civil Code Section 1360 or any other applicable law.

ARTICLE III DISCLOSURES

Because much of the information included in this Article (a) has been obtained from other sources (e.g., governmental and other public agencies and public records) and (b) is subject to change for reasons beyond the control of Declarant and the Association, the Declarant and the Association do not guarantee the accuracy or completeness of any of the information in this Article. Further, neither Declarant nor the Association is obligated to advise Persons of any changes affecting the disclosures in this Article. Persons should make their own inquiries or investigations to determine the current status of the matters addressed in this Article.

3.1 NO REPRESENTATIONS OR WARRANTIES. No representations or warranties, express or implied, have been given or made by Declarant, the Association, or their agents in connection with the Properties, its physical condition, zoning, compliance with laws, fitness for intended use; or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof as a condominium project, except as expressly provided in this Declaration, or as submitted by Declarant to the DRE, or as provided by Declarant to the first Owner of each Condominium.

3.2 ACCESS FACILITIES. Vehicular and pedestrian access into the Properties are controlled by entry gates located at the private street into the Properties. There may be controlled access pedestrian gates in the Properties. Declarant has reserved the right to limit the operation of any access gate during the period when Declarant is offering Condominiums for sale. Until the last Close of Escrow occurs in the Properties, (a) the access gate may be open to the general public, and (b) Declarant may change the hours of access gate operation in its sole discretion without notice to accommodate construction and marketing activities, and (c) operation of the access gate may be limited.

3.3 SECURITY AND PRIVACY DISCLAIMER. Access gates and their staffing are not intended to provide security or privacy for persons, personal property or Condominiums within the Properties. Declarant and the Association do not undertake to provide security or privacy for the Properties or Owners nor do they make any representations or warranties concerning the privacy, security and safety of the Properties or Owners.

3.4 EFFECT OF EXPANSIVE SOIL. The soil within the Properties may be composed of formations that have "expansive" characteristics. Owners should perform soils testing, use special construction techniques, and take precautions when constructing new Improvements or modifying existing Improvements because the soil expands when it is wet and can cause Improvements to lift and crack. Owners should consider the following information and recommendations before making or modifying any Improvements:

3.4.1 Concrete and Masonry Improvements. Special attention is required in designing and constructing concrete and masonry Improvements such as masonry walls and planters, concrete slabs and decking. For example, steel-reinforcing bars may be required in lieu of steel mesh in concrete patio slabs. Block walls may require extra horizontal and vertical steel reinforcing bars.

3.5 **ALISO CREEK.** The properties are located nearby to Aliso Creek. Aliso Creek serves as a flood control channel and may flood or become dangerous during rains.

3.6 **MAJOR STREETS.** The Properties are located nearby to the Toll Road, Moulton Parkway and Laguna Hills Drive. Owners may experience noise, vibration and fumes from these streets and highways.

3.7 **PROPERTY LINES.** The boundaries of each Condominium within the Properties and the Common Property are delineated on subdivision (tract) maps, lot line adjustments, parcel maps or Condominium Plans that are public records and are available at the office of the County Recorder.

3.8 **NO ENHANCED PROTECTION AGREEMENT.** No provisions of this Declaration or any Supplemental Declaration are intended, or shall be interpreted, to be an "enhanced protection agreement" as defined in Section 901 of the California Civil Code.

3.9 **CONDITION OF IMPROVEMENTS.** The Condominium Improvements in the Properties were originally built in approximately 1984 pursuant to the then applicable City requirements. The Properties have been operated and maintained as an apartment from that time until late 2004 when Declarant began converting the Properties into a condominium project. Various components of the Improvements in the Properties have been repaired, replaced or renovated over the years, and Declarant has made and will continue to make certain additional repairs, replacements and renovations in connection with the conversion of the Properties into a condominium project; however, most of the Improvements are in their originally constructed condition. Accordingly, the Association and the Owners should expect these Improvements to operate and to require maintenance in a manner appropriate to their age and existing condition, and not as new construction.

3.10 **URBAN ENVIRONMENT.** Living in an attached Condominium building within a densely populated community entails living in very close proximity to other Persons and business, with attendant limitations on solitude. Walls, floors and ceilings have been designed to meet applicable building codes. However, Owners will hear noise from adjacent Units within the Properties, including noise from showers, bathtubs, sinks, toilets or other sources of running water. Also, Owners may hear noise from items such as vacuum cleaners, stereos or televisions, or from people running, walking or exercising. Finally, Owners can expect to hear noise from adjacent residential and commercial areas. Owners may also experience light entering the Units from street lights located in close proximity to the windows and doors of the Units.

3.11 **COMMUNITY ASSOCIATION.** The Association is located within the Community Association. The Association and the owners are subject to the jurisdiction of the Community Association and the requirements of the Community Declaration. Among other things, this means the Owners are obligated to (a) pay assessments to the Community Association in addition to the Annual Assessment payable to the Association, and (b) comply with any architectural review requirements of the Community Association.

3.12 NATURAL HAZARD ZONE DISCLOSURES.

3.12.1 Seismic Hazard Zone. Many portions of California are subject to risks associated with seismic activity. Areas that meet the definition of "Seismic Hazard Zone" in the Seismic Hazards Mapping Act (California Public Resources Code Section 2690, et seq.) are shown on maps that are prepared and released by the California Department of Conservation, Division of Mines and Geology. Such zones may pose an increased risk of damage to property from earthquakes and liquefaction. As of the date of Recording of this Declaration, Declarant has been informed that all or a portion of the Properties are located within a Seismic Hazard Zone. Owners are advised to consult with the City, County, other public agencies, and appropriate experts to evaluate the potential risk. For more information concerning seismic activity and risks, read "The Homeowner's Guide to Earthquake Safety."

3.12.2 State Responsibility Area. State Responsibility Areas are usually wildland areas that may contain substantial risk of forest fire and hazards. Declarant has been informed that the Properties are located within a State Responsibility Area due to wildland exposure. Government regulations may impose restrictions and requirements on building that could substantially limit or otherwise impact the Owner's right to construct and modify Improvements pursuant to Section 4125 of the Public Resources Code. An Owner's Condominium is subject to the maintenance requirements of Section 4291 of the Public Resources Code. It is not the state's responsibility to provide fire protection services to any building or structure located within the State Responsibility Area, unless the Department of Forestry and Fire Protection has entered into a cooperative agreement with a local agency for those purposes pursuant to Section 4142 of the Public Resources Code. These maps are updated periodically, and Declarant makes no representations, guarantees or warranties with respect to any future state responsibility area determinations.

3.13 Airport Proximity Disclosure. According to information provided to Declarant from its consultants, the Properties are located within the below estimated distances of the following airports:

GSA Laguna Niguel Helistop Heliport	2.5 miles
El Toro Marine Corps Air Station	7.2 miles
John Wayne Airport	15.0 miles
Long Beach – Daugherty Field	41.1 miles

3.14 **SALES OFFICE.** Declarant and the association may enter a lease agreement covering all or a portion of the clubhouse. Under this lease agreement, Declarant may receive exclusive use of the space identified in the lease agreement for purposes of selling or leasing Condominium Units in the Properties.

3.15 **ADDITIONAL PROVISIONS.** There may be provisions of various laws, including the Davis-Stirling Common Interest Development Act codified at Sections 1350 et seq. of the California Civil Code and the Federal Fair Housing Act codified at Title 42 United States Code, Section 3601, et seq., which may supplement or override the Restrictions. Declarant makes no representations or warranties regarding the future enforceability of any portion of the Restrictions.

ARTICLE IV THE ASSOCIATION

4.1 **NAME OF THE ASSOCIATION.** The Association is or shall be operated under the name Bella Tierra Community Association as a California nonprofit mutual benefit corporation, as required by Section 1363 of the California Civil Code.

4.2 **GENERAL DUTIES AND POWERS.** The Association has the duties and powers listed in the Restrictions and also has the general and implied powers of a nonprofit corporation, generally to do all things that a corporation organized under the laws of the State of California may lawfully do which are necessary or proper in operating for the peace, health, comfort, safety and general welfare of the Owners, subject only to the limits on the exercise of such powers listed in Restrictions. Unless otherwise indicated in the Articles, Bylaws, this Declaration or a Supplemental Declaration the powers of the Association may be exercised by the Board.

4.3 **SPECIFIC DUTIES AND POWERS.** In addition to its general powers and duties, the Association has the following specific powers and duties.

4.3.1 **Common Property.** The power and duty to accept, maintain and manage the Common Property in accordance with the Restrictions. The Association may install or remove capital Improvements on the Common Property. The Association may reconstruct, replace or refinish any Improvement on the Common Property. The Association may enter a lease agreement with Declarant for the purpose of selling and leasing Condominium Units in the Properties.

4.3.2 **Utilities.** The power and duty to obtain, for the benefit of the Properties, all commonly metered water and sewer services, and the power but not the duty to provide for trash collection and cable television service.

4.3.3 **Granting Rights.** The power to grant exclusive or nonexclusive easements, licenses, rights of way or fee interests in the Common Property owned in fee simple by the Association, to the extent any such grant is reasonably required (a) for Improvements to serve the Properties, (b) for purposes of conformity with the as-built location of Improvements installed or authorized by Declarant or the Association, (c) in connection with any lawful lot line adjustment, or (d) for other purposes consistent with the intended use of the Properties. This power includes the right to create and convey easements for one (1) or more Owners of the Common Property. The Association may deannex any Property from the encumbrance of this Declaration in connection with any lawful lot line adjustment.

4.3.4 **Employ Personnel.** The power to employ Persons necessary for the effective operation and maintenance of the Common Property, including legal, management and accounting services.

4.3.5 **Insurance.** The power and duty to maintain insurance for the Common Property in accordance with this Declaration.

4.3.6 **Sewers and Storm Drains.** The power and duty to maintain any private water systems, private sewer systems, private storm drains, or private drainage facilities within the Common Property in accordance with the Restrictions.

4.3.7 **Maintenance Requirements.** The power and duty to (a) operate, maintain and inspect the Common Property and its various components in conformance with any Maintenance Requirements; and (b) review any Maintenance Manual applicable to the Common Property for necessary or appropriate revisions no less than annually after the Board has prepared the Budget, provided however, that the Association shall not revise the Maintenance Manual to reduce the level of maintenance required of any Improvement without the prior written consent of Declarant until ten (10) years after the last Close of Escrow for the sale of a Condominium in the Properties by Declarant.

4.3.8 **Rules and Regulations.** The power, but not the duty, to establish, amend, restate, delete, and create exceptions to, the Rules and Regulations.

(a) ***Standards for Enforceability.*** To be valid and enforceable, a Rule must satisfy all the following requirements:

- (1) The Rule must be in writing;
- (2) The Rule is within the authority of the Board conferred by law or by this Declaration, the Articles or the Bylaws;
- (3) The Rule is not inconsistent with governing law, this Declaration, the Articles, or the Bylaws;

(4) The Rule is adopted, amended or repealed in good faith and in substantial compliance with the requirements of Article 4 of Title 6 of Part 4 of Division 2 of the California Civil Code;

(5) The Rule is reasonable; and

(6) The Rule complies with the requirements of California Civil Code Section 1357.110 (as amended from time to time).

(b) **Areas of Regulation.** The Rules and Regulations may concern use of the Properties, signs, parking restrictions, minimum standards of property maintenance, and any other matter under the Association's jurisdiction; provided however, the Rules and Regulations are enforceable only to the extent they are consistent with the Articles, Bylaws, Declaration, and any Supplemental Declarations.

(c) **Limits on Regulation.** The Rules and Regulations must apply uniformly to all Owners. The rights of Owners to display religious, holiday and political signs, symbols and decorations inside their Residence of the kinds normally displayed in single family residential neighborhoods shall not be abridged, except the Association may adopt time, place and manner restrictions for such displays if they are visible outside of the Condominium. No modification to the Rules and Regulations may require an Owner to dispose of personal property that was present in a Unit prior to the adoption of such modification if such personal property was in compliance with all rules previously in force; however, this exemption shall apply only during the period of such Owner's ownership of the Unit. This exemption shall not apply to (i) subsequent Owners who take title to the Unit after the modification is adopted, or (ii) clarifications to the Rules and Regulations.

(d) **Procedure for Adoption, Amendment and Repeal.** Rules or procedures concerning (i) the use of Common Property, (ii) the use of a Condominium, including any aesthetic standards or Design Guidelines that affect Condominiums, (iii) member discipline, including any schedule of monetary penalties for violation of the Restrictions, (iv) any procedure for the imposition of penalties, (v) any standards for delinquent assessment payment plans, and (vi) any procedures adopted by the Association for resolution of assessment disputes (each, a "**Covered Rule**") may only be adopted, amended or repealed in accordance with the following procedure:

(1) The Board must provide written notice ("**Notice**") of a proposed change in a Covered Rule to the members at least thirty (30) days before making the change, except for an Emergency Rule Change (defined below). The Notice must include the text of the proposed change and a description of the purpose and effect of the proposed change (Notice is not required if the Board determines that an immediate change is required to address an imminent threat to public health or safety, or an imminent risk of substantial economic loss to the Association);

(2) The decision on a proposed change shall be made at a Board meeting after consideration of comments made by the members of the Association;

(3) The Board shall deliver Notice of the adopted change to every member of the Association within fifteen (15) days of adoption. If the change was an Emergency Rule Change, the notice shall include the text of the Emergency Rule Change, and the date on which the Emergency Rule Change expires;

(4) If the Board determines that an immediate Rule change is required to address an imminent threat to public health or safety, or an imminent risk of substantial economic loss to the Association, it may make the change on an emergency basis ("**Emergency Rule Change**") and no Notice will be required. An Emergency Rule Change is effective for one hundred-twenty (120) days, unless the adopted change provides for a shorter effective period. Any change that is adopted as an Emergency Rule Change may not be re-adopted under authority of this subpart;

(5) A Notice required by this Section 4.3.8 is subject to California Civil Code Section 1350.7; and

(6) A Rule change made pursuant to this Section 4.3.8(d) may be reversed as provided in California Civil Code Section 1357.140.

The foregoing procedure does not apply to Rules that do not meet the definition of Covered Rules above, nor to decisions of the Board regarding maintenance of Common Property, a decision on a specific matter that is not intended to apply generally, a decision setting the amount of an Annual Assessment or a Special Assessment, a Rule change that is required by law if the Board has no discretion as to the substantive effect of the changes, or issuance of a document that merely repeats existing law or the governing documents.

(e) **Use of Facilities.** The Rules and Regulations may (i) specify a maximum number of guests which an Owner, tenant or other Person may admit to the Common Property facilities at one time, (ii) establish rules for allowing Owners, tenants or other Persons to use Common Property facilities for private functions, or (iii) establish admission fees, deposit requirements and other fees for the use of any facilities located on the Common Property.

4.3.9 Borrowings. The power, but not the duty, to borrow money for purposes authorized by the Articles, Bylaws, Declaration, any Supplemental Declarations or any Notice of Addition, and to use the Association Property owned in fee simple by the Association as security for the borrowing.

4.3.10 Contracts. The power, but not the duty, to enter into contracts. This includes contracts with Owners or other Persons to provide services or to maintain Improvements in the Properties and elsewhere which the Association is not otherwise required to provide or maintain pursuant to this Declaration.

4.3.11 Telecommunications Contract. Notwithstanding anything in the Restrictions to the contrary, the Board shall have the power to enter into, accept an assignment of, or otherwise cause the Association to comply with the terms and provisions of an exclusive Telecommunications Services contract ("**Telecommunications Contract**") with a Telecommunications Service provider ("**Service Provider**"), pursuant to which the Service Provider shall serve as the exclusive provider of Telecommunications Services to each

Condominium in the Properties. The Board shall only enter into, accept an assignment of, or otherwise cause the Association to comply with the terms and provisions of the Telecommunications Contract if the Board determines, in its sole discretion, that such action is in the best interests of the Association. Although not exhaustive, the Board shall consider the following factors in making such a determination:

(a) ***Initial Term and Extensions.*** The initial term of the Telecommunications Contract should not exceed five (5) years, and, if the Telecommunications Contract provides for automatic extensions, the length of each such extension should also not exceed one (1) year.

(b) ***Termination.*** The Telecommunications Contract should provide that: (i) at least six (6) months prior to the expiration of either the initial or any extended term of the Telecommunications Contract, the entire Membership of the Association may, without cause, by a sixty percent (60%) vote, prevent any automatic extension that the Telecommunications Contract may provide for, and thereby allow the Telecommunications Contract to expire, and (ii) at any time, the Board may terminate the Telecommunications Contract if, in the sole discretion of the Board, the Service Provider fails to provide quality, state-of-the-art Telecommunications Services.

(c) ***Fees.*** Whether the monthly fee charged to the Association by the Service Provider for the provision of the Telecommunications Services to all of the Condominiums represents a discount from the comparable retail fees charged by the Service Provider in the general geographic area in which the Properties are located, and, if so, the amount of such discount.

(d) ***Installation of Telecommunications Facilities.*** Whether the Service Provider is solely responsible for the installation, and the cost thereof, of all of the Telecommunications Facilities necessary to provide Telecommunications Services to each Condominium.

(e) ***Removal of Telecommunications Facilities.*** Whether the Service Provider has the right to remove the Telecommunications Facilities upon expiration or termination of the Telecommunications Contract.

4.3.12 Indemnification.

(a) ***For Association Representatives.*** To the fullest extent authorized by law, the Association has the power and duty to indemnify Board members, Association officers, Design Review Committee members, and all other Association committee members for all damages, pay all expenses incurred, and satisfy any judgment or fine levied as a result of any action or threatened action brought because of performance of an act or omission within what such person reasonably believed to be the scope of the Person's Association duties ("***Official Act***"). Board members, Association officers, Design Review Committee members, and all other Association committee members are deemed to be agents of the Association when they are performing Official Acts for purposes of obtaining indemnification from the Association pursuant to this Section. The entitlement to indemnification under this Declaration inures to the

benefit of the estate, executor, administrator and heirs of any person entitled to such indemnification.

(b) ***For Other Agents of the Association.*** To the fullest extent authorized by law, the Association has the power, but not the duty, to indemnify any other Person acting as an agent of the Association for damages incurred, pay expenses incurred, and satisfy any judgment or fine levied as a result of any action or threatened action because of an Official Act.

(c) ***Provided by Contract.*** The Association also has the power, but not the duty, to contract with any Person to provide indemnification in addition to any indemnification authorized by law on such terms and subject to such conditions as the Association may impose.

4.3.13 Vehicle Restrictions. The power granted in Section 2.5 to identify Authorized Vehicles or Prohibited Vehicles and to modify the restrictions on vehicles.

4.3.14 Prohibited Functions.

(a) ***Property Manager.*** The Association shall not hire any employees, furnish offices or other facilities, or use any Common Property for an "on-site" Manager. The Association Manager shall at all times be a professional manager employed as an independent contractor or agent working at its own place of business.

(b) ***Off-site Nuisances.*** The Association shall not use any Association funds or resources to abate any annoyance or nuisance emanating from outside the physical boundaries of the Properties.

(c) ***Political Activities.*** The Association shall not conduct, sponsor, participate in or expend funds or resources toward any activity, campaign or event, including any social or political campaign, event or activity which is not directly and exclusively pertain to the authorized activities of the Association. Furthermore, the Association shall not participate in federal, state or local political activities or activities intended to influence a governmental action affecting areas outside the boundaries of the Properties (e.g., endorsement or support of legislative or administrative actions by a local governmental authority, candidates for elected or appointed office, or ballot proposals.) There shall be no amendment of this Section so long as Declarant owns any portion of the Properties.

4.3.15 Standing to Resolve Disputes. The Association shall have standing to institute, defend, settle or intervene in litigation, alternative dispute resolution or administrative proceedings (each, an "Action") in its own name as the real party in interest and without joining the Owners, in matters pertaining to (a) damage to the Association Property, (b) damage to portions of the Condominiums which the Association is obligated to maintain or repair, and (c) damage to portions of the Condominiums which arises out of, or is integrally related to, damage to the Association Property or portions of the Condominiums that the Association is obligated to maintain or repair (each, a "***Claim***"). However, the Association shall not have standing to institute, defend, settle or intervene in any Action in any matter pertaining only to an individual Condominium and not included in subsections (b) and (c) above.

Upon commencement of an Action by the Association pertaining to any Claim described in subsections (a), (b) or (c) above, the Association's standing shall be exclusive, and during the pendency of such Action, the Owners shall be barred from commencing a new Action or maintaining a pending Action on the same Claim. The Association's exercise of exclusive standing as to an Action on a particular Claim shall not be deemed to give rise to any affirmative obligation on the part of the Association to maintain, settle or dismiss the Action, except in the Association's sole discretion.

4.4 STANDARD OF CARE, NONLIABILITY.

4.4.1 Scope of Powers and Standard of Care.

(a) **General Scope of Powers.** Rights and powers conferred on the Board, the Design Review Committee or other committees or representatives of the Association by the Restrictions are not duties, obligations or disabilities charged upon those Persons unless the rights and powers are explicitly identified as including duties or obligations in the Restrictions or law. Unless a duty to act is imposed on the Board, Design Review Committee or other committees or representatives of the Association by the Restrictions or law, the Board, Design Review Committee and the committees have the right to decide to act or not act. Any decision not to act is not a waiver of the right to act in the future.

(b) **Business Affairs.** This Section 4.4.1 applies to Board member actions in connection with management, personnel, maintenance and operations, insurance, contracts and finances, and Design Review Committee member actions. Each Board member shall perform the duties of a Board member in good faith, in a manner such Board member believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. When performing his duties, a Board member is entitled to rely on information, opinions, reports or statements, including financial data prepared or presented by:

(1) One (1) or more officers or employees of the Association whom the Board member believes to be reliable and competent in the matters presented;

(2) Counsel, independent accountants or other Persons as to matters which the Board member believes to be under such Person's professional or expert competence; or

(3) A committee of the Board upon which the Board member does not serve, as to matters under its designated authority, which committee the Board member believes to merit confidence, so long as, in any such case, the Board member acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

This Section 4.3.1(b) is intended to be a restatement of the business judgment rule established in applicable law as it applies to the Association. All modifications and interpretations of the business judgment rule applicable to the Association shall be interpreted to modify and interpret this Section 4.3.1(b).

(c) **Association Governance.** This Section 4.3.1(c) applies to Board actions and Design Review Committee decisions in connection with interpretation and enforcement of the Restrictions, architectural and landscaping control, regulation of uses within the Properties, rule making and oversight of committees. Actions taken or decisions made in connection with these matters shall be reasonable, fair and nondiscriminatory.

4.4.2 **Nonliability.**

(a) **General Rule.** No Person is liable to any other Person (other than the Association or a party claiming in the name of the Association) for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries or damage result from the Person's willful or malicious misconduct. No Person is liable to the Association (or to any party claiming in the name of the Association) for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries or damage result from such Person's negligence or willful or malicious misconduct. The Association is not liable for damage to property in the Properties unless caused by the negligence of the Association, the Board, the Association's officers, the Manager or the Manager's staff.

(b) **Nonliability of Volunteer Board Members and Officers.** A volunteer Board member or volunteer Association officer shall not be personally liable to any Person who suffers injury, including bodily injury, emotional distress, wrongful death or property damage or loss as a result of the tortious act or omission of the volunteer officer or Board member if all applicable conditions specified in Section 1365.7 of the California Civil Code are met.

(c) **Nonliability of Owners.** Pursuant to California Civil Code Section 1365.9, no Owner shall be liable for any cause of action in tort which can be brought against the Owner solely because of the Owner's undivided interest in the Common Area so long as the Association keeps one (1) or more policies of insurance which include coverage for general liability of the Association in the amount required by California Civil Code Section 1365.9 and that insurance is in effect for the cause of action being brought.

4.5 **MEMBERSHIP.**

4.5.1 **Generally.** Every Owner shall automatically acquire a Membership in the Association and retain the Membership until such Owner's Condominium ownership ceases, at which time such Owner's Membership shall automatically cease. Ownership of a Condominium is the sole qualification for Membership. Memberships are not assignable except to the Person to whom title to the Condominium is transferred, and every Membership is appurtenant to and may not be separated from the fee ownership of such Condominium. The rights, duties privileges and obligations of all Owners are as provided in the Restrictions.

4.5.2 **Transfer.** The Membership of any Owner may not be transferred, pledged or alienated in any way, except on the transfer or encumbrance of such Owner's Condominium, and then only to the transferee or Mortgagee of such Condominium. A prohibited transfer is void and will not be reflected in the records of the Association. Any Owner who has sold a Condominium to a contract purchaser under an agreement to purchase may

delegate the Owner's Membership rights to the contract purchaser. The delegation must be in writing and must be delivered to the Association before the contract purchaser may vote. The contract seller shall remain liable for all charges and Assessments attributable to the contract seller's Condominium which accrue before title to the Condominium is transferred. If an Owner fails or refuses to transfer his Membership to the purchaser of such Owner's Condominium on transfer of title thereto, the Association may record the transfer in the Association's records. Until satisfactory evidence of such transfer is presented to the Association, the purchaser will not be entitled to vote at Association meetings. The Association may levy a reasonable transfer fee against a new Owner and such Owner's Condominium (which fee shall be paid through escrow or added to the Annual Assessment chargeable to such new Owner) to reimburse the Association for the administrative cost of transferring the Membership to the new Owner on the Association's records. Such fee may not exceed the Association's actual cost involved in changing its records.

