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DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
CONCERTO LOFTS MAINTENANCE CORPORATION

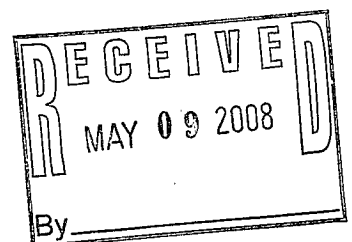


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DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR

CONCERTO LOFTS MAINTENANCE CORPORATION

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CONCERTO LOFTS MAINTENANCE CORPORATION is made this 26th day of February, 2008, by WARMINGTON PV 325 ASSOCIATES, LLC, a Delaware limited liability company ("*Participating Builder*").

RECITALS{ TC "RECITALS" \fC \l "1" }:

A. NEIGHBORHOOD. Participating Builder is the owner of certain real property in the City of Los Angeles, County of Los Angeles, State of California, described as follows (the "Neighborhood"):

Lots 9, 10, 11 and 12 of Tract No. 49104-01, as shown on a map filed in Book 1233, Pages 51 through 64 of Maps ("*Map*"), in the Office of the Los Angeles County Recorder, together with that portion of Parcel O of said Tract, as set out and shown on that certain Covenant and Agreement to Hold Property as One Parcel, recorded August 3, 2005 as Instrument No. 05-1848333, in Official Records of Los Angeles County, California.

Lots 9, 10, 11, 12 and a portion of Parcel O of Tract No. 49104-01 are subject to a Covenant and Agreement to Hold Property as One Parcel recorded August 3, 2005 as Instrument No. 05-1848333, in Official Records of Los Angeles County, California, although Participating Builder may further subdivide such Lots into Condominiums as herein provided.

B. NATURE OF PROJECT. Participating Builder intends to develop on the Neighborhood a statutory airspace condominium project containing eighty-nine (89) condominium units consisting of three (3) phases. In accordance with California Civil Code Section 1353(a), this Neighborhood is a Common Interest Development condominium project. Participating Builder desires to divide the Neighborhood and Improvements thereon into a Condominium project, as defined in Sections 783 and 1351(f) of the California Civil Code, in accordance with the recorded Condominium Plan for the "Neighborhood" as hereinafter defined. Participating Builder also intends to impose upon the Neighborhood mutually beneficial restrictions, easements, assessments and liens under a general plan or scheme designed to benefit and enhance the value of the Neighborhood. Participating Builder will hereafter hold and convey title to all or any portion of the Neighborhood, as hereinafter defined, subject to certain protective covenants, conditions, restrictions and easements hereinafter set forth.

NOW, THEREFORE, Participating Builder hereby declares and does hereby establish that the Neighborhood, including any Improvements added or constructed on or about the

Neighborhood in the future, shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following limitations, restrictions, covenants and conditions, for the purposes of creating the condominium project and of mutually benefiting the Neighborhood, the Neighborhood and all of the Units, and the future owners thereof. All of the restrictions, covenants and conditions set forth herein shall run with the land, shall be enforceable equitable servitudes, unless unreasonable, and shall be binding upon all parties having or acquiring any right, title or interest in the Neighborhood, and shall be for the benefit of each owner of any portion of the Neighborhood, or any interest therein, and shall inure to the benefit of and be binding upon each successor in interest of the owner thereof. In addition to this Declaration, the Neighborhood is also subject to the Master Declaration, as such term is defined hereinbelow, to which this Declaration is subject and subordinate.

## ARTICLE I

### DEFINITIONS

The following terms used in these covenants, conditions and restrictions shall be applicable to this Declaration and are defined as follows:

SECTION 1. ANNEXED PHASE. The term "Annexed Phase" shall mean and refer to that portion of the Neighborhood which has been designated as a Phase herein or in a Supplementary Declaration of Covenants, Conditions and Restrictions recorded pursuant to the terms of the Article of this Declaration entitled "ANNEXATION", in which at least (a) one (1) Unit has been conveyed by Participating Builder to an individual Owner under the authority of a Public Report, (b) Participating Builder has exercised an Association vote with respect to any portion of such Phase; or (c) assessments have commenced with respect to any portion of such Phase.

SECTION 2. ARTICLES OF INCORPORATION. The term "Articles of Incorporation" or "Articles" shall mean and refer to the Articles of Incorporation of the Association.

SECTION 3. ASSESSMENTS. The term "Assessments" shall mean and refer to the following: Regular Assessment, Reimbursement Assessment, Reconstruction Assessment and Special Assessment.

(a) Reconstruction Assessment. The term "Reconstruction Assessment" shall mean and refer to a charge levied against each Owner to cover the cost of the repair, reconstruction and restoration of any Improvements on the Association Property.

(b) Regular Assessment. The term "Regular Assessment" shall mean and refer to the amount which is to be paid by each Owner to the Association for common expenses as provided by the terms of this Declaration.

(c) Reimbursement Assessment. The term "Reimbursement Assessment" shall mean and refer to a charge against an Owner for the purpose of reimbursing the Association for any costs incurred by the Association on behalf of an individual Owner or for purposes of collecting any monetary penalties which may be imposed by the Association against an Owner as a disciplinary measure for failure of the Owner to comply with provisions of this Declaration, the determinations of the Board or the Design Review Committee, or any rule or regulation adopted by the Association.

(d) Special Assessment. The term "Special Assessment" shall mean and refer to a charge levied against each Owner in any fiscal year of the Association as provided in California Civil Code Section 1366 for the installation, construction, reconstruction, maintenance, repair or replacement of any Association Property or Common Area. In the event the Association undertakes to provide materials or services which benefit a particular Owner, such Owner, in accepting such materials and services, agrees that the cost thereof shall also be a Special Assessment.

SECTION 3. ASSOCIATION. The term "Association" or "Subassociation" shall mean and refer to CONCERTO LOFTS MAINTENANCE CORPORATION, a nonprofit mutual benefit corporation, its successors and assigns. Pursuant to the provisions of the Master Declaration, the Association is also a "Subassociation" as defined in Section 1.63 of the Master Declaration.

SECTION 4. ASSOCIATION PROPERTY. The term "Association Property" shall mean and refer to all real property and the Improvements thereon owned in fee by the Association or over which the Association has an easement for the use, care, maintenance or other purposes for the common use, benefit and enjoyment of all Members, as provided herein. The Association Property is described as s AP-1, AP-2, AP-3 and AP-4, as shown and defined on that certain Condominium Plan recorded concurrently herewith in Official Records of Los Angeles County, California, affecting Lots 9, 10, 11, 12 and a portion of Parcel O of Tract No. 49104-01, as per map recorded in Book 1233, Pages 51 through 64 of Maps, Records of Los Angeles County, California, as further set out in a Covenant and Agreement to Hold Property as One Parcel recorded August 3, 2005 as Instrument No. 05-1848333, in Official Records of Los Angeles County, California. The Association Property shall be conveyed to the Association prior to or concurrently with the conveyance of the first Unit in the Phase of the Neighborhood in which it is located as further set forth on *Exhibit A* attached hereto and incorporated herein by this reference. Pursuant to the provisions of the Master Declaration, the Association Property is also "Common Area" as defined in Section 1.13 of the Master Declaration.

SECTION 5. ASSOCIATION RECORDS. The term "Association Records" shall mean and refer to Association financial documents or statements, the Budget, meeting minutes and other documents set forth by Section 1365.2 of the California Civil Code.

SECTION 6. ASSOCIATION RULES. The term "Association Rules" shall mean and refer to rules and regulations adopted, amended and repealed from time to time by the Board.

SECTION 7. BEST MANAGEMENT PRACTICES. The term "Best Management Practices" or "BMP's" shall mean and refer to the criteria established by the County to provide appropriate stormwater pollution control related to the Project's structural and non-structural facilities in compliance with the National Pollutant Discharge Elimination System. The BMP implementation shall include the storage and application of fertilizers, pesticides and other landscape management products as required to minimize potential pollutant discharges into the water system. The BMP's will be incorporated into the Playa Vista Storm Water Management District's public education program as described in the Playa Vista Storm Water Management Plan.

SECTION 8. BOARD OF DIRECTORS. The term "Board of Directors" or "Board" shall mean and refer to the duly elected Board of Directors of the Association.

SECTION 9. BUDGET. The term "Budget" shall mean a pro forma operating budget prepared by the Board pursuant to the requirements of Section 1365 of the California Civil Code.

SECTION 10. BYLAWS. The term "Bylaws" shall mean and refer to the bylaws of the Association.

SECTION 11. CITY. The term "City" shall mean and refer to the City of Los Angeles, a municipal corporation of the State of California.

SECTION 12. CLOSE OF ESCROW. The term "Close of Escrow" shall mean and refer to the date on which a deed is recorded conveying a Unit pursuant to a transaction requiring the issuance of a Public Report.

SECTION 13. COMMON AREA. The term "Common Area" shall mean and refer to that certain volume of space described and depicted on the Condominium Plan which shall be owned by Owners as tenants-in-common. The area within the boundaries of the volume of space may contain air, earth or water or any combination thereof. Any references in this Declaration to Common Area are references to the Common Area as a whole and to portions thereof. The Common Area within each Phase of the Neighborhood is designated on *Exhibit A* attached hereto and incorporated herein by this reference.

SECTION 14. COMMON PROPERTY. The term "Common Property" shall mean and refer to the Common Area and/or the Association Property, as applicable.

SECTION 15. CONDOMINIUM. The term "Condominium" shall mean and refer to 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 together with a separate ownership interest in fee in a Unit and all easements appurtenant thereto. Subject to the provisions of Article XV, the undivided fee simple interest in the Common Area is appurtenant to each Unit in a Phase of the Neighborhood and is a fraction having one (1) as its numerator and the number of Units in the Phase of the Neighborhood as its denominator, and shall be held by the Owners of Condominiums in the Phase of the Neighborhood as tenants-in-common. Condominiums in the Neighborhood are "Condominiums" as defined in Section 1.18 of the Master Declaration

SECTION 16. CONDOMINIUM BUILDING. The term "Condominium Building" shall mean and refer to a separate building containing one or more Units.

SECTION 17. CONDOMINIUM PLAN. The term "Condominium Plan" shall mean and refer to the Condominium Plan recorded for the Neighborhood, consisting of (a) a description or survey map of the Neighborhood which shall refer to or show monumentation on the ground, (b) a three-dimensional description of the Neighborhood, one or more dimensions which may extend for indefinite distance upwards or downwards with sufficient detail to identify the Common Area, the Association Property and each Unit, and (c) a certificate consenting to the recordation of the Condominium Plan pursuant to the Davis-Stirling Common Interest Development Act and acknowledged by the record owner of fee title to the Neighborhood included in the condominium project. This certificate shall also be signed and acknowledged by the Trustee or beneficiary of each recorded Deed of Trust and the Mortgagee of each recorded Mortgage encumbering the property included in the condominium project.

SECTION 18. CORPORATION PROPERTY. The term "Corporation Property" shall mean and refer to the "Corporation Property" as defined in the Master Declaration.

SECTION 19. COUNTY. The term "County" shall mean and refer to the County of Los Angeles, California.

SECTION 20. DECLARANT. The term "Declarant" shall mean and refer to the "Declarant" defined in the Master Declaration.

SECTION 21. DECLARATION. The term "covenants" and/or "Declaration" shall mean and refer to this Declaration, and the covenants, conditions, restrictions, reservations, easements, liens and charges imposed by or expressed herein. This Declaration is a "Subordinate Declaration" as defined in Section 1.64 of the Master Declaration.

SECTION 22. DELEGATE. The term "Delegate" shall mean and refer to the "Delegate" as defined in the Master Declaration.

SECTION 23. DEPARTMENT OF REAL ESTATE. The term "Department of Real Estate" or "DRE" shall mean and refer to the California Department of Real Estate and any successor department or agency.

SECTION 24. DESIGN REVIEW COMMITTEE. The term "Design Review Committee" or "Committee" shall mean and refer to the Design Review Committee created pursuant to the Article of this Declaration entitled "DESIGN REVIEW."

SECTION 25. DESIGN GUIDELINES. The term "Design Guidelines" shall mean and refer to the guidelines created by the Design Review Committee to govern design standards, criteria, procedures, rules and instructions adopted or to be adopted by the Design Review Committee, as such Design Guidelines may be amended or supplemented from time to time pursuant to the Article of this Declaration entitled "DESIGN REVIEW." Design Guidelines also include criteria established by the local jurisdiction (City and/or County) for the purpose of uniformly enhancing and protecting the attractiveness and desirability of the Neighborhood. The Design Guidelines shall comply with the provisions of Civil Code Section 1378 for reviewing, approving and disapproving proposed changes to the Neighborhood.

SECTION 26. EXCLUSIVE USE PROPERTY. The term "Exclusive Use Property" shall mean and refer to those portions of the Association Property which are designated by this Declaration or the Condominium Plan for the exclusive use of one (1) or more but fewer than all the Owners of the Units, in accordance with California Civil Code Section 1351(i), and which are or will be appurtenant to the Unit. The Exclusive Use Property is identified on the Condominium Plan as follows:

(a) "Parking Space" shall be that certain portion of the Association Property designated for use as a parking space in the subterranean garage, the exclusive use of which area shall be reserved to the Owner of a particular Unit. The parking spaces are identified on the Condominium Plan by the letter designation "PS" followed by a parking space number. This number is for identification purposes only and does not represent a Unit number to which the Parking Space will be assigned. The assignment and allocation of the Parking Space appurtenant to individual Units shall be made by the grant deed conveying from Participating Builder to a Condominium Owner or by subsequent conveyance from the Participating Builder to an Owner, and shall be determined by Participating Builder in its sole and absolute discretion. The Parking Spaces shown on the Condominium Plan are only for purposes of identifying the location and boundaries of those parking spaces, and is not for purposes of allocation to individual Units.

(b) "Patio" shall be that certain portion of the Association Property designated for use by some Units as a patio, the exclusive use of which area shall be reserved to the Owner of a particular Unit, and shall be identified on the Condominium Plan by a Unit number and the letter designation "P".

SECTION 27. FEDERAL AGENCIES. The term "Federal Agencies" shall mean and refer to one or more of the following agencies to the extent that any such agency is a Mortgagee, owner, insurer or guarantor of a Mortgage within the Neighborhood, and the following letter designations for such agencies shall mean and refer to, respectively, the agency specified within the parentheses following such letter designation: FHLMC (Federal Home Loan Mortgage Corporation), FNMA (Federal National Mortgage Association), and GNMA (Government National Mortgage Association).

SECTION 28. FINAL SUBDIVISION PUBLIC REPORT. The term "Final Subdivision Public Report" or "Public Report" shall mean and refer to the report issued by the DRE pursuant to Section 11018.2 of the California Business and Professions Code.

SECTION 29. FIRE AUTHORITY. The term "Fire Authority," "Fire Department" or "LAFD" shall mean and refer to City of Los Angeles Fire Department or any other successor agency having such jurisdiction over the Neighborhood.

SECTION 30. GOVERNING DOCUMENTS. The term "Governing Documents" shall mean and refer to the Articles of Incorporation and Bylaws for the Association, this Declaration, the Design Guidelines and Association Rules, if any, Maintenance Manual, and any amendments to the foregoing.

SECTION 31. HOME BUILDER'S LIMITED WARRANTY. The term "Home Builder's Limited Warranty" shall mean and refer to the Limited Warranty that is offered by Participating Builder to the original Owner of a Condominium within the Neighborhood.

SECTION 32. IMPROVEMENT. The term "Improvement" shall mean and refer to any structure or appurtenance thereto of every type and kind installed or erected on the Neighborhood or any installation, alteration or modification (which shall include change of material, exterior appearance, color or texture) removal or replacement thereof, including but not limited to buildings, walkways, stairs, sprinkler pipes, garages, room additions, patio covers, room partitions, fences, screens, screening walls, skylights, window tinting, retaining walls, stairs, decks, landscaping, antennas, hedges, windbreaks, plantings, potted plants, exterior tiling or carpeting, utility facilities, poles, signs, exterior air conditioning and water softening fixtures or equipment (if permissible under applicable laws), and any additions or alterations to a Unit which causes penetrations beyond the unfinished surfaces of the walls, ceilings or surface flooring of a Unit or impacts or effects in any manner any Association Property within the Neighborhood.

SECTION 33. INVITEE. The term "Invitee" shall mean any person whose presence within the Neighborhood is approved by or is at the request of the Association or a particular Owner, including, but not limited to, lessees, tenants, and the family members, guests, employees, licensees or invitees of Owners, tenants or lessees.

SECTION 34. MAINTENANCE MANUAL. The term "Maintenance Manual" shall mean and refer to each of the manuals which may be prepared by the Participating Builder or



its agents and provided to the Association and to each initial Owner, specifying obligations for maintenance of the Common Property by the Association and the Units by the Owners, including but not limited to preventative maintenance information, manufactured products' maintenance and limited warranty information, fit and finish warranty or other contractual warranties, as may be updated and amended from time to time pursuant to a Home Builder's Limited Warranty program.

SECTION 35. MAINTENANCE RESPONSIBILITY CHART. The term "Maintenance Responsibility Chart" refers to *Exhibit B* attached hereto and incorporated herein which designates some components of the Project to be maintained by the Association and the Owners. The Maintenance Responsibility Chart may be further modified or supplemented in a Supplementary Declaration or an amendment to this Declaration.