4.5.3 Classes of Membership. The Association classes of voting Membership are as follows:

Class A. Class A members are all Owners except Declarant for so long as a Class B Membership exists. Class A members are entitled to one (1) vote for each Condominium owned by such Class A members which is subject to Assessment. Declarant shall become a Class A member on conversion of Declarant's Class B Membership as provided below. The vote for each Condominium shall be exercised in accordance with Section 4.5.3, but no more than one (1) Class A vote may be cast for any Condominium.

Class B. The Class B member is Declarant. The Class B member is entitled to three (3) votes for each Condominium owned by Declarant which is subject to Assessment. The Class B Membership shall convert to Class A Membership on the earlier to occur of the following events:

- (1) The second anniversary of the first Close of Escrow in the most recent Phase, or
- (2) The fourth anniversary of the first Close of Escrow in Phase 1.

However, if all of the Annexable Territory is annexed to the Properties within one year from the first Close of Escrow in Phase 1, the Class B Membership shall convert to Class A Membership on the fourth anniversary of the first Close of Escrow in Phase 1.

Class C. The Class C member shall be Declarant (whether or not Declarant is an Owner). The Class C Membership shall not be considered a part of the voting power of the Association. The Class C member is entitled to select a majority of the members of the Board of Directors until the Class C Termination Date. The "Class C Termination Date" shall be the earlier to occur of the following events.

- (1) The Close of Escrow for the sale of one hundred and five (105) Lots in the Properties and Annexable Territory;
- (2) The fourth (4th) anniversary of the first Close of Escrow in the Phase for which a Final Subdivision Public Report was most recently issued by the DRE; or

(3) The tenth (10th) anniversary of the first Close of Escrow of the sale of a Lot in the Properties.

4.6 VOTING RIGHTS.

4.6.1 Limits Generally. All voting rights are subject to the Restrictions. Except as provided in Sections 4.5.2 and 12.4 of this Declaration and Section 4.8 of the Bylaws, as long as there exists a Class B Membership, any provision of the Restrictions which expressly requires the vote or written consent of a specified percentage (instead of a majority of a quorum) of the Association's voting power before action may be undertaken shall require the approval of such specified percentage of the voting power of both the Class A and Class B Membership. Except as provided in Section 12.4 of this Declaration and Section 4.8 of the Bylaws, on termination of the Class B Membership, any provision of the Restrictions which expressly requires the vote or written consent of Owners representing a specified percentage (instead of a majority of a quorum) of the Association's voting power before action may be undertaken shall then require the vote or written consent of Owners representing such specified percentage of both (1) the Association's total voting Class A power and (2) the Association's Class A voting power represented by Owners other than Declarant.

4.6.2 Joint Ownership. When more than one (1) Person holds an interest in any Condominium ("*co-owners*"), each co-owner may attend any Association meeting, but only one (1) co-owner shall be entitled to exercise the single vote to which the Condominium is entitled. Co-owners owning the majority interests in a Condominium may designate in writing one (1) of their number to vote. Fractional votes shall not be allowed, and the vote for each Condominium shall be exercised, if at all, as a unit. Where no voting co-owner is designated or if the designation is revoked, the vote for the Condominium shall be exercised as the co-owners owning the majority interests in the Condominium agree. Unless the Association receives a written objection in advance from a co-owner, it shall be conclusively presumed that the voting co-owner is acting with his co-owners' consent. No vote may be cast for any Condominium if the co-owners present in person or by proxy owning the majority interests in such Condominium fail to agree to the vote or other action. The nonvoting co-owner or co-owners are jointly and severally responsible for all obligations imposed on the jointly-owned Condominium and are entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in the Restrictions are binding on all Owners and their successors in interest.

4.6.3 Community Association Delegate. The Community Association votes attributable to the Owners in the Community shall be exercised by a "Delegate" (as defined in Section 4.04(a) of the Community Declaration) elected as provided in the Bylaws of the Community Association.

4.7 REPAIR AND MAINTENANCE.

4.7.1 Maintenance Standards. The Association shall maintain everything it is obligated to maintain in a clean, sanitary and attractive condition reasonably consistent with the level of maintenance reflected in the most current Budget, and in conformity with any Maintenance Requirements. Unless specifically provided in any Maintenance Requirements, the

Board shall determine, in its sole discretion, the level and frequency of maintenance of the Common Property and Improvements thereon. Each Owner shall maintain everything the Owner is obligated to maintain in a clean, sanitary and attractive condition and in conformity with all applicable Maintenance Requirements; provided however, that only Declarant (and not the Association or any other Owner) shall have the right to determine and enforce conformance with the Maintenance Requirements.

4.7.2 By Owners.

(a) **Generally.** Owners' repair, maintenance and replacement responsibilities are set forth in this Section 4.7.2 and on **Exhibit D**, attached hereto. Unless otherwise specified in the Declaration, each Owner shall bear all costs and expenses of the maintenance, repair and replacement that the Owner is required to perform pursuant to the Declaration and Maintenance Requirements.

(b) **Other Responsibilities.** Each Owner shall pay when due all charges for any utility service which is separately metered to the Owner's Unit. If the Association does not adopt an inspection and prevention program with regard to wood-destroying pests and other organisms, then such a program shall be the responsibility of each Owner. Subject to any required approval of the Design Review Committee, each Owner shall maintain those portions of any heating and cooling equipment and other utilities which are located in or which exclusively serve his Residence. Maintenance, repair and replacement of the air conditioner compressor is the sole responsibility of the Owner.

4.7.3 By Association.

(a) **Commencement of Obligations.** The Association's obligation to maintain Common Property in the Properties commences on the date Annual Assessments commence on Condominiums in the Properties. Until commencement of Annual Assessments, Declarant shall maintain the Common Property.

(b) **Maintenance Items.** The Association shall be responsible for all maintenance, repair and replacement that is not the responsibility of the Owners, pursuant to Section 4.7.2 and **Exhibit D** attached hereto. The Association shall repair and pay for all centrally metered utilities and mechanical and electrical equipment serving the Common Property; and pay charges for utilities which serve individual Condominiums, but which are subject to a common meter. **The Association shall maintain the chimney of the Unit, but the fireplace and firebox shall be the responsibility of the Owner.** The Association shall also paint, stain, waterproof (as necessary), and replace all exterior entry doors to each Unit. The Association shall maintain all portions of the perimeter walls surrounding the Properties and the wrought iron fencing along portions of Sheep Hills Park. The Association shall maintain the patios, balconies, storage areas, carports and parking areas that exclusively serve the Units, except as otherwise provided on **Exhibit D** hereto.

(c) **Termite Eradication.** If the Association adopts an inspection and preventive program for the prevention and eradication of infestation by wood destroying pests and organisms, the Association, on no less than fifteen (15) nor more than thirty (30) days'

notice, may require each Owner and any occupants of the Owner's Condominium to vacate such Condominium to accommodate the Association's efforts to eradicate such infestation. The notice must state the reason for the temporary relocation, the date and time of the beginning of treatment, the anticipated date and time of termination of treatment, and that the occupants will be responsible for their own accommodations during the temporary relocation. Any damage caused to a Condominium by such entry by the Association or by any person authorized by the Association shall be repaired by the Association as a Common Expense. All costs involved in operating the inspection and preventive program as well as repairing and replacing the Common Property and Improvements thereon when the need for such maintenance, repair or replacement is the result of wood destroying pests or organisms are a Common Expense.

(d) **Additional Items.** The Association shall also be responsible for maintaining any Improvements a majority of the voting power of the Association designates for maintenance by the Association. Such property shall be deemed to be Association Property and subject to the Restrictions applicable to the Association Property.

(e) **Charges to Owners.** All costs of maintenance for the Properties shall be paid for as Common Expenses out of the Association Maintenance Funds as provided in this Declaration.

4.7.4 Inspection of the Properties. The Board shall require strict compliance with all provisions of this Declaration and shall periodically cause an inspection of the Properties to be conducted to report any violations of the Declaration. The Board shall also cause inspections of the Common Property and all Improvements thereon to determine the condition of those Improvements ("**Condition Inspections**"), which shall be conducted in conformance with the applicable Maintenance Requirements. In the absence of inspection frequency recommendations in any applicable Maintenance Requirements, the Board shall conduct Condition Inspections at least once every three (3) years in conjunction with the inspection required for the reserve study to be conducted pursuant to Section 2.10 of the Bylaws. Condition Inspections shall, at a minimum, (a) determine whether the Common Property is being maintained adequately in accordance with the standards of maintenance established in Section 4.7.1, (b) identify the condition of the Common Property and any Improvements thereon, including the existence of any hazards or defects, and the need for performing additional maintenance, refurbishment, replacement, or repair, and (c) recommend preventive actions which may be taken to reduce potential maintenance costs to be incurred in the future. The Board shall, during its meetings, regularly determine whether the required inspections and maintenance activities set forth in any applicable Maintenance Requirements have been followed and, if not followed, what corrective steps need to be taken to assure proper inspections and maintenance of the Common Property. The Board shall keep a record of such determinations in the Board's minutes. The Board shall keep Declarant fully informed of the Board's activities under this Section 4.7.4. The Board shall employ, consistent with reasonable cost management, such experts, contractors and consultants as are necessary to perform the inspections and make the reports required by this Section.

The Board shall prepare a report of the results of the Condition Inspections required by this Section. Reports shall be furnished to Owners within the time set for furnishing

the Budget to the Owners. The report of a Condition Inspection must include at least the following:

- (a) a description of the condition of the Common Property, including a list of items inspected, and the status of maintenance, repair and need for replacement of all such items;
- (b) a description of all maintenance, repair and replacement planned for the ensuing Fiscal Year and included in the Budget;
- (c) if any maintenance, repair or replacement is to be deferred, the reason for such deferral;
- (d) a summary of all reports of Condition Inspections performed by any expert, contractor or consultant employed by the Association to perform inspections since the Board's last Condition Inspection report;
- (e) a report of the status of compliance with the maintenance, replacement and repair needs identified in the Condition Inspection report for preceding years and identified in any applicable Maintenance Requirements; and
- (f) such other matters as the Board considers appropriate.

For a period of ten (10) years after the date of the last Close of Escrow in the Properties, the Board shall also furnish to Declarant (A) the report of each Condition Inspection performed for the Board, whenever such Condition Inspection is performed and for whatever portion of the Common Property that is inspected, within thirty (30) days after the completion of such Condition Inspection, and (B) the most recent condition inspection report prepared for any portion of the Common Property, within ten (10) days after the Association's receipt of a written request therefor from Declarant.

4.7.5 Damage by Owners. Each Owner is liable to the Association for any damage to the Common Property caused by the act of an Owner, his Family, guests, tenants or invitees and any other Persons who derive their use of the Common Property from the Owner or from the Owner's Family, tenants or invitees. The Association may, after Notice and Hearing, levy a Special Assessment against the Owner to recover the cost of correcting the damage. The amount of the Special Assessment may include (a) the amount of any deductible payable on the insured portion of the loss (if the Board elects to make a claim under the Association's insurance policy or policies), (b) all costs and expenses actually incurred by the Association to correct damage that is not covered by the Association's insurance or for which the Association has elected not to make an insurance claim, and (c) the amount of the increase in premiums payable by the Association, to the extent the increase is directly caused by damage attributable to the actions of the Owner. If a Condominium is jointly owned, the liability of its Owners is joint and several, except to the extent that the Association has previously contracted in writing with the joint owners to the contrary. After Notice and Hearing, the cost of correcting the damage shall be a Special Assessment against such Owner.

4.8 UNSEGREGATED REAL PROPERTY TAXES. To the extent not assessed to or paid by the Owners, the Association shall pay all real and personal property taxes and

assessments levied against the Properties. If all Condominiums in a Phase are taxed under a tax bill covering all of such Phase, then each Owner shall pay his share of any installment due under the tax bill to the Association at least ten (10) days before the delinquency date. The Association shall transmit the taxes to the appropriate tax collection agency on or before the delinquency date. The Association shall allocate taxes equally among the Owners and their Condominiums in the Properties, based on the total number of Condominiums in the Phase. The Association shall, at least forty-five (45) days before the delinquency date of any tax installment, deliver to each Owner in such Phase a copy of the tax bill, along with a written notice setting forth the Owner's obligation to pay his share of the tax installment and the potential additional charges to the Owner for failure to comply. The Association shall pay the taxes on behalf of any Owner who does not pay his share. The Association shall add to the Annual Assessment of a delinquent Owner the amount of any sum advanced, plus interest at the rate of ten percent (10%) per annum and any amount necessary to reimburse the Association for any penalty or late charge actually assessed in connection with the tax bill for such Phase, which late charge results from the failure of the delinquent Owner to make timely payment of his share of the taxes. Until Close of Escrow for the sale of ninety percent (90%) of the Condominiums in such Phase has occurred, this Section may not be amended without the written consent of Declarant.

ARTICLE V DESIGN REVIEW COMMITTEE

5.1 MEMBERS OF DESIGN REVIEW COMMITTEE. The Design Review Committee shall be composed of three (3) members. The initial members of the Design Review Committee shall be representatives of Declarant until one (1) year after the original issuance of the Final Subdivision Public Report ("**Public Report**") for Phase 1 ("**First Anniversary**"). After the First Anniversary the Board may appoint and remove one (1) member of the Design Review Committee, and Declarant may, but is not obligated to, appoint and remove a majority of the members of the Design Review Committee and fill any vacancy of such majority, until the earlier to occur of (a) Close of Escrow for the sale of ninety percent (90%) of all the Condominiums in the Properties, or (b) the fifth (5th) anniversary of the original issuance of the Public Report for Phase 1, after which the Board may appoint and remove all members of the Design Review Committee. Design Review Committee members appointed by the Board must be Owners, but Design Review Committee members appointed by Declarant need not be Owners. Board members may serve as Design Review Committee members.

5.2 POWERS AND DUTIES.

5.2.1 General Powers and Duties. The Design Review Committee shall consider and act upon all plans and specifications submitted for its approval, including inspection of work in progress to assure conformity with plans approved by the Design Review Committee, and shall perform such other duties as the Board assigns to it.

5.2.2 Issuance of Standards. The Design Review Committee shall issue and update its Design Guidelines and provide notice of any requirements for Association approval of proposed Improvements. The notice shall describe the types of proposed Improvements that require Association approval and shall include a copy of the procedure used to review and approve or disapprove any proposed Improvements. The Design Guidelines may require a fee to

accompany each application for approval, or may identify additional factors which the Design Review Committee will consider in reviewing submissions. The Design Review Committee may provide that fees it imposes be uniform, or that fees be determined in any other reasonable manner.

5.2.3 Retaining Consultants. The Design Review Committee has the power, but not the duty, to retain Persons to advise its members Design Review Committee in connection with decisions; however, the Design Review Committee does not have the power to delegate its decision-making power.

5.3 REVIEW OF PLANS AND SPECIFICATIONS.

5.3.1 Improvements Requiring Approval. No construction, installation or alteration of an Improvement visible to the Association Property, or affecting the structural integrity of a building may be commenced until the plans and specifications showing the nature, kind, shape, height, width, color, materials and location thereof are submitted to and approved in writing by the Design Review Committee. The provisions of this Article apply, without limitation, to the construction, installation and alteration of solar energy systems, as defined in Section 801.5 of the California Civil Code, subject to the provisions of California Civil Code Sections 714 and 714.1, the City Building Code, zoning regulations, and other laws.

5.3.2 Application Procedure. Until changed by the Board, the address for the submission of such plans and specifications is the Association's principal office. Only the Design Review Committee may approve or disapprove an Application.

If the Design Review Committee receives plans and specifications it determines are not complete, the Design Review Committee may reject the Application for approval. The Design Review Committee shall transmit its decision and the reasons therefor to the Applicant at the address listed in the Application for approval within forty-five (45) days after the Design Review Committee receives all required materials. Any Application submitted pursuant to this Section shall be deemed approved unless the Manager or a representative of the Board or Design Review Committee shall execute a written approval therefore within fifteen (15) days at the request of the Applicant. A decisions on a proposed Improvement shall be consistent with California law, made in good faith and may not be unreasonable, arbitrary or capricious. If disapproved, the written decision shall include both an explanation of why the proposed Improvement is disapproved and a description of the procedure for reconsideration by the Board of Directors.

5.3.3 Standard for Approval. The Design Review Committee shall approve plans and specifications submitted for its approval only if it determines that (a) installation, construction or alterations of the Improvements in the locations proposed will not be detrimental to the appearance of the surrounding area of the Properties as a whole, (b) the appearance of any structure affected by the proposed Improvements will be in harmony with the surrounding structures, (c) installation, construction or alteration of the proposed Improvements will not detract from the beauty, wholesomeness and attractiveness of the Properties or the enjoyment thereof by the Owners, (d) maintenance of the proposed Improvements will not become a burden on the Association, and (e) the proposed Improvements are consistent with this Declaration. The Design Review Committee may consider the impact of views from other Residences or

Condominiums along with other factors including reasonable privacy right claims, passage of light and air, beneficial shading and other factors in reviewing, approving or disapproving any proposed landscaping, construction or other Improvements. However, neither Declarant nor the Association warrants that any views in the Properties are protected. No Residence or Condominium is guaranteed the existence or unobstructed continuation of any particular view.

5.3.4 Conditions to Approval. The Design Review Committee may condition its approval of an Application for any Improvement on any one (1) or more of the following: (a) the Applicant's agreement to furnish the Association with security acceptable to the Association against any mechanic's lien or other encumbrance which may be Recorded against the Common Property or another Owner's Condominium as a result of such work, (b) such changes to the Application as the Design Review Committee considers appropriate, (c) the Applicant's agreement to grant to the Association or other Owners such easements as are made reasonably necessary by the existence of the Improvements, (d) the Applicant's agreement to install (at its sole cost) water, gas, electrical or other utility meters to measure any increased utility consumption, (e) the Applicant's agreement to reimburse the Association for the cost of maintaining the Improvements (should the Association agree to accept maintenance responsibility for the Improvement as built), or (f) the Applicant's agreement to complete the proposed work within a stated period of time. The Design Review Committee may also require the Applicant, prior to commencing work, to deposit with the Association adequate funds to repair or restore any Common Property that may be damaged by the Applicant or the Applicant's contractors. The Design Review Committee will determine the actual amount of the deposit in each case, but the amount shall be at least enough to cover the cost of repairing or restoring damage that is reasonably foreseeable to the Design Review Committee. The deposit shall be refundable to the extent the Design Review Committee finds that the work of Improvement is complete, and that the Common Property was not damaged or was restored at least to the condition it was in prior to the commencement of work.

The Design Review Committee has the right to require a reasonable security deposit with each application. The security deposit will be applied to the cost of repairing damage to Common Property as a result of the Application. The amount of the security deposit shall be specified in the Design Guidelines. The security deposit may be increased or decreased from time to time at the discretion of the Design Review Committee. The Design Review Committee may also require submission of additional plans and specifications or other information before approving or disapproving material submitted. The Applicant shall meet any review or permit requirements of the Community Association, the City or the County before making any construction, installation or alterations permitted under this Declaration.

5.3.5 Matters Outside Scope of Approval. Approval of any Application does not constitute a finding by the Design Review Committee that the Application or any portion of the Application (a) incorporates good engineering practices, (b) complies with the requirements of the Community Association and the Community Declaration, (c) complies with applicable law, ordinance, code, or regulation, including zoning laws and building and safety codes, (d) complies with the requirements of any public utility, or (e) is permissible under the terms of any easement, license, permit, mortgage, deed of trust, or other recorded or unrecorded instrument (other than the Restrictions) that affects the land.

5.3.6 **Exculpation of Design Review Committee.** By submitting an application, each Applicant is deemed to agree that neither the Design Review Committee, nor the members thereof, nor Declarant, nor their respective agents, employees, attorneys or consultants shall be liable to any Person for (a) any defect in any Improvement constructed by or on behalf of the Applicant pursuant to an approved Application; (b) any loss, damage or injury to Persons or property arising out of or in any way connected with work performed by or on behalf of the Applicant pursuant to an approved Application; or (c) any loss, damage, or injury to Persons or property arising out of or in any way connected with the performance of the Design Review Committee's duties hereunder, unless due to willful misconduct or gross negligence.

5.4 **MEETINGS AND ACTIONS OF THE DESIGN REVIEW COMMITTEE.** The Design Review Committee shall meet as necessary to perform its duties. All approvals issued by the Design Review Committee must be in writing. Verbal approvals issued by the Design Review Committee, by any individual Design Review Committee member or by any other representative of the Association are not valid, are not binding on the Association and may not be relied on by any Person. If within six (6) months of issuance of the approval, an Owner either does not commence work pursuant to approved plans or obtain an extension of time to commence work, the approval shall be automatically revoked and a new approval must be obtained before work can be commenced.

5.5 **NO WAIVER OF FUTURE APPROVALS.** The Design Review Committee's approval of any proposals or plans and specifications or drawings for any work done or proposed in connection with any other matter requiring the Design Review Committee's approval does not waive any right to withhold approval of any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval.

5.6 **COMPENSATION OF MEMBERS.** The Design Review Committee's members shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in performing their duties.

5.6.1 **INSPECTION OF WORK.** The Design Review Committee or its duly authorized representative may inspect any work for which approval of plans is required under this Article ("**Work**"). The right to inspect includes the right to require any Owner to take such action as may be necessary to remedy any noncompliance with the Design Review Committee-approved plans for the Work or with the requirements of this Declaration ("**Noncompliance**").

5.7 **VARIANCES.** The Design Review Committee may authorize variances from compliance with any of the architectural provisions of this Declaration or the Design Guidelines including restrictions on height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration require. Such variances must be evidenced in writing, must be signed by a majority of the Design Review Committee, and become effective on Recordation.

5.8 **PRE-APPROVALS.** The Design Review Committee may authorize pre-approval of certain specified types of construction activities if, in the exercise of the Design Review Committee's judgment, such preapproval is appropriate in carrying out the purposes of the Restrictions.

5.9. **APPEALS.** If a proposed Improvement is disapproved, the Applicant is entitled to reconsideration by the Board of Directors at an open meeting that satisfies the requirements of Civil Code Section 1363.05. This paragraph does not require reconsideration of a decision that is made by the Board, or the Design Review Committee if the Committee has the same membership as the Board.

ARTICLE VI PROPERTY EASEMENTS AND RIGHTS

6.1 EASEMENTS.

6.1.1 **Maintenance and Repair.** Declarant reserves for the benefit of the Association and all Association agents, officers and employees, nonexclusive easements over the Common Area and the Exclusive Use Areas as necessary to fulfill the obligations and perform the duties of the Association.

6.1.2 **Utility Easements.** Declarant reserves easements to install and maintain utilities over the Common Property for the benefit of the Owners and their Condominiums. Declarant reserves the right to grant additional easements and rights-of-way throughout the Properties to utility companies and public agencies, as necessary, for the proper development and disposal of the Properties. Such right of Declarant shall expire on Close of Escrow for the sale of the last Condominium in the Properties.

6.1.3 **Encroachments.** Declarant reserves, for its benefit and the benefit of all Owners, a reciprocal easement appurtenant to each Condominium over the other Units and the Common Property to accommodate (a) any existing encroachment of any wall, eave, roof overhang, architectural feature or any other Improvement installed by Declarant or approved by the Design Review Committee, and (b) shifting, movement or natural settling of the Residence or other Improvements. Use of the foregoing easements may not unreasonably interfere with each Owner's use and enjoyment of the burdened Residences.

6.1.4 **Completion of Improvements.** Declarant reserves the right and easement to enter the Properties to complete any Improvement which Declarant considers desirable to implement Declarant's development plan.

6.1.5 **Owners' Easements in Common Property.** Declarant reserves, for the benefit of every Owner and each Owner's Family, tenants and guests, a nonexclusive easement for use of and vehicular and pedestrian access over the Common Property in connection with use and enjoyment of each Condominium in the Properties. This easement is appurtenant to and passes with title to every Condominium in the Properties. This easement is subject to the restrictions, rights and other easements in the Restrictions.

6.1.6 **Drainage Easements and Restrictions.** Declarant reserves, for the benefit of the Properties, the Owners and the Association, reciprocal nonexclusive easements for drainage of water over, across and on the Properties.

6.1.7 **Exclusive Use Area.** Declarant reserves, for the benefit of specified Owners, exclusive easements over the Properties for use as an Exclusive Use Area, including for

balcony or patio purposes as shown and assigned on the Plan, for air conditioner compressor pads and internal and external telephone wiring as originally installed and assigned to the Condominium served thereby and for carport spaces as shown and numbered on the Plan and assigned in the respective Owner's deed. Declarant reserves a special power of attorney coupled with an interest to execute such documents as are reasonably necessary on behalf of Owners and Mortgagees to correct misassignments of Exclusive Use Area carport spaces or to reflect changes in carport space assignments for Units which Declarant owns or as built conditions. Declarant also reserves, for the benefit of the Association, the right to enter the Exclusive Use Areas as necessary to perform the obligations of the Association.