SECTION 36. MASTER ASSOCIATION. The term "Master Association" shall mean and refer to the Playa Vista Parks and Landscape Corporation, a California Nonprofit corporation, formed pursuant to the California Nonprofit Public Benefit Corporation Law, and its successors and assigns, as further defined in Section 1.42 of the Master Declaration. The Master Association is an "association" as defined in Section 1351(a) of the California Civil Code.

SECTION 37. MASTER DECLARATION. The term "Master Declaration" shall mean and refer to the Master Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Playa Vista, recorded on February 7, 2000 as Instrument No. 00-0187083, and amended by a First Amendment thereto, recorded on March 26, 2001 as Instrument No. 01-0481376, by a Second Amendment thereto, recorded on November 26, 2002, as Instrument No. 02-2875170, and a Third Amendment thereto, recorded on November 26, 2002, as Instrument No. 02-2875171, all of Official Records of Los Angeles County, California, as amended or restated.

SECTION 38. MEMBER. The term "Member" shall mean and refer to each person entitled to membership in the Association as provided in this Declaration and in the Association's Articles of Incorporation and Bylaws.

SECTION 39. MITIGATION SYSTEM. The term "Mitigation System" shall mean and refer to the comprehensive prevention, detection and monitoring methane systems installed in the Condominium Buildings including a sub-slab methane gas barrier membrane and active and passive venting systems, a vent pipe system comprised of a sub-slab perforated pipe and vent piping extending up within the structural walls and exiting out the roofline of the Condominium Building, as well as pipe sensors and audible alarm.

SECTION 40. MORTGAGE OR MORTGAGEE. The terms "Mortgage" and "Mortgagee" shall mean and refer to respectively any duly recorded and valid mortgage or deed of trust encumbering a Condominium and the holder of the mortgagee's or beneficiary's interest under any such Mortgage. The term "First Mortgage" and "First Mortgagee" shall mean and refer respectively to a Mortgage which has priority over all other Mortgages encumbering a specific Condominium and the holder of any such First Mortgage. The term "First Mortgagee" shall also include the insurer or guarantor of a First Mortgage, if applicable.

SECTION 41. NEIGHBORHOOD. The term "Neighborhood" shall mean and refer to that certain real property described in Recital A of this Declaration as further shown and described on the Condominium Plan, and subject to that certain Covenant and Agreement to Hold Property as One Parcel recorded August 3, 2005 as Instrument No. 05-1848333, in Official Records

of Los Angeles County, California. The term "Neighborhood" shall also include all real property which is annexed to this Declaration pursuant to the provisions of the Article of this Declaration entitled "ANNEXATION." The Neighborhood is a "condominium project" as defined in Section 1351(f) of the California Civil Code and a "common interest development" as defined in Section 1351(c) of the California Civil Code. Any references in this Declaration to the Neighborhood are references to the Neighborhood as a whole and to portions thereof. The Neighborhood is a "Neighborhood" as defined in the Master Declaration.

**SECTION 42. NEIGHBORHOOD WALLS.** The term "Neighborhood Walls" shall mean and refer to those certain walls or fences abutting the Neighborhood (a) that are constructed on a tract boundary; (b) that are constructed entirely within Association Property, or (c) that are designated as a Neighborhood Wall by Participating Builder. The Association shall have a nonexclusive easement for maintenance of the Neighborhood Walls as hereinafter provided. The Association shall only be required to maintain such portions of the Neighborhood Walls as defined herein as have been included in the Budget for the Association as reviewed by the DRE in connection with the issuance of a Final Subdivision Public Report for the Project.

**SECTION 43. OWNER.** The term "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, who are alone or collectively the record Owner of a fee simple title to a Condominium, including Participating Builder, but excluding those having such interest merely as security for the performance of an obligation. If a Condominium has been sold under a land sale contract in which the State of California is the vendor, then the vendee shall be deemed to be the Owner of such Condominium. If a Condominium is leased by Participating Builder for a term in excess of ten (10) years, and the lease or memorandum thereof is recorded, the lessee or transferee of the leasehold interest, and not the Participating Builder, shall be deemed to be the Owner. If fee title to a Condominium is owned other than by Participating Builder, the Owner of the fee title and not the lessee of such Condominium shall be deemed the Owner regardless of the term of the lease.

**SECTION 44. PARTICIPATING BUILDER.** The term "Participating Builder" shall mean and refer to WARMINGTON PV 325 ASSOCIATES, LLC, a Delaware limited liability company, and its successors and assigns. Participating Builder is a "Participating Builder" as defined in the Master Declaration and, for purposes of this Declaration, a "Declarant" as such term is defined in Civil Code Section 1351.

**SECTION 45. PHASE.** The term "Phase", "Phase of the Development", "Phase of the Project" or "Phase of the Neighborhood" shall mean and refer to the Phases of the Neighborhood as identified on *Exhibit A* to this Declaration, and which shall be contained in a Final Subdivision Public Report covering each such Phase of the Neighborhood, or identified by a Supplementary Declaration representing additional property to be annexed to the Neighborhood pursuant to the Article of this Declaration entitled "ANNEXATION." The Phases of the Neighborhood identified on *Exhibit A* to this Declaration may be amended by recording a Supplementary Declaration affecting any portion of the Neighborhood, provided that (1) Participating Builder has not exercised any Association vote with respect to any portion of such Phase of the Neighborhood; (2) assessments have not yet commenced with respect to any portion of such Phase of the Neighborhood; (3) no escrow has closed for the sale of any Unit to a member of the general public requiring the delivery of a Final Subdivision Public Report in such Phase of the Neighborhood; and (4) the Association has not made any expenditures or incurred any obligations with respect to any portion of such Phase of the Neighborhood.

SECTION 46. PLAYA VISTA. The term "Playa Vista" shall mean and refer to the properties subject to the Master Declaration, and shall sometimes hereinafter be referred to as the "Playa Vista Community."

SECTION 47. PROJECT. The term "Project" shall mean and refer to the real property and all Improvements located within the Neighborhood affecting Lots 9, 10, 11 and 12 and a portion of Parcel O of Tract No. 49104-01, as per map recorded in Book 1233, Pages 51 through 64 of Maps, Records of Los Angeles County, California, as further set out in a Covenant and Agreement to Hold Property as One Parcel recorded August 3, 2005 as Instrument No. 05-1848333, in Official Records of Los Angeles County, California. The term Project shall also include the term Neighborhood where the context in which it is used has the same meaning.

SECTION 48. RESIDENCE. The term "Residence" shall mean and refer to the Unit, together with any Exclusive Use Property appurtenant thereto.

SECTION 49. RESTRICTIONS. The term "Restrictions" shall mean and refer to the "Restrictions" as defined in the Master Declaration.

SECTION 50. UNIT. The term "Unit" shall mean and refer to a separate interest in space as defined in California Civil Code Sections 1351(f) and 1351(l)(2). Each of the Units shall be a separate freehold estate as separately shown, numbered and designated on the Condominium Plan.

(a) Each Unit includes the frames and hardware of all entry doors and all glass portions of the windows and 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 wall, floor and ceiling Improvements encompassing the Unit, as constructed or reconstructed in substantial accordance with the original plan for the Unit. This interpretation shall apply notwithstanding any depiction expressed in deeds, the Condominium Plan or this Declaration, regardless of settling or lateral movement of the Improvements, and regardless of minor variances between Unit boundaries shown in a deed or Condominium Plan and those of the Improvements.

## ARTICLE II

### INTRODUCTION TO THE NEIGHBORHOOD

*Participating Builder is the developer of the Concerto Lofts at Playa Vista project and has established the CONCERTO LOFTS MAINTENANCE CORPORATION, a California nonprofit mutual benefit corporation. The primary purpose of the Association is to manage, maintain and govern certain real property located within the Neighborhood and to enforce this Declaration. Participating Builder has established this Declaration to provide a governance structure and statement of the objectives of that structure for the Neighborhood. This Neighborhood will have a flexible system of standards and procedures for its overall development, administration and operation. This Declaration establishes the powers and flexibility necessary to develop, protect and maintain the Neighborhood and to enhance the value, desirability and attractiveness of the Condominium for the benefit of all Owners of Condominiums therein. These covenants, conditions and restrictions are imposed upon the Owners of all Condominiums and shall bind the original Owners as well as each of their successors and assigns of such Condominiums. All such covenants, conditions and restrictions are intended as and are hereby declared to be covenants running with the land or equitable servitudes upon the land, as the case may be. The provisions governing Owners as set forth in this Article shall also apply to Invitees where the text permits, whether or not specifically stated.*

*The Association is a nonprofit mutual benefit corporation. The Association's powers are described in ARTICLE V of this Declaration entitled "DUTIES AND POWERS OF THE ASSOCIATION." The Association will maintain the Association Property and will be the governing body for the Neighborhood. The Declaration empowers the Association to enter into agreements with other entities to exercise its powers and fulfill its responsibilities.*

*The majority of the Association's business is overseen by its Board of Directors. Day-to-day activities are supervised by the Association's officers. The Board is given the power of enforcing the use restrictions and other portions of the Declaration through administrative means. The Design Review Committee is a committee of the Association formed to have jurisdiction over design, development, aesthetics and the character of the Neighborhood. Certain issues cannot be decided by the Board of Directors of the Association. Instead, these issues will be presented to the Members of the Association. Procedures for calling Member meetings are contained in the Bylaws.*

*Owners within the Neighborhood will also become Members of the Master Association which has been formed to manage and govern the Playa Vista Community. All Owners within Playa Vista will be subject to the Master Declaration. The Declarant under the Master Declaration is Playa Capital Company, LLC, a Delaware limited liability company. There is, however, no guarantee that the Playa Vista Community will be developed as planned. Areas surrounded by and adjacent to the Playa Vista Community are to be or have been developed for commercial use. It is not anticipated that these commercial areas will be governed by the Master Association. Participating Builder does not have any control over the Master Association or development of the Playa Vista Community.*

SECTION 1. GENERAL PLAN OF DEVELOPMENT. Concerto Lofts at Playa Vista is a multi-phase condominium project, as defined in Section 1351(f) of the California

Civil Code, which, if completed as planned, may consist of approximately three phases containing eighty-nine (89) attached Condominium Units, Common Area and Association Property.

SECTION 2. OWNERSHIP OF CONDOMINIUMS. Title to each Condominium in the Neighborhood shall be conveyed in fee to an Owner. Ownership of each Condominium within the Neighborhood shall include (a) a Unit, (b) a fractional undivided interest in the Common Area, (c) a membership in the Association, (d) any exclusive or non-exclusive easement or easements appurtenant to such Condominium over the Association Property as described in this Declaration, the Condominium Plan, and/or the deed to the Condominium. The Owners shall have a nonexclusive easement for ingress and egress over the Association Property, subject to any exclusive easements or other easements of record, any rights reserved by Participating Builder under this Declaration and rights assigned or granted in this Declaration.

SECTION 3. INTEREST IN COMMON AREA. The ownership of each Unit shall include an equal undivided interest as tenant-in-common in the Common Area of the Phase of the Neighborhood as set forth on **EXHIBIT A** attached hereto. Each Owner covenants and agrees that the equal undivided interests in the Common Area of the Phase of the Neighborhood and the fee titles in and to the respective Units conveyed therewith shall not be separated or separately conveyed, and each such undivided interest in the Common Area of the Phase of the Neighborhood 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 fee title and to the Unit. Each Owner's equal undivided interest in the Common Area of the Phase of the Neighborhood may not be diminished or changed.

### ARTICLE III

#### USE RESTRICTIONS

*This Article establishes certain use restrictions which limit the uses within the Neighborhood. The Board has the power to enforce those use restrictions. Potential purchasers of Condominiums in the Neighborhood should read these use restrictions closely to make sure they can use their property as they intend, without violating these use restrictions. The Neighborhood shall be held, used and enjoyed subject to the following restrictions.*

**SECTION 1.     ANIMALS.** No insects or animals of any kind shall be raised, bred or kept in the Neighborhood except that a reasonable number of dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained, for any commercial purpose, nor in violation of any other provision of this Declaration and such limitations as may be set forth in the Association Rules. The Association, acting through the Board of Directors, shall have the right to prohibit maintenance of any animal in any Condominium in the Neighborhood which constitutes, in the opinion of the Board, a nuisance to Owners of Condominiums within the Neighborhood. The Board shall further be authorized and empowered to create rules and regulations governing the keeping of pets, including, but not limited to the size, breed and locations pets are allowed to reside. Animals belonging to Owners, occupants or their licensees, tenants or invitees within the Neighborhood must be either kept within an enclosed area capable of containing the animal or on a leash or bridle being held by a person capable of controlling the animal. Furthermore, any Owner shall be absolutely liable to each and all remaining Owners, their families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept in the Neighborhood by an Owner or Invitee; and it shall be their absolute duty and responsibility to clean up after such animals which have used any portion of the Neighborhood. Any Owner (including such Owner's Invitees) who maintains any pet, animal, reptile, livestock or other living creature of any kind, within the Neighborhood, whether in compliance with this Declaration and the Association Rules or otherwise, shall indemnify, defend and hold the Association harmless from and against any damages, claims, causes of action or losses of any kind or nature, including reasonable attorney's fees and costs, incurred by the Association as a result of any alleged damage or injury caused by such living creature to the Association, to the Common Property, or to the Members, their family, guests or Invitees, or their property.

**SECTION 2.     ANTENNAS AND SATELLITE DISHES.** Owners are prohibited from installing any antennae outside of or on the exterior of a Unit for any purpose, except for an "**Authorized Antenna**," which may be installed in accordance with the Design Review Guidelines and the Association Rules. An Authorized Antenna means exterior radio antenna, C.B. antenna, television antenna, microwave or satellite dish, aerial or other antenna of any type that have a diameter or diagonal measurement allowed by California and federal laws. The Association may prohibit the installation of an Authorized Antenna if the installation, location or maintenance of such Authorized Antenna unreasonably affects the safety of managers, agents or employees of the Association and other Owners, or for any other safety related reason established by the Association. The Association may also (A) prohibit an Owner from installing an Authorized Antenna on property which such Owner does not own or is not entitled to exclusively use or control under the Governing Documents, or (B) allow an Owner to install an antenna other than an Authorized Antenna subject to the Design Review Guidelines and review by the Design Review

Committee. Notwithstanding any provision hereof, this Section shall be interpreted to comply with state and federal laws applicable to antennas in effect at the time of enforcement of this Section. In that regard, this Section shall not be interpreted or enforced in a manner which would (i) unreasonably delay or prevent installation, maintenance or use of such Authorized Antenna, (ii) unreasonably increase the cost of installation, maintenance or use, or (iii) preclude reception of an acceptable quality signal.

SECTION 3. COMMERCIAL USE. Subject to the Section entitled "Construction and Sales Easement" of the Article hereof entitled "Easements", no part of the Neighborhood shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or any nonresidential purposes; provided, however, that the Association shall have the right to provide or authorize such services on the Association Property as it deems appropriate for the enjoyment of the Association Property or for the benefit of the Members. Provided, however, nothing in this Declaration shall preclude Participating Builder, its successors or assigns, from using any portion of the Neighborhood for a model home site, and display and sales office during the construction and sales period. The provisions of this Section shall not preclude professional and administrative occupations without external evidence thereof, as long as such occupations are in conformance with all applicable governmental ordinances and are merely incidental to the use of the Condominium as a residential home.

SECTION 4. COMPLIANCE WITH MAINTENANCE MANUAL. By accepting a deed to a Condominium, each Owner acknowledges and agrees that each Owner is required to comply with all of the maintenance obligations and schedules set forth in the Maintenance Manual, and each Owner is further obligated to provide a copy of such Maintenance Manual to any successor purchaser of such Owner's Condominium. The Association shall comply with all of the maintenance obligations and schedules set forth in the Maintenance Manual provided the Association.

SECTION 5. CONDUCT IN CONDOMINIUMS AND ASSOCIATION PROPERTY. No Condominium or the Association Property shall be occupied or used for any purpose or in any manner which shall cause either to be uninsurable against loss by fire or the perils of the extended coverage endorsement of the California Standard Fire Policy form, or cause any policy or policies representing such insurance to be canceled or suspended or the company issuing the same to refuse renewal thereof. No Condominium shall be used in such a manner as to obstruct or interfere with the enjoyment of occupants of other Condominiums or annoy them by unreasonable noises or otherwise, nor shall any nuisance be committed or permitted to occur in any Condominium.

SECTION 6. DRILLING. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any portion of the Neighborhood, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted upon the surface or any portion of the Neighborhood or within five hundred feet (500') below the surface of the Neighborhood. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted upon any portion of the Neighborhood.

SECTION 7. EXTERIOR LIGHTING. Any exterior lighting shall be shielded and directed onto the site and no floodlighting shall be located so as to be seen directly from the adjacent residential areas. However, low-level security lighting is permissible. Animated building

identification signs shall be prohibited. Illuminated residential building identification signs shall not be permitted above the first level of a Condominium Building. All lighting near sensitive habitat shall be restricted to low intensity units shielded to prevent glare upon such habitat areas.

SECTION 8. FIXED LITE FIRE RATED WINDOWS. Certain Units within the Neighborhood contain Fixed Lite fire rated steel framed windows located in the kitchen area. These windows are designed to conform to a 45 minute fire-test rating and are fixed and non-operational. If these windows are damaged or broken, they must be replaced with a Fixed Lite fire rated window with the same fire resistance rating, and which shall conform to the appropriate local governmental agency's requirements.