6.1.8 Telecommunications Easement. Declarant reserves blanket easements (collectively, "Telecommunications Easements") over the Properties for access and for purposes of constructing, installing, locating, altering, operating, maintaining, inspecting, upgrading, removing and enhancing Telecommunications Facilities (collectively, "**Telecommunications Purposes**") for the benefit of Declarant. Such easements are freely transferable by Declarant to any other Person and their successors and assigns. No one, except for Declarant and Declarant's transferees may use the Properties for Telecommunications Purposes. All Telecommunications Facilities shall be owned, leased or licensed by Declarant, as determined by Declarant, in its sole discretion and business judgment. Transfer of the Properties does not imply transfer of any Telecommunications Easements or Telecommunications Facilities. The holders of the Telecommunications Easements may not exercise the rights reserved hereunder in any manner which will unreasonably interfere with the reasonable use and enjoyment of the Properties by any Owner. If the exercise of any Telecommunications Easement results in damage to the Properties, then the easement holder who caused the damage shall, within a reasonable period of time, repair such damage. If Declarant has not conveyed the Telecommunications Easements to another Person before the last Close of Escrow in a Phase, then Declarant grants the Telecommunications Easements to the Association effective as of the last Close of Escrow in the Properties.

6.1.9 Clubhouse. Declarant reserves for the use and enjoyment of all Owners, an easement over Lot 3, the Clubhouse. Use of the foregoing easement shall not interfere with Declarant's rights described in Article XV or the right of the Association to suspend an owner's privileges as described in Section 4.3.8.

6.1.10 Reservation from Association Property. Declarant reserves from the Association Property, and hereby subjects the use and enjoyment of the Association Property to the rights of the Community Association, Declarant, Community Declarant, their respective members and guests, and others of access, ingress and egress for maintenance, use and enjoyment of those portions of the Association Property, if any, which also comprise the Community Association's "Community Association's Properties" (as defined in Section 1.01 of the Community Declaration). The Community Association shall have exclusive jurisdiction over and control of any portions of the Association Property which also comprise Community Association's "Association Property." The Association shall not interfere with the Community Association as it performs its obligations pursuant to the Community Declaration.

6.1.11 **Sales and Leasing Office.** Declarant reserves the exclusive right and easement to operate any portion of the Association Property for sales or leasing purposes until such time as Declarant no longer owns any Condominium in the Properties.

6.1.12 **Private Street Access Easements.** Declarant reserves for the benefit of the Association, nonexclusive easements for pedestrian and vehicular access and parking of vehicles subject to the Restrictions (the "*Access Easements*") over the portions of the Properties and the Annexable Territory improved with private street. Declarant shall maintain the private streets until they are turned over to the Association for maintenance purposes. The Access Easements shall be subject to relocation by Declarant to accommodate Declarant's construction, sales and other activities, provided such relocation (a) is set forth in a Recorded instrument signed by Declarant and (b) does not prevent legal access from public streets to any Unit then in the Properties.

6.2 **RIGHT TO GRANT EASEMENTS.** Declarant reserves easements over the Common Property owned in fee simple by the Association for the exclusive use by an Owner or Owners of contiguous property as a yard, gardening and landscaping area. Any such easement may be conveyed by the Declarant before the last Close of Escrow for sale of a Condominium in the Properties. Such conveyance must be approved by the Board, which approval must not be unreasonably withheld. The purpose of the easement, the portion of the Common Property affected, the Condominium to which the easement is appurtenant, and any restrictions on use of the easement area shall be identified in a Recorded grant of easement.

6.3 **DELEGATION OF USE.** Owner shall either delegate his right to use the Common Property owned in fee simple by the Association in writing to his tenants, contract purchasers or subtenants who reside in such Owner's Condominium, or retain these rights himself, subject to regulation by the Board.

6.4 **RIGHT OF ENTRY.**

6.4.1 **Association.** The Association has the right to enter the Condominium to inspect the Properties, and may take whatever corrective action it determines to be necessary or proper. Entry onto any Condominium under this Subsection may be made after at least three (3) days' advance written notice to the Owner of the Unit except for emergency situations, which shall not require notice. Any damage to the Condominium caused by entry under this Subsection shall be repaired by the Association.

6.4.2 **Declarant.** The Declarant has the right to enter the Condominiums and the Common Property (a) for repair of any Improvements, (b) to comply with requirements for the recordation of the Map or the grading or construction of the Properties, and (c) to comply with requirements of applicable governmental agencies. Declarant shall provide the applicable Owner reasonable notice before such entry, except for emergency situations, which shall not require notice. Any damage to the Properties caused by entry under this Subsection shall be repaired by the Declarant. Unless otherwise specified in the initial grant deed of the Unit from Declarant, this right of entry shall automatically expire eleven (11) years from the last Close of Escrow for the sale of a Condominium in the Properties.

6.4.3 **Owners.** Each Owner shall permit other Owners, and their representatives, to enter his Condominium to perform installations, alterations or repairs to the mechanical or electrical services to a Unit if (a) requests for entry are made in advance; (b) entry is made at a time reasonably convenient to the Owner whose Condominium is to be entered; and (c) the entered Condominium is left in substantially the same condition as existed immediately preceding such entry. Any damage to the Condominium caused by entry under this Subsection shall be repaired by the entering Owner.

ARTICLE VII ASSOCIATION MAINTENANCE FUNDS AND ASSESSMENTS

7.1 **PERSONAL OBLIGATION TO PAY ASSESSMENTS.** Each Owner shall pay to the Association all Assessments established and collected pursuant to this Declaration. The Association shall not levy or collect any Assessment that exceeds the amount necessary for the purpose for which it is levied. All Assessments, together with late payment penalties, interest, costs, and reasonable attorneys' fees for the collection thereof, are a charge and a continuing lien on the Condominium against which such Assessment is made. Each Assessment, together with late payment penalties, interest, costs and reasonable attorneys' fees, is also the personal obligation of the Person who was the Owner of the Condominium when the Assessment accrued. The personal obligation for delinquent Assessments may not pass to any new Owner ("**Purchaser**") unless expressly assumed by the Purchaser, or unless the Purchaser has actual or constructive knowledge of such delinquent Assessments, whether by virtue of the Recordation of the Notice of Delinquent Assessment or receipt from the Association of a certificate pursuant to Section 1368(a)(4) of the California Civil Code.

7.2 **ASSOCIATION MAINTENANCE FUNDS.** The Association shall establish no fewer than two (2) separate Association Maintenance Fund accounts into which shall be deposited all money paid to the Association and from which disbursements shall be made, as provided in this Declaration. The Association Maintenance Funds may be established as trust accounts at a banking or savings institution and shall include: (a) an Operating Fund for current Common Expenses, (b) an adequate Reserve Fund for the portion of Common Expenses allocated to (i) reserves for Improvements which the Board does not expect to perform on an annual or more frequent basis, and (ii) payment of deductible amounts for insurance policies which the Association obtains, and (c) any other funds which the Association may establish.

7.3 **PURPOSE OF ASSESSMENTS.** The Assessments shall be used exclusively to (a) promote the Owners' welfare, (b) operate, improve and maintain the Common Property, and (c) discharge any other Association obligations under this Declaration. All amounts deposited into the Association Maintenance Funds must be used solely for the common benefit of all Owners for purposes authorized by this Declaration. Disbursements from the Operating Fund generally shall be made by the Association to discharge Association responsibilities which cannot be discharged by disbursements from the Reserve Fund. However, if the Board determines that the Operating Fund contains excess funds, the Board may transfer the excess funds to any other Association Maintenance Fund. Disbursements from the Reserve Fund shall be made by the Association only for the purposes specified in this Article and in Section 1365.5(c) of the California Civil Code.

7.4 **WAIVER OF USE.** No Owner may exempt himself from personal liability for Assessments duly levied by the Association, nor release such Owner's Condominium from the liens and charges thereof, by waiving use and enjoyment of the Common Property or by abandoning such Owner's Condominium.

7.5 **LIMITS ON ANNUAL ASSESSMENT INCREASES.**

7.5.1 **Maximum Authorized Annual Assessment For Initial Year of Operations.** During the Fiscal Year in which Annual Assessments commence, the Board may levy an Annual Assessment per Condominium in an amount which exceeds one hundred twenty percent (120%) of the amount of Annual Assessments disclosed for the Properties in the most current Budget filed with and approved by the DRE only if the Board first obtains the approval of Owners casting a majority of votes at a meeting or election of the Association in which more than fifty percent (50%) of the Condominiums are represented ("**Increase Election**"). This Section does not limit Annual Assessment increases necessary for addressing an "Emergency Situation" as defined in Section 7.5.5.

7.5.2 **Maximum Authorized Annual Assessment For Subsequent Fiscal Years.** During the Fiscal Years following the Fiscal Year in which Annual Assessments commence, the Board may levy Annual Assessments which exceed the Annual Assessments for the immediately preceding Fiscal Year only as follows:

(a) If the increase in Annual Assessments is less than or equal to twenty percent (20%) of the Annual Assessments for the immediately preceding Fiscal Year, then the Board must either (i) have distributed the Budget for the current Fiscal Year in accordance with Section 1365(a) of the California Civil Code, or (ii) obtain the approval of Owners casting a majority of votes in an Increase Election; or

(b) If the increase in Annual Assessments is greater than twenty percent (20%) of the Annual Assessments for the immediately preceding Fiscal Year, then the Board must obtain the approval of Owners casting a majority of votes in an Increase Election.

This Section does not limit Annual Assessment increases necessary for addressing an "Emergency Situation" as defined in Section 7.5.5.

7.5.3 **Supplemental Annual Assessments.** If the Board determines that the Association's essential functions may be properly funded by an Annual Assessment in an amount less than the maximum authorized Annual Assessment described above, it may levy such lesser Annual Assessment. If the Board determines that the estimate of total charges for the current year is or will become inadequate to meet all Common Expenses, it shall immediately determine the approximate amount of the inadequacy. Subject to the limits described in Sections 7.5.1, 7.5.2 and 7.5.5, the Board may levy a supplemental Annual Assessment reflecting a revision of the total charges to be assessed against each Condominium.

7.5.4 **Automatic Assessment Increases.** Despite any other provisions of this Section 7.5, on Declarant's annexation of Annexable Territory pursuant to Article XVI, the Annual Assessment shall be automatically increased by the additional amount, if any, necessary

to maintain the Common Property identified in the Notice of Addition as a part of the Phase that includes the Annexable Territory.

7.5.5 Emergency Situations. For purposes of Sections 7.5.1, 7.5.2 and 7.7, an "Emergency Situation" is any one of the following:

- (a) An extraordinary expense required by an order of a court;
- (b) An extraordinary expense necessary to maintain the portion of the Properties for which the Association is responsible where a threat to personal safety on the Properties is discovered; and
- (c) An extraordinary expense necessary to maintain the portion of the Properties for which the Association is responsible that could not have been reasonably foreseen by the Board when preparing the Budget. Before imposing or collecting an Assessment pursuant to this Subparagraph (c), the Board shall adopt a resolution containing written findings regarding the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The resolution shall be distributed to the Owners with the notice of the assessment.

7.6 ANNUAL ASSESSMENTS.

7.6.1 Commencement of Annual Assessments. Except as stated in 7.6.4 below, Annual Assessments shall commence as to all Condominiums in a Phase on the first day of the first calendar month following the first Close of Escrow of a Condominium in that Phase. Annual Assessments for fractions of a month shall be prorated. Declarant shall pay its full pro rata share of the Annual Assessments on all unsold Condominiums for which Annual Assessments have commenced. The Board shall fix the amount of the Annual Assessment against each Condominium at least thirty (30) days in advance of each Annual Assessment period. However, unless otherwise established by the Board, the initial Annual Assessments shall be assessed in accordance with the most recent Budget on file with and approved by the DRE. Written notice of any change in the amount of any Annual Assessment, Capital Improvement Assessment or Reconstruction Assessment shall be sent via first-class mail to every Owner subject thereto not less than thirty (30) nor more than ninety (90) days before the increased Assessment becomes due.

7.6.2 Apportionment of Annual Assessments Among Owners. The Board may determine that funds in the Operating Fund at the end of the Fiscal Year be retained and used to reduce the following Fiscal Year's Annual Assessments. On dissolution of the Association incident to the abandonment or termination of the Properties as a condominium project, any amounts remaining in any of the Association Maintenance Funds shall be distributed to or for the benefit of the Owners in the same proportions as such money was collected from the Owners.

7.6.3 Payment of Annual Assessments. Each Owner shall pay Annual Assessments in installments at such frequency and in such amounts and by such methods as are established by the Board. If the Association incurs additional expenses because of a payment method selected by an Owner, the Association shall charge that expense to the Owner. Each

installment of Annual Assessments may be paid to the Association in one (1) check or in separate checks as payments attributable to specified Association Maintenance Funds. If any payment of an Annual Assessment installment (a) is less than the amount assessed and (b) does not specify the Association Maintenance Fund or Funds into which it should be deposited, then the amount received shall be credited in order of priority first to the Operating Fund, until that portion of the Annual Assessment has been satisfied, and second to the Reserve Fund.

7.6.4 Models. For any Phase which includes a Model, Annual Assessments shall begin on all Condominiums in that Phase, including each Model, on the first day of the first calendar month after the first Close of Escrow in that Phase on a Condominium other than a Model.

7.7 CAPITAL IMPROVEMENT ASSESSMENTS. The Board may levy, in any Fiscal Year, a Capital Improvement Assessment or Reconstruction Assessment to defray, in whole or in part, the cost of any construction, repair or replacement of a capital Improvement or other such addition to the Common Property. No Capital Improvement Assessments in any Fiscal Year which, if added to the Capital Improvement Assessments already levied during such Fiscal Year, exceed five percent (5%) of the Association's Budgeted gross expenses for such Fiscal Year, may be levied without the vote or written consent of Owners casting a majority of votes at an Increase Election. The Board may levy, in any Fiscal Year, a Capital Improvement Assessment applicable to that Fiscal Year which exceeds five percent (5%) of the Association's Budgeted gross expenses for such Fiscal Year if such increase is necessary for addressing an Emergency Situation as defined in Section 7.5.5.

7.8 SPECIAL ASSESSMENTS: The Association may specially assess its Members in accordance with the requirements of Civil Code Section 1367.1

ARTICLE VIII INSURANCE

8.1 DUTY TO OBTAIN INSURANCE; TYPES. The Association shall obtain and keep in effect at all times the following insurance coverages:

8.1.1 Public Liability. Adequate public liability insurance (including coverage for medical payments), with limits acceptable to Fannie Mae and as required by Section 1365.9 of the California Civil Code, insuring against liability for bodily injury, death and property damage arising from the activities of the Association and the Owners, with respect to the Common Property.

8.1.2 Fire and Casualty Insurance. Fire and casualty insurance with extended coverage, without deduction for depreciation, in an amount as near as possible to the full replacement value of the Common Property.

8.1.3 Fidelity Insurance. Fidelity insurance coverage for any Person handling funds of the Association, whether or not such persons are compensated for their services, in an amount not less than the estimated maximum of funds, including reserve funds, in the custody of the Person during the term of the insurance. The aggregate amount of the fidelity insurance

coverage may not be less than the sum equal to one-fourth (1/4) of the Annual Assessments on all Condominiums in the Properties, plus reserve funds.

8.1.4 Insurance Required by Fannie Mae, Ginnie Mae and Freddie Mac. Casualty, flood, liability and fidelity insurance meeting the insurance requirements for condominium projects established by Fannie Mae, Ginnie Mae and Freddie Mac, so long as any of these entities is a Mortgagee or Owner of a Condominium in the Properties, except to the extent such coverage is not reasonably available or has been waived in writing by the entity requiring the insurance coverage.

8.1.5 Other Insurance. Such other insurance insuring other risks customarily insured by associations managing condominium projects similar in construction, location and use. Such additional insurance may include general liability insurance and director's and officer's errors and omissions insurance in the minimum amounts established in Section 1365.9 of the California Civil Code.

8.1.6 Beneficiaries. The Association's insurance shall be kept for the benefit of the Association, the Owners, and the Mortgagees, as their interests may appear as named insured, subject, however, to loss payment requirements established in this Declaration.

8.2 WAIVER OF CLAIM AGAINST ASSOCIATION. All policies of insurance kept by or for the benefit of the Association and the Owners must provide that the Association and the Owners waive and release all claims against one another, the Board and Declarant, to the extent of the insurance proceeds available, whether or not the insurable damage or injury is caused by the negligence or breach of any agreement by any of the Persons.

8.3 RIGHT AND DUTY OF OWNERS TO INSURE. Each Owner is responsible for insuring his personal property and all other property and Improvements in his Condominium for which the Association has not purchased insurance in accordance with Section 8.1. Nothing in this Declaration precludes any Owner from carrying any public liability insurance as he considers desirable; however, Owners' policies may not adversely affect or diminish any coverage under any of the Association's insurance policies. Duplicate copies of Owners' insurance policies shall be deposited with the Association on request. If any loss intended to be covered by the Association's insurance occurs and the proceeds payable are reduced due to insurance carried by any Owner, such Owner shall assign the proceeds of the Owner's insurance to the Association, to the extent of such reduction, for application to the same purposes as the reduced proceeds are to be applied.

8.4 NOTICE OF EXPIRATION REQUIREMENTS. If available, each of the Association's insurance policies must contain a provision that the policy may not be canceled, terminated, materially modified or allowed to expire by its terms, without at least ten (10) days' prior written notice to the Board and Declarant, and to each Owner and Mortgagee, insurer and guarantor of a first Mortgage who has filed a written request with the carrier for such notice and every other Person in interest who requests such notice of the insurer. In addition, fidelity insurance shall provide that it may not be canceled or substantially modified without at least ten (10) days' prior written notice to any insurance trustee named pursuant to Section 8.6 and to each Fannie Mae servicer who has filed a written request with the carrier for such notice.

8.5 **INSURANCE PREMIUMS.** Premiums for insurance policies obtained by the Association are Common Expenses.

8.6 **TRUSTEE FOR POLICIES.** The Association is trustee of the interests of all named insureds under the Association's insurance policies. Unless an insurance policy provides for a different procedure for filing claims, all claims must be sent to the insurance carrier or agent by certified mail and be clearly identified as a claim. The Association shall keep a record of all claims made. All insurance proceeds under any Association insurance policies must be paid to the Board as trustees. The Board has the authority to negotiate loss settlements with insurance carriers, with participation, to the extent the Board desires, of first Mortgagees who have filed written requests within ten (10) days of receipt of notice of any damage or destruction as provided in Section 9.4. The Board is authorized to make a settlement with any insurer for less than full coverage for any damage, so long as the Board acts in accordance with the standard of care established in this Declaration. Any two (2) officers of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures are binding on all the named insureds. A representative chosen by the Board may be named as an insured, including a trustee with whom the Association may enter into an insurance trust agreement and any successor to such trustee, who shall have exclusive authority to negotiate losses under any insurance policy and to perform such other functions necessary to accomplish this purpose.

8.7 **ACTIONS AS TRUSTEE.** Except as otherwise specifically provided in this Declaration, the Board has the exclusive right to bind the Association and the Owners to all matters affecting insurance carried by the Association, the settlement of a loss claim and the surrender, cancellation, and modification of all such insurance. Duplicate originals or certificates of all policies of fire and casualty insurance kept by the Association and of all renewals thereof, together with proof of payment of premiums, shall be delivered by the Association to all Owners and Mortgagees who requested them in writing.

8.8 **ANNUAL INSURANCE REVIEW.** The Board shall review the Association's insurance policies at least annually to determine the amount of the casualty and fire insurance referred to in Section 8.1. If economically feasible, the Board shall obtain a current appraisal of the full replacement value of the Improvements on the Common Property and the Residences, without deduction for depreciation, from a qualified independent insurance appraiser, before each such annual review.

8.9 **REQUIRED WAIVER.** All of the Association's insurance policies insuring against physical damage must provide, if reasonably possible, for waiver of:

8.9.1 Subrogation of claims against the Owners and tenants of the Owners;

8.9.2 Any defense based on coinsurance;

8.9.3 Any right of setoff, counterclaim, apportionment, proration or contribution due to other insurance not carried by the Association;

8.9.4 Any invalidity, other adverse effect or defense due to any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or

arising from any act or omission of any named insured or the respective agents, contractors and employees of any insured;

8.9.5 Any right of the insurer to repair, rebuild or replace, and, if the Improvement is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the Improvements insured;

8.9.6 Notice of the assignment of any Owner of his interest in the insurance by virtue of a conveyance of any Condominium;

8.9.7 Any right to require any assignment of any Mortgage to the insurer;

8.9.8 Any denial of an Owner's claim because of negligent acts by the Association or other Owners; and

8.9.9 Prejudice of the insurance by any acts or omissions of Owners that are not under the Association's control.

ARTICLE IX DESTRUCTION OF IMPROVEMENTS

9.1 **RESTORATION OF THE PROPERTIES.** Except as otherwise authorized by the Owners, if any portion of the Properties which the Association is responsible for maintaining is destroyed, the Association shall restore the same to its former condition as promptly as practical. The Association shall use the proceeds of its insurance for reconstruction or repair of the Properties unless otherwise authorized in this Declaration or by the Owners. The Board shall commence such reconstruction promptly. The Properties shall be reconstructed or rebuilt substantially in accordance with the Condominium Plan and the original construction plans if they are available, unless changes recommended by the Design Review Committee have been approved by at least sixty-seven percent (67%) of the Owners. If the insurance proceeds amount to at least ninety-five percent (95%) of the estimated cost of restoration and repair, the Board shall levy a Reconstruction Assessment to provide the additional funds necessary for such reconstruction. If the insurance proceeds amount to less than ninety-five percent (95%) of the estimated cost of restoration and repair, the Board may levy a Reconstruction Assessment and proceed with the restoration and repair only if both of the following conditions ("**Conditions to Reconstruction**") have been satisfied: (a) the levy of a Reconstruction Assessment to pay the costs of restoration and repair of the Properties is approved by the Owners; and (b) within one (1) year after the date on which the destruction occurred, the Board Records a certificate of the resolution authorizing the restoration and repair ("**Reconstruction Certificate**"). If either of the Conditions to Reconstruction does not occur following a destruction for which insurance proceeds available for restoration and repair are less than ninety-five percent (95%) of the estimated cost of restoration and repair, then the Board shall proceed as provided in Section 9.2.

9.2 **SALE OF PROPERTIES AND RIGHT TO PARTITION.** No Owner shall have the right to partition of his interest in the Condominium and there shall be no judicial partition of the Properties, or any part thereof, except as provided in Section 1359(b) of the California Civil Code. For purposes of subsection 4 of Section 1359(b), partition may occur only if all of the following conditions are satisfied: (a) either or both of the Conditions to

Reconstruction described in Section 9.1 have failed to occur; (b) within six (6) months after the date on which destruction occurred, restoration or repair has not actually commenced; and (c) the Owners of at least sixty-seven percent (67%) of the Condominiums in the Properties approve the partition. In such event, the Association shall prepare, execute and Record, as promptly as practical, the certificate stating that a majority of the Board may properly exercise an irrevocable power of attorney to sell the Properties for the benefit of the Owners and execute such other documents and instruments as may be necessary for the Association to consummate the sale of the Properties at the highest and best price obtainable, either in its damaged condition, or after damaged structures have been razed. Such certificate shall be conclusive evidence of such authority for any Person relying thereon in good faith. The net proceeds of such sale and the proceeds of any insurance carried by the Association shall be divided proportionately among the Owners, such proportions to be determined in accordance with the relative appraised fair market valuation of the Condominiums as of a date immediately before such destruction (or condemnation), expressed as percentages, and computed by dividing such appraised valuation of each Condominium by the total of such appraised valuations of all Condominiums in the Properties. The Board is authorized to hire one (1) or more appraisers for such purpose and the cost of such appraisals shall be a Common Expense of the Association. However, the balance then due on any valid Mortgage of Record shall be first paid in order of priority before the distribution of any proceeds to an Owner whose Condominium is so encumbered. Nothing in this Declaration prevents partition of a cotenancy in any Condominium. Except as provided above, each Owner and the successors of each Owner, whether by deed, gift, devise, or by operation of law, for their own benefit and for the Condominiums and for the benefit of all other Owners, specifically waive and abandon all rights, interests and causes of action for a judicial partition of the tenancy in common ownership of the Properties and do further covenant that no action for such judicial partition shall be instituted, prosecuted or reduced to judgment.

9.3 INTERIOR DAMAGE. With the exception of any casualty or damage covered by insurance kept by the Association, restoration and repair of any damage to the interior of any individual Residence, including all fixtures, cabinets and improvements therein, together with restoration and repair of all interior paint, wall coverings and floor coverings, must be made by and at the individual expense of the Owner of the Residence so damaged. If a determination to rebuild the Properties after partial or total destruction is made, as provided in this Article, such interior repair and restoration shall be completed as promptly as practical and in a lawful and workmanlike manner, in accordance with plans approved by the Design Review Committee as provided in this Declaration.

9.4 NOTICE TO OWNERS AND LISTED MORTGAGEES. The Board, immediately on having knowledge of any damage or destruction affecting a Unit or a material portion of the Common Property owned in fee simple by the Association, shall promptly notify all Owners and Mortgagees, insurers and guarantors of first Mortgages on Condominiums in the Properties who have filed a written request for such notice with the Board.

ARTICLE X EMINENT DOMAIN

The term "taking" as used in this Article means inverse condemnation, condemnation by exercise of the power of eminent domain or a sale under the threat of the exercise of the power of

eminent domain. The Board shall represent the Owners in any proceedings, negotiations, settlements, or agreements regarding takings. All takings proceeds shall be payable to the Association for the benefit of the Owners and their Mortgagees, and shall be distributed to such Owners and Mortgagees as provided in this Article.

10.1 PROPERTY CONDEMNATION. If (a) there is a taking of an interest in all or part of the Properties such that the ownership, operation and use of the Properties in accordance with this Declaration is substantially and adversely affected, and (b) within one hundred twenty (120) days after the effective date of the taking the Owners of Units (i) not taken, or (ii) only partially taken but capable of being restored to at least ninety-five percent (95%) of their floor area and to substantially their condition before the taking (collectively, the "***Remaining Units***") do not by affirmative vote of at least one-third (1/3) of their voting power approve the continuation of the Properties and the repair, restoration and replacement to the extent feasible of the Association Property and the Remaining Units, then the Board shall proceed with the sale of that portion of the Properties which was not taken and distribute the net proceeds of such sale after deducting any incidental fees and expenses, in the same proportion and manner as provided in Section 9.2.

10.2 CONDEMNATION OF COMMON PROPERTY. If there is a taking of (a) the Common Property owned in fee simple by the Association or any interest therein (other than the taking of an undivided interest therein taken as a result of the taking of a Condominium), or (b) the Association Property (other than Exclusive Use Area) or any interest therein, then the award in condemnation shall be paid to the Association and shall be deposited in the Operating Fund.

10.3 CONDEMNATION OF EXCLUSIVE USE AREA. If there is a taking of all or any portion of an Exclusive Use Area, the award in condemnation shall be paid to the Owner of the Condominium to which the taken Exclusive Use Area was appurtenant; however, such award shall first be applied to the balance then due on any Mortgages encumbering such Owner's Condominium, in order of priority.

10.4 CONDEMNATION OF CONDOMINIUMS. If there is a taking of a Condominium, the award in condemnation shall be paid to the Owner of the Condominium; however, such award shall first be applied to the balance then due on any Mortgages encumbering such Owner's Condominium, in order of priority.

10.5 CONDEMNATION OF PORTIONS OF UNITS.

10.5.1 Minor Takings Within Limits. If (a) there is a taking of a portion of one (1) or more Units that does not substantially and adversely affect the Units' ability to serve as residential dwellings, and (b) restoration of such Units can be accomplished at a cost less than or equal to the sum of (i) the amount of the condemnation awards for such takings plus (ii) any amounts the Owners of the taken Units wish to contribute to restoration plus (iii) an amount less than or equal to five percent (5%) of the Budgeted gross expenses of the Association for that Fiscal Year (collectively, the "***Allowable Cost***"), then the Board shall contract for such restoration and levy a Reconstruction Assessment in an amount equal to the Allowable Cost minus the amount of the condemnation awards and Owners' contributions, and the condemnation

awards, Owners' contributions and Reconstruction Assessment shall be applied to such restoration. If the restoration is accomplished at a cost less than the amount of the condemnation awards, then that portion of the condemnation awards which exceeds the restoration costs shall be paid to the Owners of the partially taken Units in proportion to the decreases in the fair market values of their Condominiums; however, such awards shall first be applied to the balance then due on any Mortgages encumbering such Owners' Condominiums, in order of priority.

10.5.2 Minor Takings Exceeding Limits. If (a) there is a taking of a portion of one (1) or more Units that does not substantially and adversely affect the Units' ability to serve as residential dwellings, and (b) restoration cannot be accomplished at a cost less than or equal to the Allowable Cost, then the Board shall call a Special Meeting of the Owners. If more than fifty percent (50%) of the voting power of the Association is represented at such Special Meeting, either in person or by proxy, and a majority of the votes cast at such Special Meeting are in favor of levying a Reconstruction Assessment in an amount equal to the restoration costs minus the sum of the amount of the condemnation awards and the amounts the Owners of the taken Units wish to contribute to such restoration, then the Board shall contract for such restoration and levy a Reconstruction Assessment, and the condemnation awards, Owners' contributions and Reconstruction Assessment shall be applied to such restoration.

10.5.3 Major Takings. If neither Section 10.5.1 nor Section 10.5.2 applies to the taking of a Unit, then the award in condemnation shall be paid to the Owners of the taken Units; however, such award shall first be applied to the balance then due on any Mortgages encumbering such Owner's Condominium, in order of priority. The Board shall have the remaining portions of the taken Units razed. The remaining portions of the taken Units and appurtenant Exclusive Use Areas shall become part of the Association Property, and the Owners of such taken Units in any Phase, by acceptance of the award allotted to them in taking proceedings, relinquish (a) to the other Owners in such Phase, on the basis of their relative ownership of the Common Area therein, such Owners' undivided interest in the Common Area, and (b) to the Association, the remaining portions of the Units and the appurtenant Exclusive Use Areas. Each Owner relinquishing the Owner's interest in the Common Area pursuant to this Section shall, at the Board's request and at the Association's expense, execute and acknowledge such deeds and other instruments which the Board considers necessary or convenient to evidence such relinquishment. Each Owner of a taken Unit or Residence is not liable for Assessments under this Declaration which accrue on or after the date such Owner accepts the Owner's condemnation award.

10.6 PORTIONS OF AWARDS IN CONDEMNATION NOT COMPENSATORY FOR VALUE OF REAL PROPERTY. Those portions of awards in condemnation which do not directly compensate Owners for takings of real property (e.g., awards for takings of personal property, relocation expenses, moving expenses, or other allowances of a similar nature intended to facilitate relocation) shall be paid to the Owners whose personal property is taken, or whose relocation is intended to be facilitated.

10.7 NOTICE TO OWNERS AND MORTGAGEES. The Board, on learning of any taking affecting a Unit or a material portion of the Properties, or any threat thereof, shall promptly notify all Owners and those Mortgagees, insurers and guarantors of Mortgages on

Condominiums in the Properties who have filed a written request for such notice with the Association.

ARTICLE XI RIGHTS OF MORTGAGEES

11.1 GENERAL PROTECTIONS. No amendment or violation of this Declaration defeats or renders invalid the rights of the Mortgagee under any Mortgage encumbering one (1) or more Condominiums made in good faith and for value, provided that after the foreclosure of any such Mortgage the foreclosed Condominium(s) will remain subject to this Declaration. For purposes of this Declaration, "first Mortgage" means a Mortgage with first priority over other Mortgages or Deeds of Trust on a Condominium, and "first Mortgagee" means the Mortgagee of a first Mortgage. For purposes of any provisions of the Restrictions which require the vote or approval of a specified percentage of first Mortgagees, such vote or approval is determined based on one (1) vote for each Condominium encumbered by each such first Mortgage.

11.2 ADDITIONAL RIGHTS. To induce the VA, FHA, Freddie Mac, Ginnie Mae and Fannie Mae to participate in the financing of the sale of Condominiums, the following provisions are added hereto (and to the extent these added provisions conflict with any other provisions of the Restrictions, these added provisions control):

11.2.1 Notices. Each Mortgagee, insurer and guarantor of a Mortgage encumbering one (1) or more Condominiums, upon filing a written request for notification with the Board, is entitled to written notice from the Association of: (a) any condemnation or casualty loss which affects either a material portion of the Properties or the Condominium(s) securing the Mortgage; (b) any delinquency of sixty (60) days or more in the performance of any obligation under the Restrictions, including the payment of Assessments or charges owed by the Owner(s) of the Condominium(s) securing the Mortgage, which notice each Owner consents to and authorizes; (c) a lapse, cancellation, or material modification of any insurance policy kept by the Association; and (d) any proposed action of the Association which requires consent by a specified percentage of first Mortgagees who have submitted a written request to the Association for notice of such proposed action.

11.2.2 Right of First Refusal. Each Owner who obtains title to a Condominium (including a first Mortgagee who obtains title to a Condominium pursuant to (a) the remedies provided in such Mortgage, (b) foreclosure of the Mortgage, or (c) deed or assignment in lieu of foreclosure), is exempt from any "right of first refusal" created or purported to be created by the Restrictions.

11.2.3 Unpaid Assessments. If the first Mortgagee of a Condominium who obtains fee title to the Condominium by foreclosure or by any other remedy provided under the Mortgage, then the Mortgagee shall take title to the Condominium free of any claims for unpaid Assessments or charges against the Condominium to the extent the Assessments or charges occurred before the date on which the Mortgagee acquired title to the Condominium.

11.2.4 Approvals. Unless at least sixty-seven percent (67%) of the first Mortgagees or sixty-seven percent (67%) of the Owners have given their prior written approval, the Association may not:

- (a) by act or omission seek to abandon or terminate the Properties; or
- (b) change the method of determining the obligations, Assessments, dues or other charges which may be levied against any Owner; or
- (c) partition or subdivide any Condominium; or
- (d) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Property. (The granting of easements for public utilities or for other purposes consistent with the intended use of the Common Property under this Declaration, the granting of exclusive easements to Owners over the Common Property to conform the boundaries of the Common Property to the as-built location of authorized Improvements and any grant made in connection with any lawful lot line adjustment are not transfers within the meaning of this clause); or
- (e) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design, the exterior appearance or the maintenance of the Units or the Common Property; or
- (f) fail to keep Fire and Extended Coverage insurance on insurable Common Property as provided in Article VIII; or
- (g) use hazard insurance proceeds for losses to any Condominium property (i.e., Improvements to the Units or Common Property) for other than the repair, replacement or reconstruction of such Condominium property, subject to the provisions of Article IX; or
- (h) change the pro rata interest or obligations of any Condominium to levy Assessments or charges, allocate distributions of hazard insurance proceeds or condemnation awards or determine the pro rata share of ownership of each Condominium in the Common Area.

11.2.5 Association Records. All Mortgagees, insurers and guarantors of first Mortgages, on written request to the Association shall have the right to:

- (a) examine current copies of the Association's books, records and financial statements and the Restrictions during normal business hours;
- (b) require the Association to submit an annual audited financial statement for the preceding Fiscal Year if one is available, or have one prepared at the expense of the requesting entity if such statement is not otherwise prepared by the Association;
- (c) receive written notice of all meetings of Owners; and

(d) designate in writing a representative who shall be authorized to attend all meetings of Owners.

11.2.6 Material Changes. All Mortgagees, insurers and guarantors of first Mortgages, on written request, shall be given thirty (30) days' written notice before the effective date of (a) any proposed material amendment to the Restrictions or Condominium Plans; (b) any termination of an agreement for professional management of the Properties following any decision of the Owners to assume self-management of the Properties; and (c) any proposed termination of the Properties as a condominium project.

11.2.7 Reserves. The Reserve Fund described in Article VII must be funded by regular scheduled monthly, quarterly, semiannual or annual payments rather than by Special Assessments.

11.2.8 Fidelity Insurance. The Board shall secure fidelity insurance for any person handling Association funds, including, but not limited to, employees of the professional Manager.

11.2.9 Contracts. The Board may enter into such contracts or agreements on behalf of the Association as are required to satisfy the guidelines of VA, FHA, Freddie Mac, Fannie Mae or Ginnie Mae or any similar entity, so as to allow for the purchase, guaranty or insurance, as the case may be, by such entities of first Mortgages encumbering Condominiums. Each Owner hereby agrees that it will benefit the Association and the Owners, as a class of potential Mortgage borrowers and potential sellers of their Condominiums, if such agencies approve the Properties as a qualifying subdivision under their respective policies, rules and regulations. Each Owner authorizes his Mortgagees to furnish information to the Board concerning the status of any Mortgage encumbering a Condominium.

11.2.10 Professional Management. When professional management has been required by a Mortgagee, insurer or guarantor of a first Mortgage, any decision to establish self-management by the Association shall require the approval of at least sixty-seven percent (67%) of the voting power of the Association and the Mortgagees of at least fifty-one percent (51%) of the first Mortgages of Condominiums in the Properties.

11.2.11 Intended Improvements. All intended Improvements in any Phase must be substantially completed or the completion of such Improvements must be secured by a bond or other arrangement acceptable to DRE before the first Close of Escrow in such Phase. All such Improvements shall be substantially consistent with the Improvements in Phase 1 in structure type and quality of construction. The requirements of the immediately preceding sentence are for the benefit only of and may be enforced only by Fannie Mae.

11.2.12 Payment of Taxes. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Property and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for Common Property, and the Association shall immediately reimburse first Mortgagees making such payments.

ARTICLE XII ENFORCEMENT

12.1 ENFORCEMENT OF RESTRICTIONS. All violations of the Restrictions, other than those described in Sections 12.2 through 12.4, or regulated by Civil Code Section 1375, shall be resolved as follows.

12.1.1 Violations Identified by the Association. If the Board or Design Review Committee determines that there is a violation of the Restrictions, other than nonpayment of any Assessment, then the Board shall give written notice to the responsible Owner identifying (a) the condition or violation complained of, and (b) the length of time the Owner has to remedy the violation including, if appropriate, the length of time the Owner has to submit plans to the Design Review Committee and the length of time the Owner has to complete the work proposed in the plans submitted to the Design Review Committee. If an Owner does not perform such corrective action within the allotted time, the Board, after Notice and Hearing, may remedy such condition or violation complained of, and the cost thereof shall be charged to the Owner as a Special Assessment. If the violation involves nonpayment of any Assessment, then the Board may collect such delinquent Assessment pursuant to the procedures established in Section 12.2.

12.1.2 Violations Identified by an Owner. If an Owner alleges that another Person is violating the Restrictions (other than nonpayment of any Assessment), the complaining Owner must first submit the matter to the Board for Notice and Hearing before the complaining Owner may resort to alternative dispute resolution, as required by Section 1369.510, and following, of the California Civil Code, or litigation for relief.

12.1.3 Legal Proceedings. Failure to comply with any of the terms of the Restrictions by any Person is grounds for relief which may include an action to recover damages, injunctive relief, foreclosure of any lien, or any combination thereof; however, the procedures established in Sections 1363.810 and 1369.510, and following, of the California Civil Code and in Sections 12.1.1, 12.1.2 and 12.4 must first be followed, if they apply.

12.1.4 Additional Remedies. After Notice and Hearing, the Board may impose any of the remedies provided for in the Bylaws. The Board may adopt a schedule of reasonable fines or penalties which, in its reasonable discretion, the Board may assess against a Person for the failure of such Person to comply with the Restrictions. Such fines or penalties may only be assessed after Notice and Hearing. After Notice and Hearing, the Board may direct the officers of the Association to Record a notice of noncompliance (if allowed by law) against the Condominium owned by any Owner who has violated any provision of this Declaration. The notice shall include a legal description of the Condominium and shall specify the provision of this Declaration that was violated, the violation committed, and the steps required to remedy the noncompliance. Once the noncompliance is remedied or the noncomplying Owner has taken such other steps as reasonably required by the Board, the Board shall direct the officers of the Association to Record a notice that the noncompliance has been remedied.

12.1.5 No Waiver. Failure to enforce any provision of this Declaration does not waive the right to enforce that provision, or any other provision of this Declaration.

12.1.6 **Right to Enforce.** The Board, the Association, Declarant and any Owner may enforce the Restrictions as described in this Article, subject to Sections 1363.810 and 1369.510, and following, of the California Civil Code. Each Owner has a right of action against the Association for the Association's failure to comply with the Restrictions. Each remedy provided for in this Declaration is cumulative and not exclusive or exhaustive.

12.1.7 **Limit on Expenditures.** The Association may not incur litigation or arbitration expenses, including attorneys' fees, or borrow money to fund litigation or any binding dispute resolution, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings, unless the Association first obtains the consent of the Owners (excluding the voting power of any Owner who would be a defendant in such proceedings) and, if applicable, complies with the requirements of Sections 1363.810 and 1369.510, and following, of the California Civil Code. Such approval is not necessary if the legal proceedings or arbitration are initiated (a) to enforce the use restrictions contained in Article II, (b) to enforce the architectural and landscaping control provisions contained in Article V, (c) to collect any unpaid Assessments levied pursuant to the Restrictions, (d) for a claim the total value of which is less than Five Hundred Thousand Dollars (\$500,000), or (e) as a cross-complaint in litigation to which the Association is already a party. If the Association decides to use or transfer reserve funds or borrow funds to pay for any litigation or arbitration, the Association must notify the Owners of the decision by mail. Such notice shall provide an explanation of why the litigation or arbitration is being initiated or defended, why operating funds cannot be used, how and when the reserve funds will be replaced or the loan will be repaid, and a proposed budget for the litigation or arbitration. The notice must state that the Owners have a right to review an accounting for the litigation or arbitration which will be available at the Association's office. The accounting shall be updated monthly.

12.2 NONPAYMENT OF ASSESSMENTS.

12.2.1 **Delinquency.** Assessments are delinquent if not paid within fifteen (15) days after the due date established by the Association. Assessments not paid within thirty (30) days after the due date, plus all reasonable costs of collection (including attorneys' fees) and late charges bear interest at the maximum rate permitted by law commencing thirty (30) days after the due date until paid. The Association may also require the delinquent Owner to pay a late charge in accordance with California Civil Code Section 1366(d)(2). The Association need not accept any tender of a partial payment of an Assessment and all costs and attorneys' fees attributable thereto. Acceptance of any such tender does not waive the Association's right to demand and receive full payment.

12.2.2 Creation and Release of Lien.

(a) **Priority of Lien.** All liens levied in accordance with this Declaration shall be prior and superior to (i) any declaration of homestead Recorded after the Recordation of this Declaration, and (ii) all other liens, except (1) all taxes, bonds, Assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any first Mortgage of Record (meaning any Recorded Mortgage with first priority or seniority over other Mortgages) made in good faith and for value and Recorded before the date on which the "*Notice*

of Delinquent Assessment" (described in this Section) against the assessed Condominium was Recorded.

(b) ***Prerequisite to Creating Lien.*** Before the Association may place a lien on an Owner's Condominium to collect a past due Assessment, the Association shall send written notice ("***Notice of Intent to Lien***"), at least thirty (30) days prior to recording of such lien, to the Owner by certified mail which contains the following information: (i) the fee and penalty procedure of the Association, (ii) an itemized statement of the charges owed by the Owner, including the principal owed, any late charges, any interest, the method of calculation, and any attorneys' fees, (iii) the collection practices used by the Association, (iv) a statement that the Association may recover the reasonable costs of collecting past due Assessments, (v) a statement that the Owner has the right to inspect the Association's records, pursuant to California Corporations Code Section 8333, (vi) the following statement in 14-point boldface type or all capital letters: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION," (vii) a statement that the Owner shall not be liable to pay the charges, interest and costs of collection if it is determined the Assessment was paid on time to the Association, and (viii) a statement that the Owner has the right to request a meeting with the Board, as provided by California Civil Code Section 1367.1(c) and Section 12.2.2(d) below.

(c) ***Dispute by Owner.*** An Owner may dispute the Notice of Intent to Lien by submitting to the Board a written explanation of the reasons for the Owner's dispute. The Board shall respond in writing to the Owner within fifteen (15) days of the date of the postmark of the explanation, if the explanation is mailed within fifteen (15) days of the postmark of the Notice of Intent to Lien.

(d) ***Owner's Right to Request Meeting.*** An Owner may submit a written request to meet with the Board to discuss a payment plan for the debt noticed in Section 12.2.2(b) above. The Association shall provide the Owner with the standards for payment plans, if any exist. The Board shall meet with the Owner in executive session within forty-five (45) days of the postmark of the request, if the request is mailed within fifteen (15) days of the date of the postmark of the Notice of Intent to Lien, unless there is no regularly scheduled Board meeting within that period, in which case the Board may designate a committee of one or more members to meet with the Owner.

(e) ***Notice of Delinquent Assessment.*** The lien becomes effective on Recordation by the Board or its authorized agent of a Notice of Delinquent Assessment ("***Notice of Delinquent Assessment***") securing the payment of any Assessment or installment thereof levied by the Association against any Condominium Owner, as provided in Section 1367 or 1367.1 of the California Civil Code. The Notice of Delinquent Assessment must identify (i) the amount of the Assessment and other authorized charges and interest, including the cost of preparing and Recording the Notice of Delinquent Assessment, (ii) the amount of collection costs incurred, including reasonable attorneys' fees, (iii) a sufficient description of the Condominium that has been assessed, (iv) the Association's name and address, (v) the name of the Owner of the Condominium that has been assessed, and (vi) if the lien is to be enforced by nonjudicial foreclosure, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice of Delinquent Assessment must be signed by an authorized

Association officer or agent and must be mailed in the manner required by Section 2924b of the California Civil Code to the Owner of record of the Condominium no later than ten (10) calendar days after Recordation. The lien relates only to the individual Condominium against which the Assessment was levied and not to the Properties as a whole.

(f) **Exceptions.** Assessments described in Section 1367(e) of the California Civil Code and Section 2792.26(c) of the California Code of Regulations may not become a lien against an Owner's Condominium enforceable by sale of the Condominium under Sections 2924, 2924(b) and 2924(c) of the California Civil Code.

(g) **Release of Lien.** Within twenty-one (21) days of payment of the full amount claimed in the Notice of Delinquent Assessment, or other satisfaction thereof, the Board shall cause to be Recorded a Notice of Satisfaction and Release of Lien ("**Notice of Release**") stating the satisfaction and release of the amount claimed. The Association shall provide the Owner with a copy of the Notice of Release or any other notice that the full amount claimed in the Notice of Delinquent Assessment has been satisfied. The Board may require the Owner to pay a reasonable charge for preparing and Recording the Notice of Release. Any purchaser or encumbrancer who has acted in good faith and extended value may rely on the Notice of Release as conclusive evidence of the full satisfaction of the sums identified as owed in the Notice of Delinquent Assessment.

12.2.3 Enforcement of Liens. The Board shall enforce the collection of amounts due under this Declaration by one (1) or more of the alternative means of relief afforded by this Declaration. The lien on a Condominium may be enforced by foreclosure and sale of the Condominium after failure of the Owner to pay any Assessment, or installment thereof, as provided in this Declaration. The sale shall be conducted in accordance with the provisions of the California Civil Code applicable to the exercise of powers of sale in Mortgages, or in any manner permitted by law. The Association (or any Owner if the Association refuses to act) may sue to foreclose the lien if (a) at least thirty (30) days have elapsed since the date on which the Notice of Delinquent Assessment was Recorded and (b) at least ten (10) days have elapsed since a copy of the Notice of Delinquent Assessment was mailed to the Owner affected thereby. The Association may bid on the Condominium at foreclosure sale, and acquire and hold, lease, mortgage and convey the same. On completion of the foreclosure sale, the Association or the purchaser at the sale may file suit to secure occupancy of the defaulting Owner's Condominium, and the defaulting Owner shall be required to pay the reasonable rental value for the Condominium during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. A suit to recover a money judgment for unpaid Assessments may be brought without foreclosing or waiving any lien securing the same, but this provision or any suit to recover a money judgment does not affirm the adequacy of money damages. Any recovery resulting from a suit at law or in equity initiated pursuant to this Section may include reasonable attorneys' fees as fixed by the court.

12.2.4 Priority of Assessment Lien. Mortgages Recorded before a Notice of Delinquent Assessment have lien priority over the Notice of Delinquent Assessment. Sale or transfer of any Condominium does not affect the Assessment lien, except that the sale or transfer of any Condominium pursuant to judicial or nonjudicial foreclosure of a first Mortgage extinguishes the lien of such Assessments as to payments which became due before such sale or

transfer. No sale or transfer relieves such Condominium from liens for any Assessments thereafter becoming due. No Person who obtains title to a Condominium pursuant to a judicial or nonjudicial foreclosure of the first Mortgage is liable for the share of the Common Expenses or Assessments chargeable to such Condominium which became due before the acquisition of title to the Condominium by such Person. Such unpaid share of Common Expenses or Assessments is a Common Expense collectible from all Owners including such Person. The Association may take such action as is necessary to make any Assessment lien subordinate to the interests of the Department of Veterans Affairs of the State of California under its Cal-Vet loan contracts as if the Cal-Vet loan contracts were first Mortgages of record.

12.2.5 Alternative Dispute Resolution. An Owner may dispute the Assessments imposed by the Association if such Owner pays in full (a) the amount of the Assessment in dispute, (b) any late charges, (c) any interest, and (d) all reasonable fees and costs associated with preparing and filing a Notice of Delinquent Assessment (including mailing costs and reasonable attorneys' fees not to exceed the maximum amount allowed by law) and states by written notice that such amount is paid under protest and the written notice is mailed by certified mail not more than thirty (30) days after Recording the Notice of Delinquent Assessment. On receipt of the written notice, the Association shall inform the Owner in writing that the dispute may be resolved through alternative dispute resolution as established in Civil Code Sections 1363.810 and 1369.510, and following. The right of any Owner to use alternative dispute resolution under this Section may not be exercised more than two (2) times in any single calendar year, and not more than three (3) times within any five (5) calendar years unless the Owner and the Association mutually agree to use alternative dispute resolution when this limit is exceeded. An Owner may request and be awarded through alternative dispute resolution reasonable interest to be paid by the Association in the total amount paid under items (a) through (d) above, if it is determined that the Assessment levied by the Association was not correctly levied.