SECTION 9. FIRE PREVENTATIVE MEASURES.

(a) Each Condominium and modifications thereto shall conform to the requirements of the Fire Authority, which may include, but shall not be limited to protection by an automatic fire sprinkler and warning system in a manner meeting the approval of the Fire Authority. Owners are prohibited from any alteration, modifications or obstruction to the fire sprinkler and warning system that may block or penetrate the fire sprinkler or otherwise creates a fire or safety hazard. Each Owner acknowledges that substantial damage to other Condominiums and/or Association Property may occur as a result of a violation of this restriction. Maintenance of the fire sprinkler system located in a Unit which serves more than one Unit is the obligation of the Association, including the sprinkler heads that protrude into the airspace of the Units.

(b) All walkways, hallways, paths between planters, and certain patios on the podium level shall remain clear of any plants, barbecues or other obstructions that may become an obstacle in the event of an emergency in accordance with the Fire Authority requirements.

SECTION 10. INSTALLATIONS.

(a) Generally. This Section does not apply to Improvements installed by Participating Builder.

(b) Window Coverings. All window coverings shall be of a neutral color harmonious with and not in conflict with the color scheme of the exterior wall surface of the Condominium. Window tinting and window coverings shall be subject to the approval of the Design Review Committee. Curtains, drapes, shutters or blinds shall be installed as window covers within one hundred eighty days (180) from the Close of Escrow of the Owner's Condominium. No window shall be covered with aluminum foil, sheets, newspapers or similar material not intended or designed for use as a window cover.

(c) Hard Surface Floors. Except for those hard surface floors installed by Participating Builder as part of the original construction of the Neighborhood, no Owner shall install any hard surface flooring (including without limitation hardwood floors) or replace any flooring with any hard surface flooring unless the prior written approval of the Design Review Committee, has been obtained. As a condition to approving the installation or replacement of hard surface flooring, the Owner shall submit to the Design Review Committee a construction drawing clearly indicating the type of flooring to be installed and the underlayment to be provided to mitigate against impact noises such as footfalls and an evaluation of the installation shall provided by an acoustical engineer. The drawing must clearly identify all materials, their composition and thickness.



Hard surface floor coverings include, but shall not be limited to wood, ceramic tile, some linoleum products or marble or other stone products. This restriction, however, shall not apply to a floor of a Condominium not located above a living space of another Condominium.

(d) Outside Drying and Laundering. No exterior clothesline shall be erected or maintained or hung on balconies or railings within the Neighborhood and there shall be no exterior drying or laundering of clothes or any other items on any Common Area, Exclusive Use Property or Association Property which shall be visible from any other area within or outside of the Property.

(e) Outside Installations. Unless installed by Participating Builder or subsequently approved by the Design Review Committee, the following items are prohibited: (a) outside installations, including air conditioning equipment, water softeners, outdoor lighting, outdoor speakers, (b) Improvements to Exclusive Use Property Patio railings or flooring, and (c) other exterior additions or alterations to any Condominium.

(f) Barbeques. Subject to any governmental requirements and the Association Rules, an Owner shall be entitled to maintain one (1) portable electric or propane barbeque in the Exclusive Use Property. No wood burning or charcoal barbeques shall be allowed in any Exclusive Use Property or any other portion of the Neighborhood.

#### SECTION 11. INTERIOR OF UNITS.

(a) Improvements by Owner. Each Owner shall have the right and obligation, at his or her sole cost and expense, to maintain, repair, paint, paper, panel, plaster, tile and finish the interior surfaces of the ceilings, floors, window frames, door frames, trim and perimeter walls of the Unit, and the surfaces of the bearing walls and partitions located within the Unit, subject to the Owner complying with any restrictions or limitations set forth in the Governing Documents and, if such work will result in a penetration of the unfinished surfaces of the ceilings, walls or floors, obtaining the consent of the Board. Each Owner acknowledges that substantial damage to Association Property and other Units, including, but not limited to utility lines, fire sprinkler system or methane vent system which could further result in substantial damage to Association Property or other Units for which an Owner would be liable. Certain Units may have an adjoining fireplace structure, built as part of the original construction, which may or may not be delineated on the Condominium Plan. The Owner of each such Unit shall have the exclusive use of the space bounded by and contained within the interior surfaces of the fire box of the fireplace structure which opens into their Unit.

(b) Weight Limitations. No object shall be placed on the upper stories which has a load ratio greater than as allowed per the Uniform Building Code unless, under the supervision of a structural engineer, provisions have been made to support said object and the Owner has provided the Board with adequate proof that such provisions have been made. Said objects may include, but shall not be limited to, pool tables, aquariums, pianos and waterbeds. Provisions have been made by the Participating Builder in designated areas for standard size appliances. Each Owner acknowledges that substantial damage to other Condominiums or Common Property may occur as a result of a violation of this restriction.

SECTION 12. LEASING OF UNITS. Any agreement for the leasing or rental of a Unit (hereinafter referred to as a "**Lease**") shall provide that the terms of such Lease shall be

subject in all respects to the provisions of the Governing Documents and any applicable agreement between the Association and any of the Federal Agencies. Such Lease shall further provide that any failure by the lessee thereunder to comply with the terms of the foregoing documents shall be a default under the Lease. All Leases shall be in writing. The Owner of said leased or rented Unit has the duty and obligation to furnish the Board with the name or names of the individuals currently leasing or renting said Unit and to maintain with the Association a record of the current mailing address of said Owner. Any Owner who shall Lease their Unit shall be responsible for assuring compliance by such Owner's lessee with the Governing Documents. Other than the foregoing, there shall be no restriction on the right of any Owner to Lease their Unit.

SECTION 13. MASTER DECLARATION USE RESTRICTIONS. In the event of any conflict between the provisions of this Article and the provisions of the Article in the Master Declaration entitled "Residential Area and Apartment Area Use Restrictions" the provisions in the Master Declaration shall control to the extent necessary to eliminate such conflict. To the extent the provisions of this Declaration or the Master Declaration are more restrictive, the more restrictive provision shall control.

SECTION 14. METHANE GAS - LAND USE NOTICE/RESTRICTIONS RELATED TO CERTAIN UNITS OR PARCELS. The Neighborhood may be subject to methane gas intrusion from underlying soil. The City requires that the Condominium Building contain a methane gas Mitigation System. Each Owner and the Association are hereby advised, and by acceptance of a deed conveying title, acknowledges, that (i) the Neighborhood and surrounding areas may in the future be subject to the emission of methane gas, (ii) in accordance with the requirements of the City, a methane Mitigation System has been installed on structures within the Neighborhood, (iii) residual methane gas exists within the Neighborhood, which is normally dissipated into the open air; and (iv) that future building construction within the Neighborhood shall not be constructed without prior review and approval of the Mitigation System by the appropriate authorities of the City of Los Angeles Department of Building and Safety. In accordance with the requirements of the City, Owners of any Condominium, or the Association, as owner of the Association Property, are prohibited from interfering with, altering, damaging, removing or destroying any component of the Mitigation System including, but not limited to the methane monitoring, barrier and venting systems and/or any such barriers or membranes.

SECTION 15. METHANE RELATED GUIDELINES.

(a) Restricted Work. Before any persons, including the Association and its agents, perform any excavations, modifications, construction, installations or other improvements to the structure of a Condominium Building or to other areas in the Association Property ("**Restricted Work**"), they must comply with recommendations of "Qualified Consultants" and the "Guidelines for Restricted Work" as defined below. The Board also has the power and duty to comply with all laws, regulations or ordinances applicable to the Mitigation Systems or the existence of methane in the Neighborhood.

(b) Use of Qualified Consultant. The term "**Qualified Consultant**" means a California registered professional engineer who has experience in the analysis of methane gas intrusion characteristics and maintains professional liability and commercial general liability insurance which conforms to industry standards. The Association or any Owner who shall be performing Restricted Work shall engage a Qualified Consultant to review the scope of the work and, if recommended by the Qualified Consultant, develop a work plan specifying the procedures

for performing the proposed work in accordance with the Guidelines for Restricted Work, and as recommended by the Qualified Consultant, and shall confirm with a Qualified Consultant that any contractors performing any such work shall have sufficient training and experience with respect to the work to be performed.

(c) Guidelines for Restricted Work. Guidelines for Restricted Work are guidelines which outline potential actions that may adversely impact the operation of the Mitigation Systems (including the methane barrier and the venting and monitoring systems) and which may describe methane mitigation for other actions affecting Association Property. Guidelines for Restricted Work include the following:

(1) Initial Guidelines. The following Restricted Work shall not be performed without prior consultation with a Qualified Consultant:

(2) Sub-Slab Elements. Any action that would penetrate or disturb any of the sub-slab components of the Mitigation Systems. Removal or penetration of concrete floor slabs, walls and foundations have the potential to damage and penetrate the membrane barriers.