12.2.6 Receivers. In addition to the foreclosure and other remedies granted to the Association in this Declaration, each Owner, by acceptance of a deed to such Owner's Condominium, conveys to the Association all of such Owner's right, title and interest in all rents, issues and profits derived from and appurtenant to such Condominium, subject to the right of the Association to collect and apply such rents, issues and profits to any delinquent Assessments owed by such Owner, reserving to the Owner the right, before any default by the Owner in the payment of Assessments, to collect and retain such rents, issues and profits as they may become due and payable. On any such default the Association may, on the expiration of thirty (30) days following delivery to the Owner of the "Notice of Delinquent Assessment" described in this Declaration, either in person, by agent or by receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness secured by the lien described in this Declaration, (a) enter in or on and take possession of the Condominium or any part thereof, (b) in the Association's name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and (c) apply the same, less allowable expenses of operation, to any delinquencies of the Owner, and in such order as the Association may determine. The entering upon and taking possession of the Condominium, the collection of rents, issues and profits and the application thereof, shall not cure or waive any default or notice of default under this Declaration or invalidate any act done pursuant to such notice.

12.3 ENFORCEMENT OF CERTAIN BONDED OBLIGATIONS.

12.3.1 **In General.** If (a) the Common Property Improvements in any Phase are not completed before the issuance of a Public Report for such Phase, and (b) the Association is an obligee under a bond or other arrangement ("**Bond**") required by the DRE to secure performance of Declarant's commitment to complete such Improvements, then the following provisions of this Section will be applicable.

12.3.2 **Consideration by the Board.** 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 such 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. If the Association has given an extension in writing for the completion of any Common Property Improvement, then the Board shall be directed to consider and vote on the question if a Notice of Completion has not been filed within thirty (30) days after the expiration of the extension.

12.3.3 **Consideration by the Owners.** A special meeting of Owners for voting to override a decision by the Board not to initiate action to enforce the obligations under the Bond or on the Board's failure to consider and vote on the question shall be held no fewer than thirty-five (35) nor more than forty-five (45) days after the Board receives a petition for such a meeting signed by Owners representing five percent (5%) of the Association's total voting power. A vote of a majority of the Association's voting power residing in Owners (excluding Declarant) to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association, and the Board shall thereafter implement such decision by initiating and pursuing appropriate action in the Association's name.

12.4 **DISPUTE WITH DECLARANT PARTIES.** Any disputes between the Association or any Owners on the one hand, and Declarant or any director, officer, partner, shareholder, member, employee, representatives, contractor, subcontractor, design professional or agent of the Declarant (each a "**Declarant Party**," and collectively the "**Declarant Parties**") on the other hand, which dispute (a) either arises under this Declaration or relates to the Properties (including disputes regarding latent or patent construction defects); and (b) involves neither Common Property completion bonds, nor the collection of delinquent Assessments from Declarant; and (c) concerns an amount in controversy that is greater than Five Thousand Dollars (\$5,000), shall be a "**Dispute**" for purposes of this Section 12.4. All Disputes shall be resolved in accordance with the following alternative dispute resolution procedures:

12.4.1 **Notice.** Any Person with a Dispute shall give written notice of the Dispute by personal or mail service as authorized by Code of Civil Procedure Sections 415.10, 415.20, 415.21, 415.30 or 415.40 to the party to whom the Dispute is directed ("**Respondent**") describing the nature of the Dispute and any proposed remedy (the "**Dispute Notice**").

12.4.2 **Right to Inspect and Correct.** Commencing on the date the Dispute Notice is delivered to the Respondent and continuing until the Dispute is resolved, the Respondent and its representatives have the right to (a) meet with the party alleging the Dispute at a reasonable time and place to discuss the Dispute, (b) enter the Properties to inspect any areas

that are subject to the Dispute, and (c) conduct inspections and testing (including destructive or invasive testing) in a manner deemed appropriate by the Respondent. If Respondent elects to take any corrective action, Respondent and its representatives shall be provided full access to the Properties to take and complete the corrective action. Respondent is not obligated to take any corrective action. Respondent, with the consent of Declarant, has the right to select the corrective action Respondent believes is appropriate. The right to inspect and correct granted in this Section is in addition to the rights granted in California Civil Code Section 1375 ("*Calderon Act*"). The procedures established in the Calderon Act may be implemented, before, during or after the procedure in this Section is implemented.

12.4.3 Mediation Notice. If the Dispute is not resolved within ninety (90) days after the Respondent receives the Dispute Notice, any party may submit the Dispute to mediation by delivering a request for mediation ("*Mediation Notice*") in the same manner as allowed for delivery of the Dispute Notice. The Dispute shall be mediated pursuant to (a) the American Arbitration Association ("*AAA*") mediation procedures in existence when the Dispute Notice is delivered, as modified by this Section, or (b) the mediation procedures of any successor to the AAA in existence when the Dispute Notice is delivered, as modified by this Section, or (c) mediation procedures approved by the parties of any entity offering mediation services that are acceptable to the parties to the Dispute (each, a "*Party*," and collectively, "*Parties*"). Except as provided in Section 12.4.5, no Person shall commence litigation regarding a Dispute without first complying with this Section 12.4.3.

(a) ***Selection of Mediator.*** The mediator shall be selected within sixty (60) days from delivery of the Mediation Notice. The mediator shall be selected by mutual agreement of the Parties. If the parties cannot agree on a mediator, the mediator shall be selected by the entity providing the mediation service. No Person shall serve as a mediator in any Dispute in which the Person has any financial or personal interest in the result of the mediation, except by the written consent of all Parties. Before accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process.

(b) ***Position Letter; Pre-Mediation Conference.*** No later than sixty (60) days after selection of the mediator, each Party to the Dispute shall submit a letter ("*Position Statement*") containing (i) a description of the Party's position concerning the issues that need to be resolved, (ii) a detailed description of the defects allegedly at issue, and (iii) a suggested plan of repair, remediation or correction. The mediator may schedule a pre-mediation conference. All Parties shall attend unless otherwise mutually agreed. The mediation shall be commenced within twenty (20) days after submittal of all Position Statements and shall be concluded within fifteen (15) days after the mediation began unless either (A) the mediator extends the mediation period, or (B) the Parties mutually agree to extend the mediation period. The mediation shall be held in the County or another place mutually acceptable to the parties.

(c) ***Conduct of Mediation.*** The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate to achieve the goal of settling the Dispute. The mediator is authorized to conduct joint and separate meetings with the Parties and to make oral and written recommendations for settlement. The mediator may also obtain expert advice concerning technical aspects of the Dispute, provided the Parties assume the

expenses of obtaining such advice. The mediator shall not have the authority to impose a settlement on the Parties.

(d) ***Application of Evidence Code.*** The provisions of California Evidence Code Sections 1115 through 1128 shall be applicable to the mediation process. Use and disclosure of statements, evidence and communications offered or made in the course of the mediation shall be governed by these sections, including the sections which preclude use of material in future proceedings and the sections which provide for confidentiality of material.

(e) ***Parties Permitted at Mediation.*** Persons other than the Parties, their liability insurers, Declarant, attorneys for the Parties, the liability insurers and Declarant and the mediator may attend mediation sessions only with the permission of the Parties and the consent of the mediator. Declarant has the right to attend the mediation session even if Declarant is not one of the Parties.

(f) ***Record.*** There shall be no stenographic, video or audio record of the mediation process.

(g) ***Expenses.*** Each Party shall bear its own attorneys' fees and costs incurred in connection with the mediation. All other expenses of the mediation including the fees charged by the mediator and the cost of any proof or expert advice requested by the mediator shall be shared equally by the Parties unless they agree otherwise. This provision does not modify any provision of a contract between Declarant and any Declarant Party requiring indemnification or establishing a different allocation of costs between the Declarant and the Declarant Party.

12.4.4 Arbitration of Disputes. If a Dispute remains unresolved after the mediation required by Section 12.4.3 above, then the Dispute shall be submitted to binding arbitration. If the entire Dispute is a "***Small Claim***," Section 12.4.4(b) applies and either Buyer or Seller may choose to resolve the Dispute in small claims court.

(a) ***AAA Rules.*** The arbitration will be conducted by the AAA in accordance with the rules contained in the Construction Industry Dispute Resolution Procedures and the rules contained in the Supplementary Procedures for Consumer-Related Disputes (collectively, the "***Rules***") to the extent the Supplementary Procedures apply to the Dispute. If the Rules have changed or been renamed by the time a Dispute arises, the successor rules identified by the AAA will apply. Despite the choice of the Rules (or any successor rules identified by the AAA) to govern the arbitration of any Dispute between the Parties, if the AAA later identifies different rules that would specifically apply to the Dispute, those rules will apply instead of the Rules. Declarant's subcontractors, suppliers, consultants and contractors whose materials, services or work are involved in the Dispute are third party beneficiaries of this Section 12.4.4 and shall be included as Parties to the arbitration. Each Party shall cooperate in good faith with the other to ensure that to the extent possible all necessary and appropriate parties are included in the arbitration.

(b) ***Small Claims.*** Any disputes between the Association or any Owners on the one hand, and Declarant or any Declarant Party on the other hand, which dispute

(i) either arises under this Declaration or relates to the Properties (including disputes regarding latent or patent construction defects); and (ii) involves neither Common Property completion bonds, nor the collection of delinquent Assessments from Declarant; and (iii) concerns an amount in controversy that is equal to or less than Five Thousand Dollars (\$5,000) or such other amount established by law for purposes of small claims, shall be a "Small Claims Dispute." Any Party to a Small Claims Dispute may elect to have the Small Claims Dispute resolved in small claims court in accordance with the small claims act (California Code of Civil Procedure Section 116.110 et seq.)."

(c) **Arbitrator.** The arbitrator shall be a neutral, impartial individual who is either a retired judge or an attorney licensed to practice law in California and having at least fifteen (15) years of experience with substantial experience in the type of matter in dispute and with a strong emphasis on the laws governing real estate matters, especially those dealing with residential real estate development and construction. The arbitrator shall not have any relationship to the Parties or any interest in the Property or the project in which the properties are located. The arbitrator shall be selected from a panel in accordance with the rules, but in no event more than sixty (60) days after written submission to arbitrate.

(d) **Commencement and Timing of Arbitration.** The arbitrator shall promptly commence the arbitration at the earliest convenient date in light of all of the facts and circumstances and shall conduct the arbitration without undue delay.

(e) **Place.** The arbitration shall be conducted in the County unless the Parties agree in writing to another location.

(f) **Record.** To preserve all Parties' rights to limited appeal under Section 12.4.4(j), the oral evidence received by the arbitrator shall be preserved in a manner that can be converted into a written transcript, and the arbitrator shall preserve all tangible evidence.

(g) **Remedies.** The arbitrator shall have the power to grant all legal and equitable remedies and award damages in the arbitration to the full extent permitted by law.

(h) **Award.** The arbitrator's decision shall be based upon applicable law. The arbitrator shall issue a written award whether or not the Rules require and shall include findings of fact and conclusions of law to the extent required by law. If requested by a Party, the arbitrator shall provide a written explanation of the award. The award shall be binding.

(i) **Judgment on the Award.** After expiration of the time to serve a Notice of Limited Appeal has expired under Section (j)(2), judgment on the award made by the arbitrator may be entered in any court having jurisdiction over the Dispute.

(j) **Limited Appeal.**

(1) **Limited Appeal.** The award of the arbitrator shall be subject to limited appeal in accordance with the procedures set forth in this Section (j)(1). Although the rules provide that there will be no appeal or other review of the arbitrator's award, this Section (j)(1) completely replaces such portion of the Rules and provides instead a right for

either Party to have a panel of three (3) arbitrators conduct a limited appeal of the arbitrator's award.

(2) Notice. To appeal, either party must file with the AAA and serve on all other Parties a notice stating the general nature of the change it seeks in the award. The notice must be filed no later than thirty (30) days after the date of the award. If a Party appeals, the other Party for whom or against whom the arbitrator awarded money or other relief may appeal by filing and serving on all other Parties a notice stating the general nature of the change it seeks in the award. Such notice must be filed no later than sixty (60) days after the date of the award.

(3) Appellate Panel. The panel of appeal arbitrators shall satisfy the standards set forth in Section 12.4.4(c) and be appointed by the AAA under the portion of the Rules governing the appointment of arbitrators.

(4) Issues on Limited Appeal. The only issues that can be considered in a limited appeal are: (a) the award of money was excessive; (b) the award of money was insufficient; (c) the arbitrator awarded nonmonetary relief that was inappropriate; (d) a Party who received monetary or nonmonetary relief should have received other or additional monetary or nonmonetary relief; or (e) the award of the arbitrator is not based upon applicable law. The appeal arbitrators may affirm the arbitrator's award or may make any alternative award they find to be just and equitable, but shall not reject any of the arbitrator's decisions (i) that a particular Party is entitled to relief of some nature or amount or (ii) that a particular Party is responsible to provide relief of some nature or amount.

(5) Evidence; Decision on Appeal. The appeal arbitrators shall make their decision based upon the evidence received by the arbitrator and applicable law, except that they may also visit any site (including the Property) involved in the Dispute. The appeal arbitrators may receive written briefs and may hear arguments but shall not receive new evidence other than any site visit. The appeal arbitrators shall issue a written decision deciding the issues raised by the Parties. A majority of the appeal arbitrators is sufficient to decide an issue. The decision shall be final and binding, and judgment may be entered in any court having jurisdiction over the Dispute.

(6) Fees and Costs on Appeal. The appeal arbitrators shall award costs in accordance with Section 12.4.4(k).

(k) ***Fees and Costs***. Declarant shall advance the fees necessary to initiate the arbitration and any limited appeal initiated by either party (including the cost of preparing a written transcript of the oral evidence received by the arbitrator), with the costs and fees, including ongoing costs and fees, to be paid as agreed by the Parties. If the Parties are unable to agree, the arbitrator shall determine payment of ongoing costs and fees. The costs and fees of the arbitration shall be borne ultimately as determined by the arbitrator as set forth in the arbitrator's award. The expenses of witnesses for either side shall be paid by the Party producing such witnesses.

(l) **Attorneys' Fees.** Each Party to the arbitration and any limited appeal shall bear its own attorneys' fees and costs (including expert costs) in connection with such proceeding or appeal. Notwithstanding the foregoing, nothing herein is intended to modify or release any obligation of a Party other than Owner to defend (including, without limitation, payment of attorneys' fees) and indemnify Declarant pursuant to the terms of a contract between Declarant and such Owner.

(m) **Restriction Upon Award of Costs and Fees.** Notwithstanding any provision to the contrary contained in this Declaration, under no circumstances shall Owner be required to pay Declarant's share of fees and costs (including, without limitation, fees and costs of the arbitrator, provider organization, attorney or witnesses) if Buyer does not prevail in the arbitration or limited appeal.

12.4.5 Statutes of Limitation. Nothing in this Section 12.4 shall be considered to toll, stay, reduce or extend any applicable statute of limitations; provided, however, that Declarant, the Declarant Parties, the Association and any Owner may commence a legal action which in the good faith determination of that Person is necessary to preserve that Person's rights under any applicable statute of limitations so long as no further steps in processing the action are taken except those authorized in this Section 12.4.

12.4.6 Agreement to Dispute Resolution; Waivers of Jury Trial. DECLARANT, THE ASSOCIATION AND EACH OWNER AGREE TO USE THE PROCEDURES ESTABLISHED IN THIS SECTION 12.4 TO RESOLVE ALL DISPUTES AND WAIVE THEIR RIGHTS TO RESOLVE DISPUTES IN ANY OTHER MANNER. DECLARANT, THE ASSOCIATION, AND EACH OWNER ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS SECTION 12.4, THEY ARE GIVING UP THEIR RIGHT TO HAVE DISPUTES TRIED BEFORE A JURY, PURSUANT TO THE FEDERAL ARBITRATION ACT. THIS SECTION 12.4 MAY NOT BE AMENDED WITHOUT DECLARANT'S PRIOR WRITTEN CONSENT.

12.5 NO ENHANCED PROTECTION AGREEMENT. No language contained in this Declaration, any Notice of Addition or any Supplemental Declaration shall constitute, or be interpreted to constitute, an "enhanced protection agreement" ("**EPA**") as defined in Section 901 of the California Civil Code. Further, no express or implied representations or warranties made by Declarant in any other writing are intended to constitute, or are to be interpreted to constitute, an EPA.

ARTICLE XIII DURATION AND AMENDMENT

13.1 DURATION. This Declaration shall continue in full force unless a declaration of termination satisfying the requirements of an amendment to this Declaration established in Section 13.2 is Recorded.

13.2 TERMINATION AND AMENDMENT.

13.2.1 Amendment Approval. Notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form must be included in the notice of any

Association meeting or election at which a proposed amendment is to be considered. To be effective, a proposed amendment (other than an Amendment described in Section 15.7) must be adopted by the vote, in person or by proxy, or written consent of Owners representing not less than (a) sixty-seven percent (67%) of the voting power of each Class of the Association and (b) sixty-seven percent (67%) of the Association's voting power represented by Owners other than Declarant, provided that the specified percentage of the Association's voting power necessary to amend a specific provision of this Declaration may not be less than the percentage of affirmative votes prescribed for action to be taken under the provision that is the subject of the proposed amendment.

13.2.2 Mortgagee Consent. In addition to the notices and consents required by Section 13.2.1, the Mortgagees of fifty-one percent (51%) of the first Mortgages on all the Condominiums in the Properties who have requested the Association to notify them of proposed action requiring the consent of a specified percentage of first Mortgagees must approve any amendment to this Declaration and any Supplemental Declaration which is of a material nature, as follows:

(a) Any amendment which affects or purports to affect the validity or priority of Mortgages or the rights or protection granted to Mortgagees, insurers or guarantors of first Mortgages.

(b) Any amendment which restricts an Owner's right to sell or transfer his or her Condominium.

(c) Any amendment which would or could result in a Mortgage being canceled by forfeiture, or in a Condominium not being separately assessed for tax purposes.

(d) Any amendment relating to (i) the insurance provisions in Article VIII, (ii) the application of insurance proceeds in Article IX, or (iii) the disposition of any money received in any taking under condemnation proceedings.

(e) Any amendment which restricts an Owner's right to sell or transfer his or her Condominium.

(f) Any amendment which would subject any Owner to a right of first refusal or other such restriction, if such Condominium is proposed to be transferred.

(g) Any amendment concerning:

(1) Voting rights;

(2) Rights to use the Common Property;

(3) Reductions in reserves for maintenance, repair and replacement of the Common Property;

(4) Responsibility for maintenance and repairs;

- (5) Redefinition of boundaries of any Unit;
- (6) Reallocation of interests in the Common Area or Exclusive Use Areas or rights to their use;
- (7) Convertibility of Common Property into Units or Units into Common Property;
- (8) Imposition of restrictions on leasing of Units;
- (9) Any provision that expressly benefits a Mortgagee, insurer or guarantor;
- (10) Establishment of self-management by the Association if professional management has been required by the Restrictions or any Mortgagee of a first Mortgage;
- (11) Expansion or contraction of the Properties;
- (12) Increases in Assessments that raise the previously assessed amount by more than twenty-five percent (25%), Assessment liens, or the priority of such liens; or
- (13) Restoration or repair of the Properties (after damage or partial condemnation) in a manner other than that specified in this Declaration.

13.2.3 Termination Approval. Termination of this Declaration requires the approval of the Owners required by Section 13.2.1. No such termination is effective unless it is also approved in advance either by fifty-one percent (51%) of the Mortgagees of the first Mortgages on all Condominiums in the Properties who have submitted a written request to the Association that they be notified of proposed actions requiring the consent of a specified percentage of such Mortgagees (if termination is proposed due to substantial destruction or condemnation of the Properties) or by sixty-seven percent (67%) of such Mortgagees (if termination is for reasons other than such substantial destruction or condemnation).

13.2.4 Notice to Mortgagees. Each Mortgagee of a first Mortgage on a Condominium in the Properties which receives proper written notice of a proposed amendment or termination of this Declaration or any Supplemental Declaration with a return receipt requested is deemed to have approved the amendment or termination if the Mortgagee fails to submit a response to the notice within thirty (30) days after the Mortgagee receives the notice.

13.2.5 Certificate. A copy of each amendment must be certified by at least two (2) Association officers. The amendment becomes effective when a Certificate of Amendment is Recorded. The certificate, signed and sworn to by two (2) Association officers that the requisite number of Owners and Mortgagees have approved the amendment, when Recorded, is conclusive evidence of that fact. The Association shall keep in its files for at least four (4) years the record of all such approvals. The certificate reflecting any termination or amendment which

requires the written consent of any of the Mortgagees of first Mortgages must include a certification that the requisite approval of such first Mortgagees was obtained.

ARTICLE XIV GENERAL PROVISIONS

14.1 MERGERS OR CONSOLIDATIONS. In a merger or consolidation of the Association with another association, the Properties, rights and obligations of the Association may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the covenants, conditions and restrictions established by this Declaration governing the Properties, together with the covenants and restrictions established on any other property, as one (1) plan.

14.2 NO PUBLIC RIGHT OR DEDICATION. Nothing in this Declaration is a gift or dedication of all or any part of the Properties to the public, or for any public use.

14.3 NOTICES. Except as otherwise provided in this Declaration, notice to be given to an Owner must be in writing and may be delivered personally to the Owner. Personal delivery of such notice to one (1) or more co-Owners, or any general partner of a partnership owning a Condominium, constitutes delivery to all Owners. Personal delivery of such notice to any officer or agent for the service of process on a corporation or limited liability company constitutes delivery to the corporation or limited liability company. Such notice may also be delivered by regular United States mail, postage prepaid, addressed to the Owner at the most recent address furnished by such Owner to the Association or, if no such address has been furnished, to the street address of such Owner's Condominium. Such notice is deemed delivered three (3) business days after the time of such mailing, except for notice of a meeting of Owners or of the Board, in which case the notice provisions of the Bylaws control. Any notice to be given to the Association may be delivered personally to any member of the Board, or sent by United States mail, postage prepaid, addressed to the Association at such address as may be fixed and circulated to all Owners.

14.4 CONSTRUCTIVE NOTICE AND ACCEPTANCE. Every Person who owns, occupies or acquires any right, title, estate or interest in or to any Condominium or other portion of the Properties consents and agrees to every limit, restriction, easement, reservation, condition and covenant contained in this Declaration, whether or not any reference to these restrictions is in the instrument by which such Person acquired an interest in the Properties.

ARTICLE XV DECLARANT'S RIGHTS AND RESERVATIONS

If there is a conflict between any other portion of the Restrictions and this Article, this Article shall control.

15.1 CONSTRUCTION RIGHTS. Declarant has the right to (a) subdivide or resubdivide the Properties, (b) complete or modify Improvements to and on the Common

Property or any portion of the Properties owned solely or partially by Declarant, (c) alter Improvements and Declarant's construction plans and designs, (d) modify Declarant's development plan for the Properties, including designating and redesignating Phases, reshaping the Units and the Common Property therein, and constructing Residences of larger and smaller sizes, values, and of different types, and (e) construct such additional Improvements as Declarant considers advisable in the course of development of the Properties so long as any Condominium in the Properties remains unsold. Declarant may temporarily erect barriers, close off and restrict access to portions of the Common Property as reasonably necessary to allow Declarant to exercise the rights reserved in this Section so long as an Owner's access to his Condominium is not eliminated.

15.2 SALES AND MARKETING RIGHTS. Declarant's rights under this Declaration include, but are not limited to, the right to install and maintain such structures, displays, signs, billboards, flags and sales offices as may be reasonably necessary to conduct Declarant's business of completing the work and disposing of the Condominiums by sale, resale, lease or otherwise. Declarant may use any Condominiums owned or leased by Declarant in the Properties as model home complexes, real estate sales offices or leasing offices.

15.3 CREATING ADDITIONAL EASEMENTS. At any time before acquisition of title to a Condominium in the Properties by a purchaser from Declarant, Declarant has the right to establish on that Condominium additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others as Declarant determines are reasonably necessary to the Properties' proper development and disposal.

15.4 ARCHITECTURAL RIGHTS. Declarant and any Person to whom Declarant may assign all or a portion of its exemption under this Declaration need not seek or obtain Design Review Committee approval of any Improvements constructed anywhere on the Properties by Declarant or such Person. Declarant may exclude portions of the Properties from jurisdiction of the Design Review Committee in the Supplemental Declaration. Declarant, may, at its option, establish an additional design review committee for any area exempted from the jurisdiction of the Design Review Committee.

15.5 USE RESTRICTION EXEMPTION. Declarant and any Person to whom Declarant may assign all or a portion of its exemption under this Declaration is exempt from the restrictions established in Article II.

15.6 ASSIGNMENT OF RIGHTS. Declarant may assign its rights under the Restrictions to any successor-in-interest to any portion of Declarant's interest in the Properties by a written assignment.