(3) Venting Elements. Any action that would penetrate, damage, remove, or plug the Mitigation System risers and venting pipes, particularly within the walls or at the roof. Changes to walls, plumbing, and roofs have the potential to damage, penetrate or compromise the venting system. Plumbing modifications and equipment installations, such as air conditioning units, should not connect to the venting system, risers and pipes. The Mitigation System venting pipes should remain independent of all other vents.

This Declaration shall not be amended to delete the above guidelines without the prior written approval of the Los Angeles Department of Building and Safety ("LADBS").

(d) Monitoring of Mitigation Systems. The Association is responsible for operating, maintaining and testing the Condominium Building Mitigation System regularly and when requested by any local governmental agency. These responsibilities include contracting with a methane gas consultant approved by LAFD to test the Mitigation Systems at least annually and to submit a certification to the LAFD and the LADBS stating that annual testing, maintenance and service has been completed and that all Mitigation Systems are operational. The responsibilities in this Section shall continue until the LADBS approves in writing their termination.

(e) Notification Responsibilities.

(1) Association. The Association shall keep copies of the records concerning the presence of methane and the Mitigation Systems (the "**Methane Records**") in its files. The Association shall make the Methane Records available for inspection and copying upon request by representatives of the City, representatives of the Master Association, and any Owner for a purpose reasonably related to the Owner's interest as an Owner. Copies of these Methane Records shall be provided upon the payment of a reasonable fee for duplication and distribution established by the Association. If requested, the Methane Records shall also be made available to the Master Association within a reasonable time frame as established by the Master Association.

(2) Owners. Each Owner must notify persons occupying the Owner's Condominium and persons who acquire the Condominium from the Owner of the possible

existence of methane gas in the Neighborhood and the existence of the Mitigation Systems. Each Owner must deliver to persons occupying the Owner's Condominium and persons who acquire the Condominium from the Owner all disclosures and other information relating to the Mitigation System.

(3) Indemnification. The Association shall indemnify and hold the City harmless from any liability resulting from the Association's activities mandated pursuant to this Section, including its activities involved in monitoring and mitigating methane in the Neighborhood.

SECTION 16. NO OBSTRUCTION OF THE COMMON PROPERTY.

There shall be no obstruction of the Common Property nor shall anything be stored in the Common Property without the prior written consent of the Board except as hereinafter expressly provided. Nothing shall be altered or constructed in or removed from the Common Property, except upon the written consent of the Board.

SECTION 17. NO PARTITION. The Association Property shall remain undivided and no Owner shall bring any action for partition, except as otherwise hereinafter provided, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Neighborhood.

SECTION 18. PARKING AND VEHICULAR RESTRICTIONS. Vehicles shall not be parked anywhere in the Neighborhood except in compliance with the provisions of this Section. Each Owner shall be responsible for assuring that their Invitees abide by the parking restrictions set forth in this Declaration.

(a) Prohibited and Authorized Vehicles. No Owner shall park, store or keep any vehicle, except wholly within the parking area designated therefor. No Owner shall park, store or keep within any Condominium or street (public or private) within the Neighborhood any large commercial-type vehicle (including, but not limited to, any dump truck, cement mixer truck, oil or gas truck or delivery truck), any recreational vehicle (including, but not limited to, any camper unit or motor home), any bus, trailer, trailer coach, camp trailer, boat, aircraft, mobile home, any inoperable vehicle or any other similar vehicle or any vehicular equipment, mobile or otherwise deemed to be a nuisance by the Board ("**Prohibited Vehicles**"). The above excludes standard passenger vehicles, motorcycles, camper trucks and similar vehicles when used for everyday-type transportation ("**Authorized Vehicles**"), subject to approval by the Board. No Owner shall conduct maintenance, repairs or restoration of any Authorized Vehicle upon any portion of the Neighborhood. Parking along the Association Property drives is prohibited at all times.

(b) Exclusive Use Property Parking Spaces. Exclusive Use Property Parking Spaces will be assigned to each Unit by a grant deed. Each Owner acknowledges and agrees that the Exclusive Use Property Parking Spaces will remain appurtenant to such Unit, and no Owner may separately transfer, lease, convey or otherwise separate the interest in their Exclusive Use Property Parking Spaces from their ownership of a Unit. Each Owner shall keep their Exclusive Use Parking Space available for parking to Authorized Vehicles, and shall not store any goods or materials therein, nor use any portion thereof for a workshop or other use, if such storage or use would prevent such Owner from parking the number of Authorized Vehicles therein for which the Exclusive Use Parking Space was originally designed and constructed by Participating Builder to accommodate. The use of the parking spaces shall be subject to the reasonable regulation of the Association acting through the Board of Directors.

(c) Guest Parking. No Owner or Resident shall store or park a vehicle in the guest parking spaces. Any guest parking spaces shall be available on a first-come, first-served basis to all guests, visitors, Invitees and for short-term temporary parking for Owners to accommodate delivery of items and/or moving in and out of the Condominium. Other than Exclusive Use Property Parking Spaces within the Neighborhood, all guest parking spaces shall be owned, administered and maintained by the Association. Such guest parking spaces shall be held for the use of all Owners in the Neighborhood and their Invitees and may not thereafter be assigned by the Association for the exclusive use of particular Owners within the Neighborhood.

(d) Offsite Guest Parking. An easement has been created for the benefit of the Neighborhood over a portion of Lots 17 through 20 of Tract No. 49104-02, as per map recorded in Book 1270, Pages 24 through 29 of Maps, Records of Los Angeles County, California ("**Parking Facility**"), for the use of 22 parking spaces for guest parking purposes, pursuant to that certain Parking Easement Agreement recorded June 23, 2005 as Instrument No. 05-1480885, in Official Records of Los Angeles County, California ("**Agreement**"). In accordance with the Agreement, Vehicles may not be parked within the Parking Facility for more than 48 hours, nor shall any operable or inoperable commercial vehicle, trailer, dump truck, cement mixer truck, oil or gas truck, camping trailer, boat, aircraft, mobile home, recreational vehicle, motor home or any other similar vehicle be parked, stored or kept anywhere within the Parking Facility.

(e) Removal of Vehicles. In accordance with Section 22658 of the California Vehicle Code, the Association, through its officers, committees and agents, is empowered to establish and enforce parking restrictions, and Association Rules governing parking within the Neighborhood, as well as to enforce those parking limitations by all means lawful, including the removal of any violating vehicles by those so empowered. In addition, the appropriate local government authority is hereby authorized to impose and enforce all provisions of the applicable California Vehicle Code sections on any private streets contained within the Neighborhood.

(f) Due to the parking configuration, some vehicles may not fit in the space designated for a Unit. Owners may not alter the parking configuration or the storage unit contained therein without prior written consent of the Board;

(g) Notwithstanding the foregoing, parking along the Association Property drives is prohibited at all times.

(h) The Association, through the Board, is empowered to establish parking and restricted "guest parking" and "no parking" areas within the Association Property in accordance with Section 22658 of the California Vehicle Code, or any similar statute hereafter enacted, as well as to enforce parking limitations through its officers and agents by all means lawful for such enforcement on public streets, including the removal of any violating vehicle. The Board is also authorized and empowered to request the appropriate local government authority to impose and enforce all appropriate provisions of the California Vehicle Code sections on any private streets or drives contained within the Project.

(i) The Board is also authorized and empowered to create rules and regulations governing parking areas, including, but not limited to registration of resident's vehicles and other means of regulating the use of the Exclusive Use Property Parking Spaces and guest parking spaces;

(j) Each Owner shall be responsible for assuring that their guests abide by the parking restrictions set forth in this Declaration, and any additional regulations established by the Association in accordance with the Section of this Article entitled "Rules of the Association."

#### SECTION 19. POLLUTANT CONTROL.

(a) NPDES Requirements. The Neighborhood is subject to all Federal, State and local requirements of the National Pollutant Discharge Elimination System ("**NPDES**") adopted pursuant to the Federal Clean Water Act. Pursuant to a NPDES General Permit adopted by the State Water Resources Control Board and the County NPDES Storm Water Permit Program, Drainage Area Management Plan ("**DAMP**"), a Water Quality Management Plan ("**WQMP**") has been adopted for the Neighborhood which identifies certain Best Management Practices to reduce the discharge of pollutants to storm water facilities, before, during and after construction on the Neighborhood is completed.

(b) BMP Guidelines. The Association and the Owners shall comply with all NPDES requirements and all BMP guidelines that apply to the Neighborhood.

(c) Pesticides and Fertilizers. Large scale use of herbicides, pesticides or fertilizers during landscape maintenance activities and installation of certain planting materials are prohibited unless applied by applicators licensed by the State of California.

(d) Hazardous or Toxic Waste. Nothing other than natural rain water may be discharged into the storm drains and storm drainage system located on private or public property. The National Pollutant Discharge Elimination System and Section 5650 of the California Fish and Game Code prohibit, among other things, discharging anything other than natural rain water into storm drainage systems. Toxic chemicals or hydrocarbon compounds such as gasoline, motor oil, antifreeze, solvents, paints, paint thinners, wood preservative and other such fluids shall not be discharged into any street, public or private, or into storm drains or storm water conveyance systems. Use and disposal of pesticides, fungicides, herbicides, insecticides, fertilizers and other such chemical treatments shall meet Federal, State, County (and City) requirements as prescribed on their respective containers. All Owners within the Neighborhood are required to comply with such restrictions.

(e) Other Requirements. The Master Association is required to prepare a report regarding the condition of certain storm water drainage facilities that are maintained by the Association and may be required to perform or report on methane monitoring activities. The Association shall provide all requested information to the Master Association within the time frame established by the Master Association. The Association shall perform all monitoring and maintenance for any storm water drainage Improvements and any methane barriers and venting systems requested by any local agency or the Master Association. The Association shall indemnify and hold the City harmless from any liability resulting from the Association's activities mandated pursuant to this Section, including its activities involved in monitoring and mitigating methane in the Community.

SECTION 20. REINFORCED CONCRETE SLABS. The concrete slab for the Condominium Building is reinforced with a grid of steel cable installed in the concrete slab ("Reinforced Concrete Slab"). Cutting into a Reinforced Concrete Slab for any reason (e.g., to install a floor safe, to remodel plumbing, etc.) is very hazardous and may result in serious damage to the

Condominium Building, personal injury, or both. Since the Condominium Buildings have been constructed with a Reinforced Concrete Slab, each Owner and the Association hereby agree that: (a) the Reinforced Concrete Slab shall not be cut into or otherwise tampered with; (b) the existence of the Reinforced Concrete Slab shall be disclosed to any person who rents, leases or purchases the Residence; and (c) each Owner, their Invitees and the Association shall indemnify and hold Participating Builder and Participating Builder's agents, free and harmless from and against any and all claims, damages, losses or other liability (including attorneys' fees and costs of court) arising from any breach of this covenant.

SECTION 21. RIGHTS OF DISABLED. Subject to the provisions of the Article of this Declaration entitled "DESIGN REVIEW," each Owner shall have the right to modify their Condominium, at such Owner's sole expense, in order to facilitate access to their Condominium by persons who are blind, visually handicapped, deaf or physically disabled, or to alter conditions which could be hazardous to such persons in accordance with Section 1360 of the California Civil Code or any other applicable law or ordinance. In the event it is also necessary to modify a portion of the Association Property to facilitate access, Owner shall obtain prior written approval from the Design Review Committee, and the Owner shall be responsible for all costs associated with such modification; provided, however, such modification to the Association Property shall be removed and restored to its original design by the Owner, at Owner's sole expense, when the Unit is no longer occupied by persons requiring those modifications.

SECTION 22. ROOF ACCESS RESTRICTIONS. Owners and Invitees, shall not at anytime or for any reason whatsoever enter upon or attempt to enter upon (i) the roof of the Neighborhood, or (ii) any portion of the Association Property used by the Association for management, administrative, or other purposes, without the prior approval of the Board.

SECTION 23. ROOFTOP MECHANICAL EQUIPMENT. Roof equipment shall be visually screened from the view of the adjacent properties to the extent feasible. HVAC and related rooftop mechanical equipment shall be installed in accordance with the City of Los Angeles Noise Ordinance.

SECTION 24. RULES OF ASSOCIATION. Each Owner, tenant or occupant of a Condominium shall comply with the provisions of the Governing Documents, all as lawfully amended from time to time, and failure to comply with any such provisions, decisions, or resolutions, shall be grounds for an action to recover sums due, for damages, or for injunctive relief, or for any other remedy permitted by law or permitted by the terms of this Declaration.

SECTION 25. SIGNS. Subject to California Civil Code Sections 712, 713 and 1353.6, no sign advertising device or other display of any kind shall be displayed in the Neighborhood or on any public street in or abutting the Neighborhood except for the following signs:

(a) Participating Builder and Association Signs. Signs (regardless of size or configuration) as may be used by Participating Builder in connection with the development of the Neighborhood and the sale, lease or other disposition of Condominiums. Entry monuments, Neighborhood identification signs and traffic or parking control signs maintained by the Association.

(b) For Sale and Lease Signs. Each Condominium may have one (1) sign advertising the Condominium for sale or lease that complies with the following requirements:

(1) Has reasonable design and dimensions (which shall not exceed eighteen (18) inches by thirty (30) inches in size) and does not adversely affect public safety, including traffic safety; and

(2) The sign is of a color, style and location authorized by the Design Review Committee.

(c) NonCommercial Signs. Each Condominium may have a noncommercial sign, poster, flag or banner that complies with the following requirements:

(1) A noncommercial sign or poster may not be more than nine (9) square feet in size and a noncommercial flag or banner may not be more than fifteen (15) square feet in size.

(2) A noncommercial sign, poster, flag or banner may not be made of lights, roofing, siding, paving materials, flora, or balloons, or any other similar building, landscaping, or decorative component, or include the painting of architectural surfaces.

(d) Other Signs. Each Condominium may have such other signs or displays that are authorized by the Design Review Committee. Under no circumstances shall any owner be permitted to display signs or banners that endanger public health or safety, or that violate a local, state, or federal statute.

**SECTION 26. SOUND ATTENUATION.** In any multi-family dwelling, sound may be audible between Condominiums, particularly where the sound level of the source is sufficiently high and the background noise in an adjacent Condominium is very low. Each Owner shall endeavor to minimize any noise transmission from their Condominium, and shall comply with any of the rules and regulations set forth in the Governing Documents which are designed to minimize noise transmission. To minimize the noise transmission from a Condominium, each Owner (other than Participating Builder) shall adhere to the following:

(a) No holes or other penetrations shall be made on a wall that is between Condominiums other than for decorative items that would require greater than one (1) inch of penetration without the permission of the Board. In particular, no audio, television, stereo, speakers, or other audio/visual or media equipment shall be installed in or on any common wall without the permission of the Board. No penetrations of any sort shall be made in the ceilings of any Condominium.

(b) No modifications shall be made to any Condominium which would result in a reduction in the minimum impact insulation class of the Condominium.

(c) Speakers for music reproduction and television shall not be supported from or contact walls common with other Condominiums and shall be elevated from the floor by a proper acoustic platform. Noise from such speakers must be kept at a reasonable level so as not to interfere with other Owners' enjoyment of their Condominiums.



(d) Pianos shall have at least 1/2 inch sound absorbing pads (such as neoprene) under the supports to minimize vibration transmission into the structure.

(e) All furniture not on carpeted areas shall contain rubber castors or other such sound absorbing pads.

SECTION 27. STRUCTURAL ALTERATIONS. No Owner shall make or cause to be made structural alterations or modifications to the interior of their Condominium or installations located therein which would have a material effect on another Condominium without the prior written consent of the Design Review Committee provided for in this Declaration. No Owner shall make any Improvement or alteration within the boundaries of their Condominium which impairs the structural integrity or mechanical systems, or lessens the support of any portion of the Common Property.

(a) Neither the Participating Builder nor the Association shall be liable or responsible for any damage that results from Improvements constructed or modified by an Owner. Improvements should not be installed, constructed or modified without the assistance of qualified consultants.

SECTION 28. TRASH COLLECTION. No rubbish, trash or garbage or other waste material shall be kept or permitted upon any portion of the Neighborhood, except in sanitary containers located in appropriate areas screened and concealed from view, and no odor shall be permitted to arise therefrom so as to render the Neighborhood, or any portion thereof, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. Such sanitary containers shall be exposed to the view of neighboring Condominiums only when set out for a reasonable period of time (not to exceed twelve (12) hours before and after scheduled trash collection hours). If trash bins are located in the trash areas on the Common Property, all Owners shall utilize such trash bins for the disposal of their trash.

SECTION 29. UNREASONABLE RESTRICTIONS ON MARKETABILITY OF PROPERTY VOID.

(a) Any rule or regulation of the Association that arbitrarily or unreasonably restricts an Owner's ability to market their Condominium is void.

(b) The Association may not adopt, enforce, or otherwise impose any rule or regulation that does either of the following:

(1) Imposes an Assessment or fee in connection with the marketing of an Owner's Condominium in an amount that exceeds the Association's actual or direct costs. That Assessment or fee shall be deemed to violate the limitation set forth in Civil Code Section 1366.1.

(2) Establishes an exclusive relationship with a real estate broker through which the sale or marketing of Condominiums in the Neighborhood is required to occur. The limitation set forth in this paragraph does not apply to the sale or marketing of Condominiums owned by the Association or to the sale or marketing of Association Property by the Association.