15.7 AMENDMENTS. No amendment may be made to this Article without the prior written approval of Declarant. At any time before the first Close of Escrow in the Properties, Declarant may unilaterally amend or terminate all or a portion of this Declaration by Recording a written instrument which effects the amendment or termination and is signed and acknowledged by Declarant. For so long as Declarant owns any portion of the Properties, Declarant may unilaterally amend all or a portion of this Declaration, and any Supplemental Declaration by Recording a written instrument signed by Declarant to (a) conform this Declaration to the rules,

regulations or requirements of the VA, FHA, DRE, Fannie Mae, Ginnie Mae or Freddie Mac, (b) amend Article III, (c) amend any of the Exhibits to this Declaration that depict portions of the Properties that have not been subject to a Close or Escrow or conveyed to the Association, as applicable, (d) comply with any City, County, State or Federal laws or regulations, and (e) correct any typographical errors.

15.8 EXERCISE OF RIGHTS. Each Owner grants an irrevocable, special power of attorney to Declarant to execute and Record all documents and maps necessary to allow Declarant to exercise its rights under this Article.

15.9 USE OF PROPERTIES. Declarant and its prospective purchasers of Condominiums are entitled to the nonexclusive use of the Common Property owned in fee simple by the Association, without further cost for access, ingress, egress, use or enjoyment, to (a) show the Properties to prospective purchasers, and (b) dispose of the Properties as provided in this Declaration. Declarant, and prospective purchasers, are also entitled to the nonexclusive use of any portions of the Properties which are private streets, drives and walkways for ingress, egress and accommodating vehicular and pedestrian traffic to and from the Properties. The use of the Common Property by Declarant may not unreasonably interfere with the use thereof by the other Owners.

15.10 PARTICIPATION IN ASSOCIATION. The Association shall provide Declarant with written notice of the transfer of any Condominium and all notices and other documents to which a Mortgagee is entitled pursuant to this Declaration, provided that Declarant shall be provided such notices and other documents without making written request therefor. Commencing on the date on which Declarant no longer has an elected representative on the Board, and continuing until Declarant no longer owns a Condominium in the Properties, the Association shall provide Declarant with written notice of all meetings of the Board as if Declarant were an Owner and Declarant shall be entitled to have a representative present at all such Board meetings ("*Declarant's Representative*"). The Declarant's Representative shall be present in an advisory capacity only and shall not be a Board member or have any right to vote on matters coming before the Board.

15.11 DECLARANT APPROVAL OF ACTIONS.

15.11.1 General Rights. Until Declarant no longer owns a portion of the Properties, Declarant's prior written approval is required for any amendment to the Restrictions which would impair or diminish Declarant's rights to complete the Properties or sell or lease dwellings therein.

15.11.2 Limit on Actions. Until Declarant no longer owns any Condominiums in the Properties, the following actions, before being undertaken by the Association, must first be approved in writing by Declarant:

(a) Any amendment or action requiring the approval of first Mortgagees;

(b) The levy of a Capital Improvement Assessment for the construction of new facilities not constructed on the Common Property by Declarant;

(c) Any significant reduction of Association maintenance or other services; or

(d) Any modification or termination of any provision of the Restrictions benefiting Declarant.

15.12 **MARKETING NAME.** The Properties shall be marketed under the general name "*Bella Tierra*." Declarant may change the marketing name for any Phase of the Properties at any time in Declarant's sole discretion. Declarant shall notify the DRE of any change in or addition to the marketing name or names of any Phase of the Properties.

ARTICLE XVI ANNEXATION OF ADDITIONAL PROPERTY

Additional real property may be annexed to the Phase 1 and such additional real property may become subject to this Declaration by any of the following methods:

16.1 **Additions by Declarant.** Declarant may add the Annexable Territory to the Properties and bring such added territory within the general plan of this Declaration without the approval of the Association, the Board or Owners so long as Declarant owns any portion of the Annexable Territory.

16.2 **Other Additions.** Additional real property may be annexed to the Properties and brought within the general plan of this Declaration on the approval by vote or written consent of Owners entitled to exercise no less than two-thirds (2/3) of the Association's voting power.

16.3 **Rights and Obligations-Added Territory.** Subject to the provisions of Section 16.4, when a Notice of Addition containing the provisions required by this Section is Recorded, all provisions in this Declaration will apply to the real property described in the Notice of Addition (the "*Added Area*") in the same manner as if the real property were originally covered by this Declaration. Thereafter, the rights, powers and responsibilities of the parties to this Declaration with respect to the Added Area will be the same as with respect to the property originally covered by this Declaration, and the rights, powers and responsibilities of the Owners, lessees and occupants of Condominiums in the Added Area, as well as in the property originally subject to this Declaration, will be the same as if the Added Area were originally covered by this Declaration. After the first day of the month following the first Close of Escrow in the Added Area, the Owner of Condominiums located in the Added Area shall share in the payment of Assessments to the Association to meet Common Expenses of the Properties. Voting rights attributable to the Condominiums in the Added Area may not be exercised until Annual Assessments have commenced on such Condominiums.

16.4 **Notice of Addition.** The additions authorized under Sections 16.1 and 16.2 must be made by Recording a Notice of Addition which will extend the general plan of this Declaration to such Added Area. The Notice of Addition for any addition under Section 16.1 must be signed by Declarant. The Notice of Addition for any addition under Section 16.2 must be signed by at least two (2) officers of the Association to certify that the Owner approval required under Section 16.2 was obtained. On Recordation of the Notice of Addition, the Added Area will be annexed to and constitute a part of the Properties and will become subject to this

Declaration; the Owners of Condominiums in the Added Area will automatically acquire Membership. No Notice of Addition or Supplemental Declaration may revoke the covenants, conditions, restrictions, reservation of easements, or equitable servitudes in this Declaration as the same pertain to the real property originally covered by this Declaration.

16.5 Deannexation and Amendment. In addition to the rights to amend or terminate a Notice of Addition granted elsewhere in this Declaration or a Notice of Addition, Declarant may also amend a Notice of Addition or delete all or a portion of a Phase from coverage of this Declaration and the Association's jurisdiction, as long as Declarant is the owner of all of such Phase, provided that (a) an amending instrument or a Notice of Deletion of Area, as applicable, is Recorded in the same manner as the Notice of Addition was Recorded, (b) Declarant has not exercised any Association vote concerning any portion of such Phase, (c) Assessments have not commenced concerning any portion of such Phase, (d) Close of Escrow has not occurred for the sale of any Condominium in such Phase, and (e) the Association has not made any expenditures or incurred any obligations concerning any portion of such Phase.

[SIGNATURES ON FOLLOWING PAGE]

**[SIGNATURE PAGE TO DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND RESERVATION OF EASEMENTS
FOR BELLA TIERRA]**

This Declaration is dated for identification purposes Sept. 23, 2005.

SHEA LAGUNA HILLS LLC,
a Delaware limited liability company

By: SHEA PROPERTIES LLC,
a Delaware limited liability company
its Managing Member

By: [Signature]
Its: Officer MICHAEL J. TRACY
ASSISTANT SECRETARY

By: [Signature]
Its: Officer W. Steve Gilmore
Assistant Secretary
"Declarant"

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

On Sept. 23, 2005, before me, Connie Short, Notary Public,
personally appeared MICHAEL J. TRACY and
W. STEVE GILMORE, personally known to me ~~(or proved to~~
~~me on the basis of satisfactory evidence)~~ to be the persons whose names are subscribed to the
within instrument and acknowledged to me that they executed the same in their authorized
capacity, and that by their signature on the instrument the persons, or the entities upon behalf of
which the persons acted, executed the instrument.

WITNESS my hand and official seal.

[Signature]
Notary Public in and for said State

(SEAL)

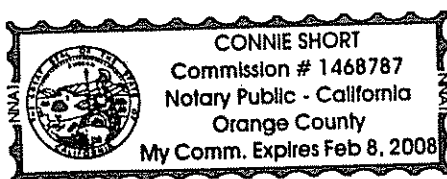


EXHIBIT A

ANNEXABLE TERRITORY

All of Lots 1, 2 and 3 of Tract No. 11608 as shown on a Subdivision Map recorded on November 14, 1983, in Book 517, at Pages 14 to 16, inclusive, of Miscellaneous Maps, in the Office of the Orange County Recorder, except Phase 1.

EXHIBIT B

ARTICLES OF INCORPORATION OF THE ASSOCIATION

**ARTICLES OF INCORPORATION
OF
BELLA TIERRA COMMUNITY ASSOCIATION**

ONE: The name of this corporation is **BELLA TIERRA COMMUNITY ASSOCIATION** (the "*Corporation*").

TWO: This Corporation is a nonprofit mutual benefit corporation organized under the Nonprofit Mutual Benefit Corporation Law. The purpose of this Corporation is to engage in any lawful act or activity, other than credit union business, for which a corporation may be organized under such law.

THREE: The Corporation's initial agent for service of process is Marion Marcum, whose business address is 603 S. Valencia Avenue, Brea, California 92823.

FOUR: The Corporation shall have and exercise any and all powers, rights and privileges which a corporation organized under the Nonprofit Mutual Benefit Corporation Law may now or hereafter have or exercise, provided that the Corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purpose of the Corporation, which is to operate a homeowners association within the meaning of Section 23701t of the California Revenue and Taxation Code and Section 528 of the Internal Revenue Code and to manage a common interest development under the Davis-Stirling Common Interest Development Act. The Corporation does not have a corporate office. The common interest development is near the intersection of Laguna Hills Road and Indian Hill Lane, Laguna Hills, California 92653-0000.

FIVE: The classes of Membership and the voting and other rights and privileges of Members shall be as set forth in the Bylaws.

SIX: The Corporation has no managing agent.

The undersigned, who is the incorporator of the Corporation, has executed these Articles of Incorporation on August ____, 2005.

Heather Reid, Incorporator

EXHIBIT C
BYLAWS OF THE ASSOCIATION

BYLAWS
OF
BELLA TIERRA COMMUNITY ASSOCIATION

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BYLAWS
OF
BELLA TIERRA COMMUNITY ASSOCIATION

ARTICLE I
PLAN OF CONDOMINIUM OWNERSHIP

1.1. **DEFINITIONS AND INTERPRETATION.** Unless otherwise provided in these Bylaws, the capitalized terms used in these Bylaws have the same meanings as in the Declaration. These Bylaws shall be interpreted in accordance with Section 1.2 of the Declaration.

1.2. **NAME.** The name of the corporation is Bella Tierra Community Association. The principal office of the Association shall be located in the County.

1.3. **APPLICATION.** These Bylaws apply to the residential condominium project known as Bella Tierra, located in the County. All Persons who use the facilities of the Properties in any manner, are subject to the regulations in these Bylaws and in the First Amended and Restated Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Bella Tierra, Recorded in the Official Records of the County against the Properties. Use of any Condominium in the Properties signifies acceptance and ratification of these Bylaws.

ARTICLE II
BOARD OF DIRECTORS

2.1. **NUMBER.** Until the first annual meeting of the Owners, the Association's property, business and affairs shall be governed and managed by a Board of Directors composed of three (3) persons. Beginning with the first annual meeting of the Owners, the property, business and affairs of the Association shall be governed and managed by a Board of Directors composed of five (5) persons, each of whom, except for those appointed and serving as first Directors, must be either an Owner, or an agent of Declarant until Declarant no longer owns a Condominium or any of the Annexable Territory. The authorized number of Directors may be changed by a duly adopted amendment to these Bylaws.

2.2. **QUALIFICATIONS FOR HOLDING OFFICE.**

2.2.1 **Suggested Director Conduct.** Directors are encouraged to satisfy the following requirements while they serve in office:

(a) Not be absent from three (3) consecutive meetings of the Board;

(b) Attend at least seventy five percent (75%) of the Board meetings held each year and attend the entire meeting each time;

(c) Exhibit respect, professionalism and courteous behavior to Owners, committee members, vendors, the Manager and its staff, and any other Persons associated with or retained by the Association;

(d) For non-Declarant Board members, be an Owner in good standing.

2.2.2 Candidacy Requirements. Other than Declarant appointees, only Owners who meet the following criteria are qualified to be elected to the Board of Directors:

(a) The Owner must be in compliance with the Restrictions for the three (3) months immediately preceding the date of the election at which the Owner is being considered for election to the Board of Directors. To be in compliance, the Owner must correct, within five (5) days of receipt of notice, any violation of the Restrictions for which the Owner has been determined to be responsible pursuant to applicable due process requirements; and

(b) The Owner must be current in the payment of all Assessments for the three (3) months immediately preceding the date of the election at which the Owner is being considered for election to the Board of Directors.

2.2.3 Incumbent Requirements. To remain qualified to serve on the Board of Directors, an Owner who has been elected to the Board of Directors must:

(a) Attend no less than six (6) Board meetings, regular or special, within a twelve (12) month period and not miss more than two (2) consecutive, regularly scheduled Board meetings;

(b) Comply with every duly approved action of the Board;

(c) Comply with the Restrictions and correct, within five (5) days of receipt of notice, any violation of the Restrictions for which that Director has been determined to be responsible pursuant to applicable due process requirements;

(d) Not be more than three (3) months in arrears in the payment of any Assessment;

(e) Refuse any type of gain, such as money, services, products, gifts or gratuities of a significant value, as determined by a majority vote of the Directors who meet all of the required qualifications to serve as such, which gain is offered in relation to the Owner's service as a Director. In addition, the Owner must disclose such offers at an open meeting of the Board. Compensation for services duly approved by the Board and unrelated to duties as a Director or Officer of the Association, and reimbursement of expenses associated with services to the Association, do not constitute prohibited gain within the meaning of this subsection; and

(f) Not act, in a manner determined by a majority vote of the Directors to be grossly detrimental to the general safety, health or welfare of the Association and its members.

2.3. ELECTION.

2.3.1 General Procedure. At the first annual meeting of the Owners, and at each annual meeting thereafter, the Owners shall elect new Directors to fill vacancies on the Board. If an annual meeting is not held, or all positions on the Board are not filled at the annual meeting, Board members may be elected at a special meeting of the Owners.

2.3.2 Voting. Voting shall be by secret written ballot. An Owner may cumulate his votes for any candidate for the Board in any election in which more than two (2) Directors are to be elected if (a) the candidate's name has been placed in nomination before the voting, and (b) an Owner has given notice at the meeting before the voting of such Owner's intent to cumulate votes. If an Owner cumulates his votes, such Owner may cast a number of votes equal to the Owner's share of the voting power multiplied by the number of Directors to be elected.

2.3.3 Special Election Requirement. So long as either (a) Declarant is entitled to exercise a Class B or Class C vote, or (b) Declarant is entitled to exercise a majority of the Association's voting power, not less than twenty percent (20%) of the members of the Board must be elected solely by the votes of Owners other than Declarant.

2.4. TERM OF OFFICE. Each Director shall hold office until the earlier to occur of (a) the end of the Director's term of office after a successor has been elected, or (b) his death, resignation, removal or judicial adjudication of mental incompetence. At the first annual meeting, the term of office of the three (3) Directors appointed by Declarant (so long as Declarant may appoint such Directors) shall be three (3) years and the term of office of the two (2) Directors receiving the highest number of votes shall be two (2) years. When Declarant may no longer appoint Directors, the term of office of the three (3) Directors receiving the highest number of votes shall be three (3) years and the term of office of the two (2) Directors receiving the next highest number of votes shall be two (2) years. The term of office of each Director elected to fill a vacancy created by expiration of a Director's term of office shall be two (2) years. The term of office of each Director elected or appointed to the Board for any other reason shall be the balance of the unserved term. Any person serving as a Director may be reelected. There is no limit on the number of terms which a Director may serve.

2.5. VACANCIES. A vacancy on the Board is deemed to exist in case of death, resignation, removal or judicial adjudication of mental incompetence of any Director or if the Owners fail to elect the full number of authorized Directors at any meeting at which a Directors election is to take place. Vacancies on the Board caused by any reason other than the removal of a Director may be filled by either (a) vote of a majority of the remaining Directors, even though they may constitute less than a quorum, or (b) by vote of the Owners at a meeting. Any vacancy caused by the removal of a Director must be filled by a vote of the Owners. Until termination of the Class C vote, a vacancy in the office of a Director who was appointed by the Declarant shall be filled only by an appointee of the Declarant. A Director may resign at any time by giving

notice to the President, the Secretary or the Board. Any Director who ceases to be an Owner or an agent of Declarant is deemed to have resigned from the Board.

2.6. REMOVAL OF DIRECTORS. At any meeting of the Owners, any individual Director or the entire Board may be removed before the expiration of their terms of office with or without cause by the vote of Owners representing a majority of a quorum of Owners. However, if the entire Board is not removed as a group pursuant to a single vote, no individual Director may be removed if the number of votes cast against removal would be sufficient to elect such Director if voted cumulatively at an election at which the same total number of votes were cast and the entire number of Directors authorized at the time of the Director's most recent election were then being elected. Any Director whose removal has been proposed by the Owners must be given an opportunity to be heard at the meeting. If any Directors are removed, new Directors may be elected at the same meeting. However, any Director elected to office solely by the votes of Owners other than Declarant pursuant to Section 2.3.3 may be removed only by the vote of at least a simple majority of the Association's voting power represented by Owners other than Declarant. Any Director elected to office solely by votes of Declarant may only be removed by Declarant, and the vacancy filled only by a Director elected by the votes of the Declarant. Upon termination of Class C Membership, the Board, by a majority vote of the Directors who meet all of the required qualifications to be a Director, may declare vacant the office of any Director not appointed by Declarant who, at any time, fails to meet the qualification criteria set forth in these Bylaws.

2.7. COMPENSATION. Directors may not receive any compensation for their services as Directors unless such compensation is first approved by Owners representing at least a majority of the Association's voting power. However, (a) nothing in these Bylaws precludes any Director from serving the Association in some other capacity and receiving compensation therefor, and (b) any Director may be reimbursed for actual expenses incurred in performance of Association duties, and (c) no officer, employee or director of Declarant or any affiliate of Declarant may receive any compensation for service as a Director of the Association.

2.8. POWERS AND DUTIES. The Board has the powers and duties necessary to administer the Association's affairs. All the Association's powers shall be exercised by the Board except those powers specifically reserved to the Owners.

2.9. SPECIAL POWERS AND DUTIES. Without limiting the scope of the Board's general powers and duties, the Board is granted the following powers and duties:

2.9.1 Officers, Agents and Employees. The power and duty to select, appoint and remove all Association officers, agents and employees, to prescribe such powers and duties for them as may be consistent with law and with the Restrictions, to fix their compensation, to require from them such security for faithful service as the Board considers advisable, and to contract to provide them with such indemnification as the Board determines is appropriate.

2.9.2 Contracts. The power to enter into contracts. This includes contracts (a) for maintenance, landscaping, and common utilities services, (b) materials, supplies and other Common Expenses relating to the Condominiums, (c) employing personnel necessary to manage the Properties, including legal and accounting services, and (d) paying for Improvements on the

Common Property. The Board may not enter into any contract with a term in excess of one (1) year, without the vote or written consent of Owners representing at least a majority of the Association's voting power, except for the following:

(a) a contract with a public utility company for a term that does not exceed the shortest term for which the public utility company will contract at the regulated rate if the rates charged for the materials or services are regulated by the California Public Utilities Commission;

(b) prepaid casualty or liability insurance policies of not more than three (3) years' duration provided that the policies permit short-term cancellation by the Association;

(c) agreements for television services and equipment, satellite dish services and equipment, communication services and equipment, and comparable technology, services and equipment with terms not in excess of five (5) years, provided that Declarant does not have a direct or indirect ownership interest in the supplier of such services or equipment equal to or greater than ten percent (10%);

(d) agreements for sale, lease or installation of burglar alarm and fire alarm equipment and related services with terms not in excess of five (5) years, provided that Declarant does not have a direct or indirect ownership interest in the supplier of such services or equipment equal to or greater than ten percent (10%);

(e) a contract approved by the DRE;

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

(g) lease agreements for laundry room fixtures and equipment with terms not in excess of five (5) years, provided that Declarant does not have a direct or indirect ownership interest in the lessor of such fixtures and equipment equal to or greater than ten percent (10%); or

(h) contracts in which the Association enters into litigation or any alternative dispute resolution procedure when the Association's obligation to pay for services is set in whole or in part on a contingency basis only if they are (1) contracts for collection of assessments or other accounts receivable, (2) or contracts involving evaluation of services, or (3) contracts with a total amount to be paid by the Association not in excess of Forty Thousand Dollars (\$40,000.00).

2.9.3 Enforcement. The power to enforce the Restrictions and any agreements entered into by the Association and to impose sanctions against Owners for violating the Restrictions.

2.9.4 Principal Office, Place of Meetings, Seal. The power but not the duty to move the Association's principal office from one location to another in the County; to designate

any place in the County for holding any meetings of Owners consistent with the provisions of Section 4.5; and to adopt and use a corporate seal and to alter the form of such seal.

2.9.5 Assessments. The power and duty to fix and levy Assessments and identify the due date for payment of Assessments. The Board may incur Common Expenses. The Association's funds shall be held in trust for the Owners.

2.9.6 Insurance. The power and duty to contract and pay for insurance in accordance with the Declaration, covering and protecting against such damages or injuries as the Board considers advisable (which coverage may include medical expenses of persons injured on the Common Property). The Board shall review, not less frequently than annually, all insurance policies and bonds obtained by the Board on the Association's behalf.

2.9.7 Delegation. The power but not the duty to delegate its powers according to law.

2.9.8 Bylaws. The power and duty to adopt these Bylaws.

2.9.9 Records. The power and duty to keep a complete record of Association acts and corporate affairs.

2.9.10 Sale of Property. The power but not the duty to sell property of the Association. Approval from Owners representing at least a majority of the Association's voting power must be obtained before property of the Association having an aggregate fair market value greater than five percent (5%) of the Association's budgeted gross expenses for the Fiscal Year is sold in a single Fiscal Year.

2.9.11 Manager. The power to engage a professional Manager for the Association at a compensation established by the Board to perform such duties and services as the Board authorizes.

2.9.12 Agreements with Declarant. The power but not the duty to negotiate and enter into agreements with Declarant.

2.10. DISTRIBUTION OF INFORMATION. The Board shall distribute the following financial information to all Owners (and any Beneficiary, insurer and guarantor of a first Mortgage on request), regardless of the number of Owners or the amount of assets of the Association:

2.10.1 Budget. A pro forma operating budget for each Fiscal Year consisting of at least the following information must be distributed not less than forty-five (45) nor more than ninety (90) days before the beginning of the Fiscal Year:

(a) Estimated revenue and Common Expenses computed on an accrual basis.

(b) A summary of the Association's reserves based on the most recent review or study conducted pursuant to Civil Code Section 1365.5, which must be printed in bold type and include all of the following:

(i) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component of the Common Property for which the Association is responsible.

(ii) As of the end of the Fiscal Year for which the study is prepared:

(A) The current estimate of the amount of cash reserves necessary to restore or maintain the major components of the Common Property for which the Association is responsible ("**Estimated Reserves**").

(B) The current amount of accumulated cash reserves actually set aside to restore or maintain the major components of the Common Property for which the Association is responsible ("**Actual Reserves**").

(iii) The percentage that the Actual Reserves is of the Estimated Reserves.

(c) A statement of whether the Board has determined or expects that the levy of one or more Capital Improvement or Reconstruction Assessments will be required to repair, replace, or restore any major component of the Common Property for which the Association is responsible or to provide adequate reserves therefor.

(d) A general statement setting forth the procedures used by the Board in calculating and establishing reserves to defray the costs of repair and replacement of, or additions to, major components of the Common Property and facilities for which the Association is responsible.

The Board may distribute a summary of the Budget instead of the Budget itself, so long as the Board complies with the provisions of Civil Code Section 1365(c).

2.10.2 Financial Report. A report consisting of the following must be distributed within one hundred twenty (120) days after the close of the Fiscal Year.

(a) A balance sheet as of the end of the Fiscal Year.

(b) An operating (income) statement for the Fiscal Year.

(c) A statement of changes in financial position for the Fiscal Year.

(d) Any information required to be reported under Corporations Code Section 8322.

(e) For any Fiscal Year in which the Association's gross income exceeds \$75,000, a copy of a review of the annual report prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy.

(f) A statement of the place where the names and addresses of the current Owners are located.

If the report referred to in Section 2.10.2 is not prepared by an independent accountant, it must be accompanied by the certificate of an authorized Association officer stating that the statement was prepared from the Association's books and records without independent audit or review.

2.10.3 Insurance Information. The Association shall distribute to all Owners a summary of the Association's property, general liability, and earthquake and flood insurance policies within ninety (90) days before the beginning of the Fiscal Year, that includes all of the following information: (a) the name of the insurer, (b) the type of insurance, (c) the limits of coverage, and (d) the amount of the deductibles, if any.

(a) The Association shall, as soon as reasonably practical, notify the Owners by first-class mail if any of the policies described above have lapsed, been canceled, and are not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible, for any of those policies. If the Association receives any notice of nonrenewal of a policy described above, the Association shall immediately notify the Owners if replacement coverage will not be in effect by the date the existing coverage will lapse.

(b) To the extent that any of the information required to be disclosed is specified in the insurance policy declaration page, the Association may meet its obligation to disclose that information by making copies of that page and distributing it to all Owners.

(c) The summary distributed above shall contain, in at least 10-point boldface type, the following statement:

"This summary of the Association's policies of insurance provides only certain information, as required by subdivision (e) of Section 1365 of the Civil Code, and should not be considered a substitute for the complete policy terms and conditions in the actual policies of insurance. Any Association member may, on request and provision of reasonable notice, review the Association's insurance policies and, on request and payment of reasonable duplication charges, obtain copies of those policies. Although the Association keeps the policies of insurance specified in this summary, the Association's policies of insurance may not cover your property, including personal property or, real property improvements to or around your dwelling, or personal injuries or other losses that occur in or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association members should consult with their individual insurance broker or agent for appropriate additional coverage."

2.10.4 Enforcement Policies. In addition to financial statements, the Board shall annually distribute within ninety (90) days before the beginning of the Fiscal Year a statement of the Association's policies and practices in enforcing its remedies against Owners for defaults in

the payment of Assessments, including the recording and foreclosing of liens against Condominiums.

2.10.5 Assessment and Foreclosure Notice.

(a) The Association shall distribute the written notice described in subsection (b) to each member of the Association during the ninety (90) day period immediately preceding the beginning of the Association's Fiscal Year. The notice shall be printed in at least 12-point type.

(b) The notice required by this Section shall read as follows:

NOTICE

ASSESSMENTS AND FORECLOSURE

This notice outlines some of the rights and responsibilities of owners of property in common interest developments and the associations that manage them. Please refer to the sections of the Civil Code indicated for further information. A portion of the information in this notice applies only to liens recorded on or after January 1, 2003. You may wish to consult a lawyer if you dispute an assessment.

ASSESSMENTS AND NONJUDICIAL FORECLOSURE

The failure to pay association assessments may result in the loss of an owner's property without court action, often referred to as nonjudicial foreclosure. When using nonjudicial foreclosure, the association records a lien on the owner's property. The owner's property may be sold to satisfy the lien if the lien is not paid. Assessments become delinquent 15 days after they are due, unless the governing documents of the association provide for a longer time. (Civil Code Sections 1366 and 1367.1)

In a nonjudicial foreclosure, the association may recover assessments, reasonable costs of collection, reasonable attorney's fees, late charges, and interest. The association may not use nonjudicial foreclosure to collect fines or penalties, except for costs to repair common areas damaged by a member or a member's guests, if the governing documents provide for this. (Civil Code Sections 1366 and 1367.1)

The association must comply with the requirements of Section 1367.1 of the Civil Code when collecting delinquent assessments. If the association fails to follow these requirements, it may not record a lien on the owner's property until it has satisfied those requirements. Any additional costs that result from satisfying the requirements are the responsibility of the association. (Civil Code Section 1367.1)

At least 30 days prior to recording a lien on an owner's separate interest, the association must provide the owner of record with certain documents by certified mail. Among these documents, the association must send a description of its collection and lien enforcement procedures and the method of calculating the amount. It must also provide an itemized statement

of the charges owed by the owner. An owner has a right to review the association's records to verify the debt. (Civil Code Section 1367.1)

If a lien is recorded against an owner's property in error, the person who recorded the lien is required to record a lien release within 21 days, and to provide an owner certain documents in this regard. (Civil Code Section 1367.1)

The collection practices of the association may be governed by state and federal laws regarding fair debt collection. Penalties can be imposed for debt collection practices that violate these laws.

PAYMENTS

When an owner makes a payment, he or she may request a receipt, and the association is required to provide it. On the receipt, the association must indicate the date of payment and the person who received it. The association must inform owners of a mailing address for overnight payments. (Civil Code Sections 1367 and 1367.1)

An owner may dispute an assessment debt by giving the board of the association a written explanation, and the board must respond within 15 days if certain conditions are met. An owner may pay assessments that are in dispute in full under protest, and then request alternative dispute resolution. (Civil Code Sections 1366.3 and 1367.1)

An owner is not liable for charges, interest and costs of collection, if it is established that the assessment was paid properly on time. (Civil Code Section 1367.1)

MEETINGS AND PAYMENT PLANS

An owner of a separate interest that is not a time-share may request the association to consider a payment plan to satisfy a delinquent assessment. The association must inform owners of the standards for payment plans, if any exist. (Civil Code Section 1367.1)

The board of the directors must meet with an owner who makes a proper written request for a meeting to discuss a payment plan when the owner has received a notice of a delinquent assessment. These payment plans must conform with the payment plan standards of the association, if they exist. (Civil Code Section 1367.1)

2.10.6 Accounts. On at least a quarterly basis, the Board shall: (a) cause to be completed and review a current reconciliation of the Association's operating and reserve accounts, (b) review the current Fiscal Year's actual reserve revenues and expenses compared to the Budget for the then current Fiscal Year, (c) review the income and expense statement for the Association's operating and reserve accounts, (d) review the most current account statements prepared by the financial institutions where the Association keeps its operating and reserve accounts, and (e) fulfill any additional duties established by Civil Code Section 1365.5. The signatures of either (1) two (2) Directors, or (2) one (1) Director and one (1) Association officer (who is not also a Director) are required for the withdrawal of money from the Association's reserve accounts. As used in this Subsection, the term "reserve accounts" means Budgeted funds that the Board has designated for use to defray the future repair and replacement of, or additions

to, those major components of the Common Property which the Association is obligated to maintain.

2.10.7 Reserve Study. The Board shall cause a study of the reserve account requirements of the Properties to be conducted in accordance with Civil Code Section 1365.5(e). As used in this Subsection, "reserve account requirements" means the estimated funds which the Board has determined are required to be available at a specified point in time to repair, replace or restore those major components of the Common Property which the Association is obligated to maintain.

2.11. MEETINGS.

2.11.1 Organization Meeting. The first regular meeting of a newly elected Board must be held within ten (10) days of election of the Board, at such place as is fixed and announced by the Directors at the meeting at which such Directors were elected, to organize, elect officers and transact other business. No notice is necessary to the newly elected Directors to hold such meeting; provided that (a) a majority of the whole Board is present when the time and place are announced at the annual meeting and (b) the meeting is held on the same day and at the same place as the annual meeting of the Owners at which the newly constituted Board was elected.

2.11.2 Regular Meetings. Regular meetings may be held at such time and place in the Properties as is determined by a resolution adopted by a majority of a quorum of the Directors; however, regular meetings must be held no less frequently than quarterly. Notice of the time and place of regular meetings of the Board shall be given to each Director at least four (4) days before the date of the meeting. Notices may be given personally or by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, facsimile, electronic mail, or other electronic means or posted at a prominent place or places in the Common Property.

2.11.3 Special Meetings. Special meetings may be called by the President or by any two (2) Directors by posting notice at least four (4) days before such meeting at a prominent place or places in the Common Property or on four (4) days' notice by first-class mail or forty-eight (48) hours' notice delivered personally or by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, telegraph, facsimile, electronic mail, or other electronic means. The notice must state the time, place and the purpose of the meeting.

2.11.4 Executive Sessions. The Board may convene in executive session to discuss and vote upon personnel matters, litigation, matters relating to the formation of contracts with third parties, Owner discipline or to meet with an Owner, upon the Owner's request regarding the Owner's payment of Assessments, as specified in Civil Code Sections 1367 or 1367.1. The nature of business to be considered in executive session must first be announced in an open session and must be generally noted in the minutes of the immediately following meeting that is open to the entire membership.

2.11.5 Other Meetings. Any congregation of a majority of the members of the Board at the same time and place to hear, discuss, or deliberate on any item of business scheduled to be heard by the Board, except those matters that may be discussed in executive session, shall constitute a meeting of the Board. All Owners shall have the right to attend any regular, special or other meeting of the Board, except an executive session. Owners who are not Directors may not participate in any deliberation or discussion at such meetings unless authorized by a vote of a majority of a quorum of the Board. However, at each Board meeting, except for executive sessions, the Board must set aside time for Owners to speak, subject to reasonable limits imposed by the Board.

2.11.6 Notice to Owners. Generally, if a meeting of the Board is not a regular or special meeting, Owners shall be given notice of the time and place of the meeting at least four (4) days before the meeting. Notice required by this Section shall be given by posting the notice in a prominent place or places in the Common Property and by mail to any Owner who had requested notification of Board meetings by mail, at the address required by the Owner. Notice may also be given by mail or delivery of the notice to each Condominium in the Properties, or by newsletter or other similar means of communication. If there are circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the Board and which of necessity make it impractical to provide notice to the Owners, then an emergency meeting of the Board may be called by the President or any two other members of the Board without providing notice to the Owners.

2.11.7 Waiver of Notice. Before or at any meeting of the Board, any Director may, in writing, waive personal notice of such meeting. Attendance by a Director at any Board meeting waives the requirement of personal notice. If all Directors are present at a Board meeting, no notice to Directors is required and any business may be transacted at such meeting. The transactions of any Board meeting, however called and noticed or wherever held, are valid as though had at a meeting duly held after regular call and notice, if (a) a quorum is present, (b) notice to the Owners of such meeting was posted as provided in Sections 2.11.2, 2.11.3 and 2.11.6, and (c) either before or after the meeting, each of the Directors not present signs a written waiver of notice, a consent to holding such meeting, or an approval of the Minutes thereof. The Secretary shall file all such waivers, consents and approvals with the Association's records or make them a part of the Minutes of the meeting.

2.12. ACTION WITHOUT MEETING. The Board may act without a meeting if all Directors consent in writing to such action. Written consents must be filed with the minutes of the Board. Each action by written consent has the same effect as a unanimous vote of such Directors. Within three (3) days after the written consents of all Directors have been obtained, an explanation of any action taken by unanimous written consent without a meeting must be either (a) posted by the Board in a prominent place or places in the Common Property, or (b) communicated to the Owners by other means the Board determines to be appropriate.

2.13. QUORUM AND ADJOURNMENT. Except as otherwise expressly provided in these Bylaws, at all meetings of the Board, a majority of the Directors constitutes a quorum for the transaction of business, and the acts of a majority of the Directors present at a meeting at which a quorum is present are the acts of the Board. At any meeting of the Board when less than a quorum present, the majority of those present may adjourn the meeting to another time. At any

such reconvened meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice if a quorum is present.

2.14. **COMMITTEES.** The Board may by resolution establish such committees as it desires, and may establish the purposes and powers of each such committee created. The resolution establishing the committee must (a) provide for the appointment of its members and a chairman, (b) state the purposes of the committee, and (c) provide for reports, termination and other administrative matters as the Board considers appropriate.

ARTICLE III OFFICERS

3.1. **DESIGNATION.** The Association's principal officers are a President, a Vice President, a Secretary, and a Treasurer, all elected by the Board. The Board may appoint an Assistant Treasurer, an Assistant Secretary and such other officers as it determines to be necessary. Officers other than the President need not be Directors. Any person may hold more than one office.

3.2. **ELECTION OF OFFICERS.** The Board shall annually elect the Association's officers at the new Board's organization meeting. Each officer shall hold his office at the pleasure of the Board, until he resigns or is removed, is otherwise disqualified to serve or a successor is elected and qualified to serve.

3.3. **REMOVAL OF OFFICERS.** On an affirmative vote of a majority of the entire Board, any officer may be removed, either with or without cause, and a successor elected at any meeting of the Board. Any officer may resign at any time by giving written notice to the Board or to the President or Secretary. Any such resignation is effective on the date of receipt of such notice or at any later time specified therein. Unless specified in the notice, acceptance of the resignation by the Board is not necessary to make it effective.

3.4. **COMPENSATION.** No officer may receive any compensation for services performed in the conduct of the Association's business unless such compensation is approved by the vote or written consent of Owners representing at least a majority of the Association's voting power; however (a) nothing in these Bylaws precludes any officer from serving the Association in some other capacity and receiving compensation therefor, and (b) any officer may be reimbursed for actual expenses incurred in the performance of Association duties. Appointment of any officer does not create contractual rights of compensation for services performed by such officer. No officer, employee or director of Declarant or any affiliate of Declarant may receive any compensation for service as an officer of the Association.

3.5. **PRESIDENT.** The President is the chief executive officer of the Association and shall (a) preside at all Association and Board meetings, (b) have the general powers and duties which are usually vested in the office of the President of a corporation, including but not limited to the power to appoint committees from among the Owners as the President decides is appropriate to assist in the conduct of the Association's affairs, and (c) subject to the control of the Board, have general supervision, direction and control of the Association's business.

3.6. **VICE PRESIDENT.** The Vice President shall take the President's place and perform the President's duties whenever the President is absent, disabled, fails or refuses to act. If neither the President nor the Vice President is available to perform the President's duties, the Board shall appoint another member of the Board to do so on an interim basis. The Vice President has such other powers and duties as may be prescribed by the Board or these Bylaws.

3.7. **SECRETARY.** The Secretary shall (a) keep the Minutes of all meetings of the Board and of the Association at the Association's principal office or at such other place as the Board may order, (b) keep the Association's seal in safe custody, (c) have charge of such books and papers as the Board may direct, (d) in general, perform the duties incident to the office of Secretary, (e) give, or cause to be given, notices of meetings of the Owners and of the Board required by these Bylaws or by law to be given, (f) keep a record book of Owners, listing the names, mailing addresses and telephone numbers of Owners, as furnished to the Association ("**Membership Register**"), and (g) record in the Membership Register the termination or transfer of ownership by any Owner, together with the date of the transfer. The Secretary has such other powers and duties as may be prescribed by the Board or these Bylaws.

3.8. **TREASURER.** The Treasurer is the Association's chief financial officer and is responsible for Association funds. The Treasurer shall (a) keep, or cause to be kept, full and accurate accounts and tax and business records of the Association, including accounts of all assets, liabilities, receipts and disbursements, (b) be responsible for the deposit of all funds in the name of the Association in such depositories as the Board designates, (c) disburse the Association's funds as ordered by the Board, and (d) render to the President and Directors, on request, an account of all transactions as Treasurer and of the Association's financial condition. The Treasurer has such other powers and duties as may be prescribed by the Board or these Bylaws.

ARTICLE IV OWNERS

4.1. VOTING RIGHTS.

4.1.1 **General Voting Rights.** The Association has three (3) classes of Membership, as described in the Declaration. The Class A and Class B Memberships are voting Memberships. The Class C Membership exists solely to appoint Directors and is not a part of the voting Membership of the Association. Except as provided in Section 2.3.3, any provision of the Bylaws which requires the vote or written consent of a specified percentage of the Association's voting power before action may be undertaken (i.e., other than actions requiring merely the vote or written consent of a majority of a quorum) requires the approval of such specified percentage of (a) the Class A Membership and the Class B Membership (so long as a Class B Membership exists), and (b) both the Association's total voting power and the Association's voting power represented by Owners other than Declarant. Whenever a reference is made in these Bylaws or the Declaration to the Association's voting power, it is a reference to the voting power of the Class A and Class B Memberships and not to the Class C membership.

4.1.2 **Vote to Initiate Construction Defect Claims.** Beginning on the date of the first annual meeting of Owners, Declarant relinquishes control over the Association's ability

to decide whether to initiate a Defect Claim. This means that Declarant, current employees and agents of Declarant, Board members who are appointed by Declarant, Board members elected by a majority of votes cast by Declarant, and all other Persons whose vote or written consent is inconsistent with the intent of the preceding sentence, are prohibited from participating and voting in any decision of the Association or Owners to initiate a Defect Claim.

4.2. **MAJORITY OF QUORUM.** Unless otherwise provided in the Restrictions, any action which may be taken by the Association may be taken by a majority of a quorum of the Owners.

4.3. **QUORUM.** Except as otherwise provided in these Bylaws, the presence in person or by proxy of at least twenty-five percent (25%) of the Association's voting power constitutes a quorum of the Membership. Owners present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, despite the withdrawal of enough Owners to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of a quorum. If a meeting is actually attended, in person or by proxy, by Owners having less than one-third (1/3) of the Association's voting power, then no matter may be voted on except matters which were generally described in the notice of the meeting. No action by the Owners on any matter is effective if the votes cast in favor are fewer than the minimum number of votes required by the Restrictions to approve the action.

4.4. **PROXIES.** Votes may be cast in person or by proxy. Proxies must be in writing and filed with the Secretary in advance of each meeting. Any form of proxy or written ballot distributed by any Person to the Owners must afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted on, except it is not mandatory that a candidate for election to the Board be named in the proxy or written ballot. The proxy or written ballot must provide that, when the Owner specifies a choice, the vote shall be cast in accordance with that choice. The proxy must also identify the person authorized to exercise the proxy and the length of time it will be valid. No proxy is valid with respect to a vote on any matter described in Corporations Code Section 7613(g) unless the general nature of the proposal was described in the proxy.

4.5. **PLACE OF MEETINGS OF OWNERS.** Meetings of the Owners shall be held on the Properties, or such other suitable place as proximate thereto as practical and convenient to the Owners, as designated by the Board.

4.6. **ANNUAL MEETINGS OF OWNERS.** The first annual meeting of Owners shall be held within six (6) months after the Close of Escrow for the sale of the first Condominium in the Properties. Thereafter, the annual meetings shall be held on or about the anniversary date of the first annual meeting. Each first Mortgagee may designate a representative to attend all annual meetings.

4.7. **SPECIAL MEETINGS OF OWNERS.** The Board shall call a special meeting of the Owners (a) as directed by resolution of a majority of a quorum of the Board, (b) by request of the President of the Association, or (c) on receipt of a petition signed by Owners representing at least five percent (5%) of the Association's total voting power. The Secretary shall give

notice of any special meeting within twenty (20) days after adoption of such resolution or receipt of such request or petition. The notice must state the date, time and place of the special meeting and the general nature of the business to be transacted. The special meeting must be held not less than thirty-five (35) nor more than ninety (90) days after adoption of such resolution or receipt of such request or petition. No business may be transacted at a special meeting except as stated in the notice. Each first Mortgagee may designate a representative to attend all special meetings.

4.8. **NOTICE.** The Secretary shall send to each Owner of record, and to each first Mortgagee who has filed a written request for notice with the Secretary, a notice of each annual or special meeting. The notice must be sent by first-class mail, at least ten (10) but not more than thirty (30) days before the meeting. The notice must state the purpose for the meeting as well as the day, hour and place where it is to be held. The notice may establish time limits for speakers and nominating procedures for the meeting. The notice must specify those matters the Board intends to present for action by the Owners, but, except as otherwise provided by law, any proper matter may be presented for action at the meeting. The notice of any meeting at which Directors are to be elected must include the names of all nominees when the notice is given to the Owners. The mailing of a notice, postage prepaid, in the manner provided in this Section, shall be considered notice served, forty-eight (48) hours after the notice has been deposited in a regular depository of the United States mail. Such notice must be posted in a conspicuous place on the Common Property and is deemed served on an Owner on posting if no address for such Owner has been then furnished the Secretary.

Notwithstanding any other provision of these Bylaws, approval by the Owners of any of the following proposals, other than by unanimous approval of those Owners entitled to vote, is not valid unless the general nature of the proposal was stated in the notice or in any written waiver of the notice: (a) removing a Director without cause; (b) filling vacancies on the Board; (c) approving a contract or transaction between the Association and one or more Directors, or between the Association and any entity in which a Director has a material financial interest; (d) amendment of the Articles; or (e) electing to wind up and dissolve the Association.

4.9. **RECORD DATES.** The Board may fix a date in the future as a record date for determining which Owners are entitled to notice of any meeting of Owners. The record date so fixed must be not less than ten (10) nor more than sixty (60) days before the date of the meeting. If the Board does not fix a record date for notice to Owners, the record date for notice is the close of business on the business day preceding the day on which notice is given. In addition, the Board may fix a date in the future as a record date for determining the Owners entitled to vote at any meeting of Owners. The record date so fixed must be not less than ten (10) nor more than sixty (60) days before the date of the meeting. If the Board does not fix a record date for determining Owners entitled to vote, Owners on the day of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.

4.10. **ADJOURNED MEETINGS.** If a quorum is not present at the time and place established for a meeting, a majority of the Owners who are present, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the original meeting date, at which meeting the quorum requirement is the presence in person or by proxy of Owners holding at least twenty-five percent (25%) of the Association's voting power.

Such an adjourned meeting may be held without the notice required by these Bylaws if notice thereof is given by announcement at the meeting at which such adjournment is taken.

4.11. ORDER OF BUSINESS. Meetings of Owners must be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the Association may adopt. The order of business at all meetings of the Owners is as follows: (a) roll call to determine the voting power represented at the meeting; (b) proof of notice of meeting or waiver of notice; (c) reading of minutes of preceding meeting; (d) reports of officers; (e) reports of committees; (f) election of inspector of election (at annual meetings or special meetings held for such purpose); (g) election of Directors (at annual meetings or special meetings held for such purpose); (h) unfinished business; and (i) new business.

4.12. ACTION WITHOUT MEETING. Except for election of Directors, any action which may be taken at a meeting of the Owners may be taken without a meeting by written ballot of the Owners. Ballots must be solicited in the same manner as provided in these Bylaws for giving of notice of meetings to Owners. Such solicitations must specify (a) the number of responses needed to meet the quorum requirements, (b) the percentage of approvals necessary to approve the action, and (c) the time by which ballots must be received to be counted. The form of written ballot must afford an opportunity to specify a choice between approval and disapproval of each matter and must provide that, where the Owner specifies a choice, the vote shall be cast in accordance therewith. Receipt within the time period specified in the solicitation of (i) ballots which equal or exceed the quorum which would be required if the action were taken at a meeting, and (ii) approvals which equal or exceed the number of votes which would be required for approval if the action were taken at a meeting at which the total number of votes cast was the same as the total number of ballots cast, constitutes approval by written ballot.

4.13. CONSENT OF ABSENTEES. The actions taken at any meeting of Owners, however called and noticed, are valid as though taken at a meeting duly held after regular call and notice, if (a) a quorum is present either in person or by proxy, and (b) either before or after the meeting, each of the Owners not present in person or by proxy signs (1) a written waiver of notice, (2) a consent to the holding of such meeting, or (3) an approval of the minutes thereof. The Secretary shall file all such waivers, consents or approvals with the corporate records or make them a part of the minutes of the meeting.

4.14. MINUTES, PRESUMPTION OF NOTICE. Minutes or a similar record of the proceedings of meetings of Owners, when signed by the President or Secretary, shall be presumed truthfully to evidence the matters described therein. A recitation in the Minutes executed by the Secretary that proper notice of the meeting was given constitutes prima facie evidence that such notice was given.

ARTICLE V AMENDMENTS

These Bylaws may be amended by the vote or written consent of Owners representing at least (a) a majority of the voting power of each class of the Owners, and (b) a majority of the Association's voting power represented by Owners other than Declarant; provided that the specified percentage of each class of Owners necessary to amend a specific provision of these

Bylaws may not be less than the percentage of affirmative votes prescribed for action to be taken under that provision. These Bylaws may be amended by a majority of the entire Board, (1) at any time before the Close of Escrow for the sale of the first Condominium, or (2) if the amendment is within the Board's power to adopt without Owner approval pursuant to the California Corporations Code and either (a) the proposed amendment conforms the Bylaws to California law or the requirements of DRE, Fannie Mae, Ginnie Mae or Freddie Mac, or (b) the proposed amendment corrects a typographical error in the Bylaws. Any amendment to these Bylaws which materially affects matters listed in Article XI or Section 12.2 of the Declaration must be approved by the Beneficiaries of that percentage of first Mortgages on the Condominiums which is specified in the affected provision of Article XI or Section 12.2 of the Declaration, respectively. If an amendment to these Bylaws materially affects matters listed in both Article XI and Section 12.2 of the Declaration, the amendment must be approved pursuant to the requirements of both Article XI and Section 12.2.

ARTICLE VI MISCELLANEOUS

6.1. **CHECKS, DRAFTS AND DOCUMENTS.** All checks, drafts, orders for payment of money, notes and other evidences of indebtedness issued in the name of or payable to the Association must be signed or endorsed in the manner and by the person or persons the Board designates by resolution, subject to the requirements of Section 2.10.6 for withdrawing money from the Association's reserve accounts.

6.2. **CONFLICTS.** If any of these Bylaws conflict with any laws of the State of California, such conflicting Bylaws shall be void on final court determination to such effect, but all other Bylaws shall remain in full force. In case of any conflict between the Articles of Incorporation and these Bylaws, the Articles of Incorporation shall control. In case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

6.3. **EXECUTION OF DOCUMENTS.** The Board may authorize any officer or officers, agent or agents to enter into any contract or execute any instrument in the name and on behalf of the Association. Such authority may be general or confined to specific instances. Unless so authorized by the Board, no officer, agent, committee member or employee may bind the Association by any contract or pledge its credit or render it liable for any purpose in any amount.

6.4. AVAILABILITY OF ASSOCIATION DOCUMENTS.

6.4.1 **Records To Be Maintained.** The Association shall keep at its principal office (or at such other place in or near the Properties as the Board may prescribe) the Restrictions and the Association's books of account; minutes of meetings of Owners, the Board and committees; and the Membership Register (collectively, the "*Association Documents*"), each of which shall be made available for inspection and copying by any Owner or the Owner's duly appointed representative for a purpose reasonably related to the Owner's interest as an Owner.

6.4.2 **Limits on Availability.** The Board may establish reasonable rules regarding (a) notice to be given to the custodian of the Association Documents by the Owner desiring to make the inspection, (b) hours and days of the week when such an inspection may be made, and (c) payment of the cost of copying any of the Association Documents requested by an Owner; provided that every Director may at any reasonable time inspect all Association Documents and the physical properties owned or controlled by the Association, and make extracts and copies of documents.

6.4.3 **Time of Availability.** The minutes, minutes that are proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any meeting of the Board (other than an executive session) must be available to Owners within thirty (30) days of the meeting. The minutes, proposed minutes or summary minutes must be distributed to any Owner on request and on reimbursement of the Association's cost in making that distribution.

6.4.4 **Distribution to Owners.** No later than ten (10) days after the Association receives written request from any Owner, the Association shall provide to that Owner a copy of each of the documents listed in Civil Code Section 1368(a) that have been requested by the Owner. Owners must be notified in writing when the budget required in Section 2.10.1 is distributed or at the time of any general mailing to the entire Association Membership of their right to have copies of the minutes of meetings of the Board and how and where those minutes may be obtained.

6.5. **FISCAL YEAR.** The Board shall select the Association's Fiscal Year. The Fiscal Year is subject to change as the Board determines.

ARTICLE VII NOTICE AND HEARING PROCEDURE

7.1. **INITIAL COMPLAINT.** Persons who believe a violation of the Restrictions has occurred may file a complaint with a Person designated by the Board on a form approved by the Board. The Board will commence the enforcement process. In its discretion, the Board may issue one or two violation letters to the Person alleged to have committed the violation ("**respondent**") or set a hearing described in Section 7.2 below. The Board may direct the Manager to assist the Board in any of the steps the Board chooses to take in enforcing the Restrictions except that decisions made at hearings must be made by the Board.

7.2. **SCHEDULING HEARINGS.** A hearing before the Board to determine whether a sanction should be imposed may be initiated by the Board after receipt of at least one complaint. To initiate a hearing, the Board must deliver to the respondent a notice which includes the following:

7.2.1 **Complaint.** A written statement setting forth in ordinary and concise language the acts or omissions with which the respondent is charged,

7.2.2 **Basis for Violation.** A reference to the specific provisions of the Restrictions which the respondent is alleged to have violated,

7.2.3 **Hearing Schedule.** The date, time and place of the scheduled hearing,

7.2.4 **Sanctions.** A list of sanctions which may be imposed at the hearing. The date for the hearing may be no less than fifteen (15) days after the date the notice of hearing is mailed or delivered to the respondent. The respondent is entitled to attend the hearing, submit a statement of defense to the Board in advance of the hearing, or present a statement of defense and supporting witnesses at the hearing. If the respondent does not attend the hearing, the respondent waives these rights.

7.3. **CONDUCT OF HEARING.** The Board shall conduct the hearing in executive session, affording the respondent a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard must be placed in the minutes of the meeting. Such proof is adequate if a copy of the notice together with a statement of the date and manner of delivery is entered by the Association officer or Board member who mailed or delivered such notice. The record of the meeting must contain a written statement of the results of the hearing and the sanction, if any, imposed.

7.4. **IMPOSITION OF SANCTIONS.** After affording the respondent an opportunity for a hearing before the Board, the Board may impose any one or more of the following sanctions: (a) levy a Special Assessment as authorized in the Declaration; (b) suspend or condition the respondent's right to use any recreational facilities the Association owns, operates or maintains commencing on a date in the future selected by the Board; (c) suspend the respondent's voting privileges established under the Declaration; (d) enter upon a Condominium to perform maintenance which, according to the Declaration, is the responsibility of the respondent; or (e) record a notice of noncompliance if allowed by law. Any suspension of Membership privileges may not be for a period of more than thirty (30) days for any noncontinuing infraction, but in the case of a continuing infraction (including nonpayment of any assessment after the same becomes delinquent) may be imposed for so long as the violation continues. Written notice of any sanctions to be imposed must be delivered to the respondent personally, by any system or technology designed to record and communicate messages, facsimile, electronic mail, or other electronic means, via first class mail or certified mail return receipt requested, or any combination of the foregoing. No action against the respondent arising from the alleged violation may take effect prior to five (5) days after the hearing.

7.5. **LIMITS ON REMEDIES.** The Board's failure to enforce the Restrictions does not waive the right to enforce them. The remedies provided by the Restrictions are cumulative and not exclusive. However, any individual Owner must exhaust all available internal Association remedies prescribed by the Restrictions before that Owner may resort to a court of law for relief with respect to any alleged violation of the Restrictions by another Owner.

EXHIBIT D**OWNER MAINTENANCE, REPAIR AND
REPLACEMENT RESPONSIBILITY**

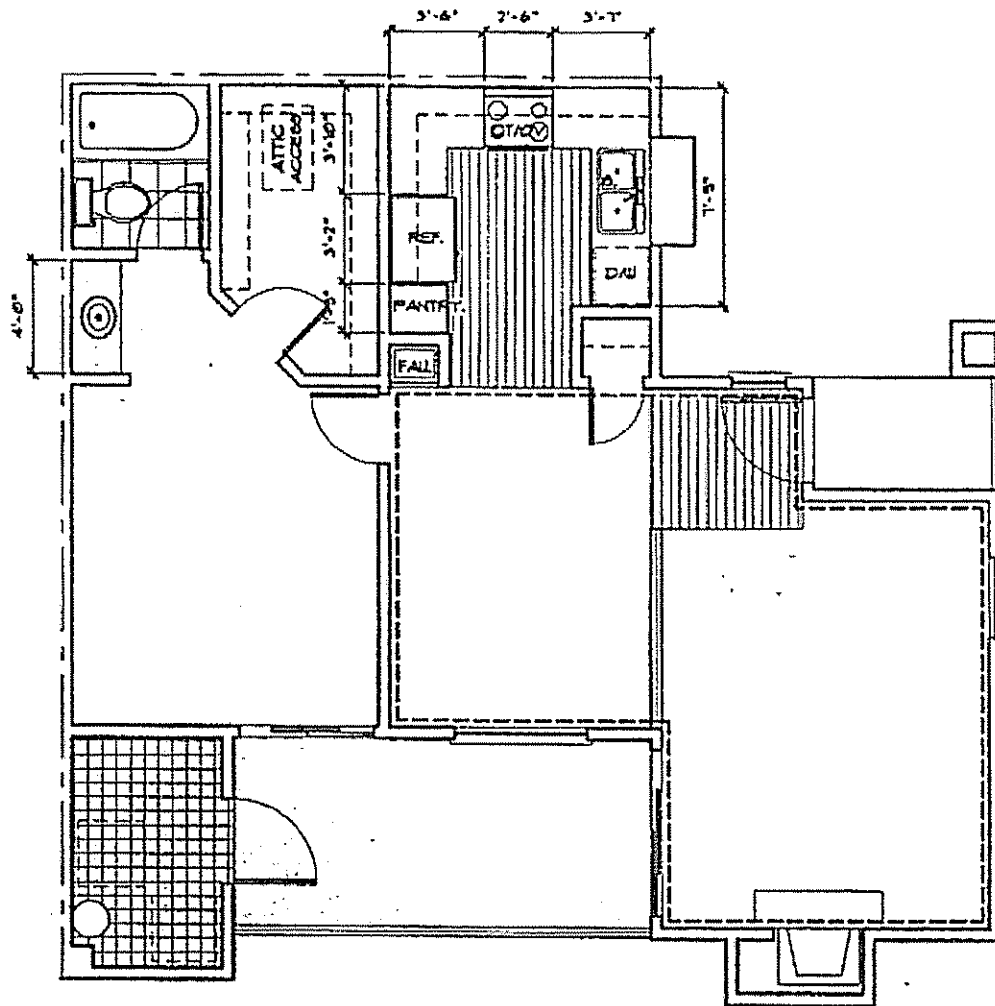
ITEM	OWNER RESPONSIBILITY
BUILDING EXTERIOR	
Sliding glass doors, screen doors	Owner shall maintain the glass portion of any sliding doors and screen doors; provided, however, Owner shall not remove sliding glass door frames.
Windows	Owner shall maintain the window glass and screens; provided, however, Owner shall not modify or remove window frames. Window frames shall be the maintenance responsibility of the Association.
Exclusive Use Area patios and balconies	Sweep patio or balcony. Clean and maintain free of debris and trash. Change light bulb for any lighting on patio or balcony. Owner maintenance obligation does not include painting or repair of floor or wall surfaces, unless damaged by Owner or Owner's family, guests or tenants.
BUILDING INTERIOR	
Unit	Owner shall maintain, repair and replace all interior doors, interior wall surfaces, drywall, cabinets, floor coverings, ceilings, permanent fixtures, appliances, electrical outlets and switches, toilets, any smoke detectors (including periodic testing and replacement of batteries), washing machine water hoses, door frames, and door locks and other hardware.
Plumbing outlets and fixtures, ducts (HVAC, dryer, stove, oven), electrical wiring, circuit breakers, electrical outlets and fixtures and any and all other heating and cooling equipment in the Unit.	Owner shall maintain, repair and replace portions within or which exclusively serve Unit. Owners shall replace light bulbs used in fixtures that obtain electricity from inside the Unit.
Any radiant wall heater	Owner maintains.
Exclusive Use Area carport	Maintain free of debris and trash.
UTILITIES	
Telephone wiring	Owner shall maintain and repair portions within or which exclusively serve Unit.
Telephone and cable television service	Owner responsible for obtaining and having serviced.
Electric service	Owner responsible for obtaining and having serviced.

Air conditioner compressor	Owner responsible for service, repair and replacement.
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ALL MAINTENANCE, REPAIR AND REPLACEMENT TO BE PERFORMED BY OWNERS SHALL BE PERFORMED IN ACCORDANCE WITH THE RESTRICTIONS, DESIGN GUIDELINES AND GOVERNMENTAL AUTHORITIES. UNLESS OTHERWISE SPECIFIED, MAINTENANCE INCLUDES THE OBLIGATION TO KEEP THE SUBJECT ITEM IN A CLEAN, SANITARY AND ATTRACTIVE CONDITION, FREE OF DEBRIS AND REASONABLY PROTECTED FROM DAMAGE SUBJECT TO THE APPROVAL OF THE DESIGN REVIEW COMMITTEE. UNLESS OTHERWISE SPECIFIED, ALL COSTS AND EXPENSES OF MAINTENANCE, REPAIR AND REPLACEMENT SHALL BE BORNE SOLELY BY THE OWNER PERFORMING SUCH MAINTENANCE, REPAIR AND REPLACEMENT.

EXHIBIT E
HARD SURFACE FLOORING

EXHIBIT E
DRAWING DEPICTING THE ONLY PORTIONS OF UNIT IN WHICH OWNER
MAY INSTALL HARD SURFACE FLOORING



UNIT A FINISH FLOOR PLAN




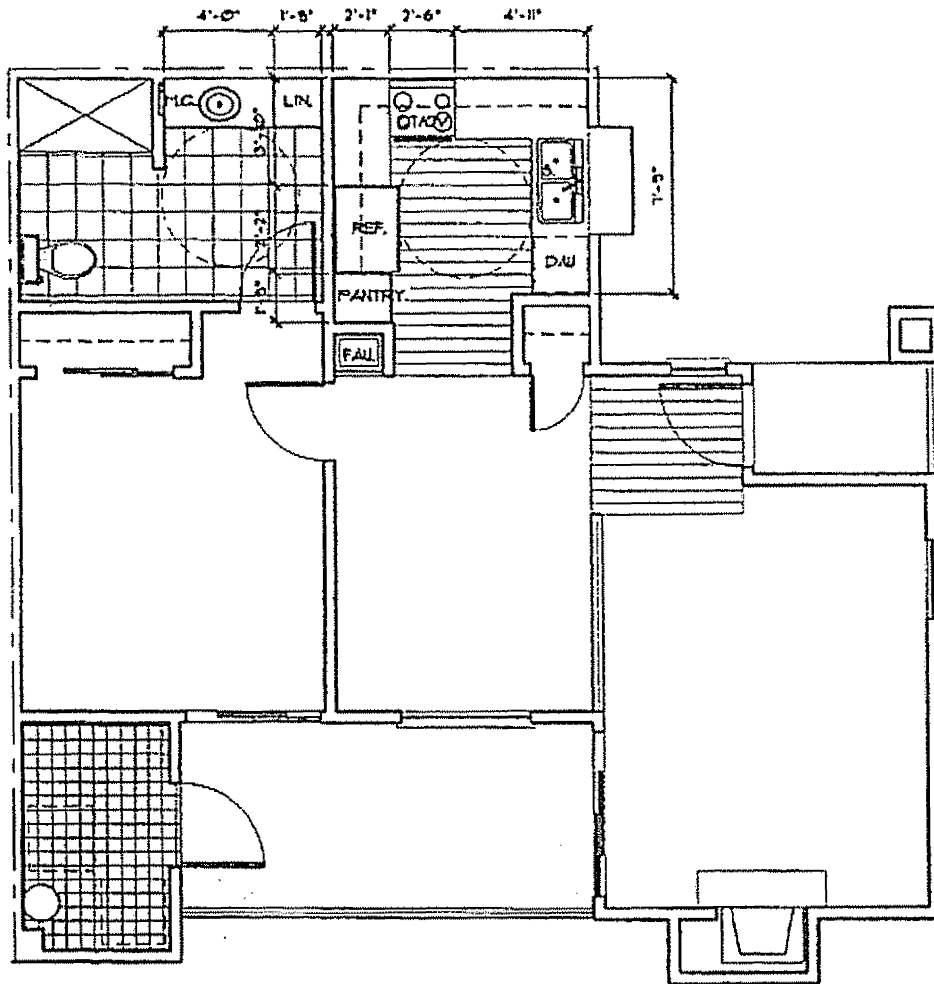
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EXHIBIT E
DRAWING DEPICTING THE ONLY PORTIONS OF UNIT IN WHICH OWNER
MAY INSTALL HARD SURFACE FLOORING



UNIT A-HC FINISH FLOOR PLAN




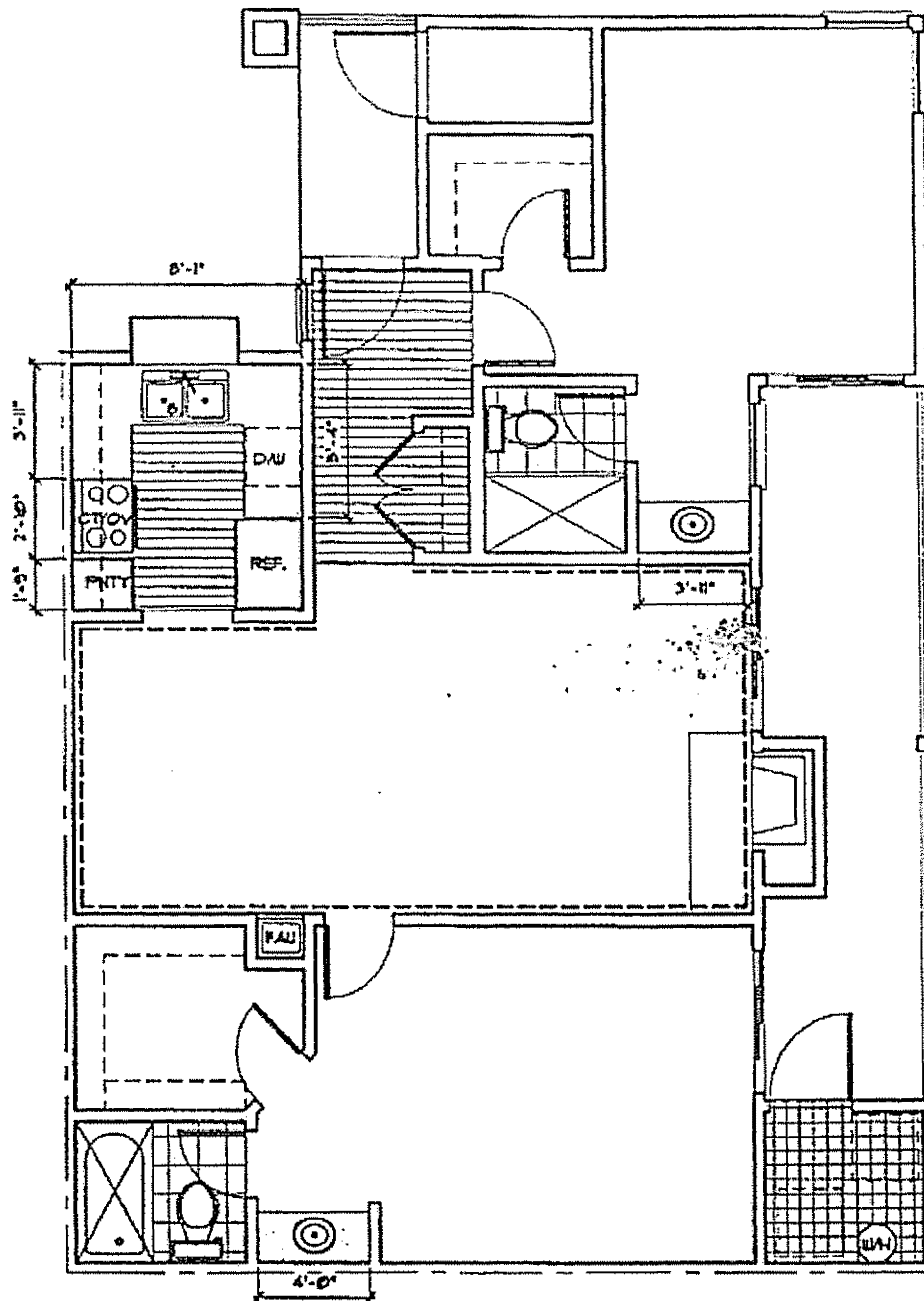
   = Allowed for hard surface flooring

EXHIBIT E
DRAWING DEPICTING THE ONLY PORTIONS OF UNIT IN WHICH OWNER
MAY INSTALL HARD SURFACE FLOORING



UNIT B FINSH FLOOR PLAN




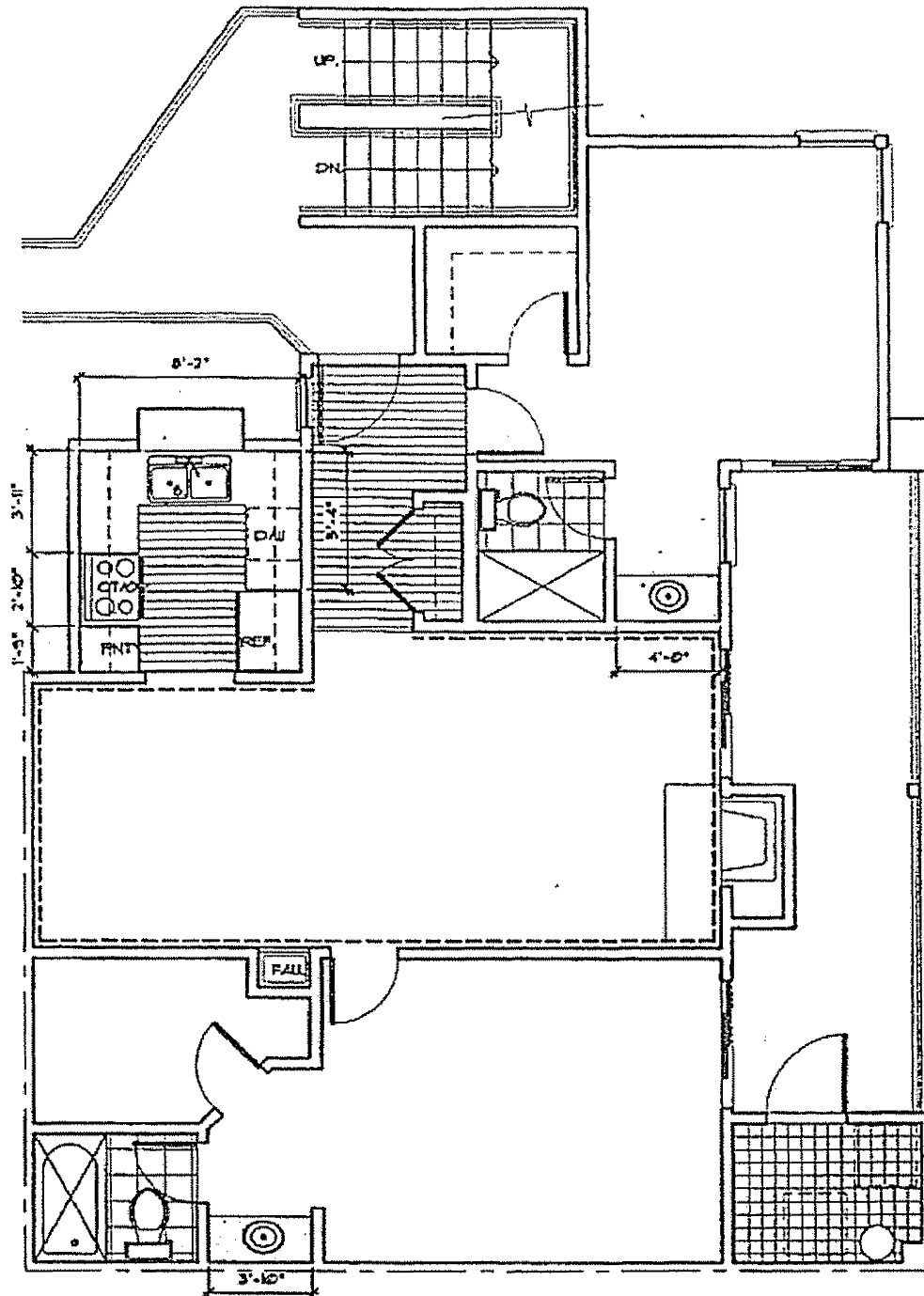




 = Allowed for hard surface flooring

EXHIBIT E
DRAWING DEPICTING THE ONLY PORTIONS OF UNIT IN WHICH OWNER
MAY INSTALL HARD SURFACE FLOORING



UNIT C1 FINISH FLOOR PLAN

 = Allowed for hard surface flooring

SUBORDINATION

The undersigned, as Beneficiary of the beneficial interest in and under the Deed of Trust among SHEA LAGUNA HILLS LLC, a Delaware limited liability company, as Trustor, UNIONBANCAL MORTGAGE CORPORATION, a California corporation, as Trustee, and UNION BANK OF CALIFORNIA, N.A., as Beneficiary, recorded on December 28, 2004, as Instrument No. 2004001146434, in the Official Records of Orange County, California (the "**Deed of Trust**"), hereby subordinates the Deed of Trust and its beneficial interest thereunder to the foregoing First Amended and Restated Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Bella Tierra, as amended or restated (the "**Declaration**"), to any Notice of Addition recorded pursuant to the provisions of Article XVI of the Declaration, as amended or restated (the "**Notice**"), any Supplemental Declaration, as amended or restated, and to all easements to be conveyed to the Association in accordance with the Declaration, any Notice and any Supplemental Declaration. By executing this Subordination, the undersigned agrees that if the undersigned acquires title to all or any portion of the Properties by foreclosure (whether judicial or nonjudicial), deed-in-lieu of foreclosure or any other remedy in or relating to the Deed of Trust, the undersigned will acquire title subject to the provisions of the Declaration, any applicable Notice and any applicable Supplemental Declaration, which shall remain in full force and effect.

Dated: September 27, 2005

UNION BANK OF CALIFORNIA, N.A.,

By: Kandice K. Parsons

Name: Kandice K. Parsons
Vice President

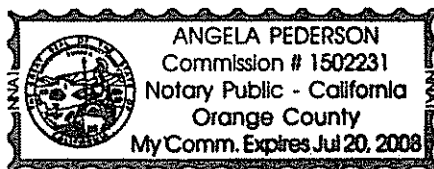
Title: _____

STATE OF CALIFORNIA)
) ss.
COUNTY OF Orange)

On Sept. 27, 2005, before me, Angela Pederson,
personally appeared Kandice K. Parsons and _____,
personally known to me (or proved to me on the basis of satisfactory evidence) to be the
person(s) whose name(s) (is) (are) subscribed to the within instrument and acknowledged to me
that (he) (she) (they) executed the same in (his) (her) (their) authorized capacity(ies), and that by
(his) (her) (their) signature(s) on the instrument the person(s), or the entity upon behalf of which
the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Angela Pederson
Notary Public in and for said State



Government Code 27361.7

I certify under the penalty of perjury that the notary seal on this document read as follows:

Name of Notary: Connie Short

Date Commission Expires: 2-8-08

County where bond is Filed: Orange

Commission No.: 1468787

Manufacturer/Vendor No.: NNA1

Name of Notary: Angela Pederson

Date Commission Expires: 7-20-08

County where bond is Filed: Orange

Commission No.: 1502231

Manufacturer/Vendor No.: NNA1

Place of execution - Newport Beach

Date - October 19, 2005


FIDELITY NATIONAL TITLE COMPANY