(c) For purposes of this section, "market" and "marketing" mean listing, advertising, or obtaining or providing access to show the Owner's Condominium in the Neighborhood.

(d) This section does not apply to rules or regulations made pursuant to Civil Code Section 712 or 713 regarding real estate signs.

SECTION 30. UNSIGHTLY ITEMS. There shall be no exterior fires whatsoever except barbecue fires contained within authorized receptacles therefor. Weeds shall be regularly removed from the exterior portion of the Condominiums and shall not be allowed to accumulate. No clothing or household fabrics shall be hung, dried or aired and no lumber, wood piles, grass, shrub or tree clippings or plant waste, metals, bulk material or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any portion of the Neighborhood except within an enclosed structure or appropriately screened from view.

SECTION 31. USE OF EXCLUSIVE USE PROPERTY. Improvements including, without limitation, plants, storage units, fountains and landscaping features within the Exclusive Use Property shall be subject to the Association Rules and any Improvements within such areas shall require the approval of the Board. Unless installed by Participating Builder, no Improvements shall be permitted to extend beyond the railings, fences, walls and/or other boundaries of the Exclusive Use Property. No Owner shall change or alter the surface of any Exclusive Use Property. Exterior Exclusive Use Property Patios shall be used only as outdoor living areas containing patio furniture and other similar outdoor furnishings which comply with the standards governing the appearance of such items as set forth in the Association Rules. Said furnishings shall be equipped with protective leg caps or other devices to prevent damage to the floor of the Exclusive Use Property. No Improvement shall be nailed, bolted, or otherwise attached to the floor, walls, or any other portion of the Exclusive Use Property subject to the restrictions in this Declaration and the Association Rules. No hanging screens, banners, or wind chimes and no other accouterment (other than plants) which may be visible from any other Condominiums or the Association Property are permitted on any exterior portion of the Exclusive Use Property Patio. Any plants placed on Exclusive Use Property Patio must, to the extent required under the Association Rules, be approved by the Design Review Committee, must have sufficiently large receptacles to contain all drainage from such plants and must not be allowed to collect condensation or moisture between the receptacles and the floor of the Exclusive Use Property Patio. Each Owner acknowledges that, notwithstanding anything to the contrary set forth in this Declaration, the Association shall have the right to enter onto such Exclusive Use Property to perform its maintenance and other obligations under this Declaration. No Owner shall use any exterior area of an Exclusive Use Property Patio for storage purposes, including, without limitation, the storage of bicycles or surfboards.

SECTION 32. UTILITIES. Each Owner of a Condominium shall be obligated to pay any and all Assessments for sewage, electricity, other utilities, taxes and other charges assessed individually against such Owner's Condominium.

SECTION 33. VEHICLE WASHING RESTRICTIONS. In order to promote water quality and conservation in accordance with the Best Management Practices, all Owners and/or their tenants shall be prohibited from washing their cars, or other vehicles or boats, within the Neighborhood.

SECTION 34. VIEW. There are no views in the Project which are protected to any extent pursuant to this Declaration, and no Owner who becomes subject to the terms hereof shall thereby obtain any view rights whatsoever. Each Owner and the Association, by accepting a deed to a Condominium or Association Property, hereby acknowledges that any construction or installation by Participating Builder, or the "Declarant", "Owner" or any "Participating Builder" under the Master Declaration, may impair the view of such Owner or of the Members of the Association, and each Owner and the Association on behalf of the Members hereby consents to such impairment.

SECTION 35. VIOLATION OF GOVERNING DOCUMENTS. There shall be no violation of the restrictions of this Declaration or of any of the Governing Documents. If any Owner or their Invitees violates any such restrictions, the Board may impose a reasonable Reimbursement Assessment upon such Owner for each violation and may suspend the voting privileges of such Owner as further provided in the Bylaws. Such Reimbursement Assessment shall be collectible in the same manner as Regular Assessments hereunder, but the Board shall give such Owner notice and hearing before invoking any such Reimbursement Assessment or suspension.

## ARTICLE IV

### DISCLOSURES

*This Article describes some of the characteristics of land uses, facilities and activities within or near the Neighborhood which may have an impact on the Neighborhood and its residents. Potential purchasers or tenants of Condominiums should read these descriptions closely to make sure they can use their Condominiums as they intend subject to these potential impacts. Some of the information in this Article was obtained from other sources (governmental and other public agencies and public records) and is subject to change without notice. The accuracy and completeness of this information is not guaranteed. Persons should make their own inquiries or investigations to determine the current status of the matters described in this Article or other matters that may affect their enjoyment of the Neighborhood.*

SECTION 1. NOTICE OF AIRPORT IN VICINITY. Pursuant to Civil Code Section 1353 the following statement is required to be set forth in this Declaration:

"This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you."

(a) Civil Code Section 1353 provides an "airport influence area", also known as an "airport referral area", is the area in which current or future airport-related noise, overflight, safety, or airspace protection factors may significantly affect land uses or necessitate restrictions on those uses as determined by an airport land use commission.

(b) Use and frequency of flights to an airport can change. Participating Builder has no control over the amount of noise and disturbance that may be experienced by Owners of Condominiums in the Neighborhood from overflight. Participating Builder makes no warranty or representation as to the future use of these facilities or future increase or decrease in overflights resulting from a change of use or frequency of flights from the airport.

SECTION 2. ENTRY FACILITY OPERATION. Each Owner of a Condominium which is part of the Neighborhood acknowledges by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in any such deed or other instrument, that Participating Builder has a substantial interest in assuring unrestricted access in and to the Neighborhood to accommodate construction and marketing activities for Condominiums within the Neighborhood and Playa Vista. Vehicular and pedestrian access into the Neighborhood will be controlled by entry gates located at the private entrances into the Neighborhood ("**Entry Gates**"). There may be controlled pedestrian gates in the Neighborhood. The Entry Gates will not be staffed. Interim access gate staffing may be provided by Participating Builder during construction in its sole discretion and at its sole cost. Interim access gate staffing, if provided, is intended only to assist

Participating Builder in its construction and marketing activities and may be modified or eliminated at any time without notice. Participating Builder reserves the unrestricted right to limit or suspend the operation of any Entry Gates and other measures to restrict access to the Neighborhood during the marketing and sales period ("**Marketing Period**"). During the Marketing Period, the Entry Gates and access points to the Neighborhood may be open without restriction to the general public and Participating Builder for construction, model home operation and other development and marketing traffic at all hours of the day, seven days a week; provided however, that Participating Builder without notice to or the approval of the Board of Directors or Owners may change the hours or nature of the Entry Gates and access point operation in its sole discretion and without notice to accommodate construction, marketing and other development activities. Neither the Board of Directors nor Owners shall take any action that interferes with the rights of Participating Builder hereunder with respect to the unrestricted control over the operation and use of and entry through the Entry Gates to the Neighborhood during the Marketing Period.

(a) Security and Privacy Disclaimer. Entry Gates are not intended to provide security for persons, personal property or Condominiums within the Neighborhood. Participating Builder and the Association do not undertake to provide security for the Neighborhood nor do they make any representations or warranties whatsoever concerning the effect the gates may have on vehicular and pedestrian access through the Neighborhood or the privacy and safety of the Neighborhood.

(b) Noise from Entry Gates. Residents living in the vicinity of the Entry Gates will experience noise from the operation of the Entry Gates and from traffic entering and exiting the Neighborhood. Vehicles may line up outside the Entry Gates during heavy traffic periods.

(c) Emergency Vehicles. Owners further acknowledge that the presence of Entry Gates within the Neighborhood extends response time for emergency vehicle access and personnel.

**SECTION 3. AVIGATION EASEMENT.** The Neighborhood is subject to a recorded Avigation Easement ("**Easement**") as set forth in a document recorded June 23, 2005 as Instrument No. 05-1480887 ("**Avigation Easement**") for the benefit of heliports as described in such Avigation Easement. The Easement grants specific rights pertaining to the flight of aircraft of any kind from and to Heliports in, through, across or about any portion of the airspace as described in the Avigation Easement. Such Easement may include the use of the airport for take-off, landing, approach and other operations, including but not limited to, the right of every type of aircraft to pass over the Neighborhood, the right to cause noise, shock waves, vibrations, odors, fumes, dust, fuel particles, smoke, light, thermal waves, air quality changes and other effects of aircraft operation. Owners may not construct structures, electrical equipment, lights or other objects or permit any trees to interfere with the operation of aircraft or the use of the heliports. Any obstructions to air navigation such as buildings, structures or other improvements and trees, or other objects shall be marked and lighted to the extent required by applicable law.

**SECTION 4. COMMUNITY FACILITIES DISTRICT AND ASSESSMENT DISTRICTS.** The Neighborhood lies within the boundaries of Special Assessment Districts and Mello-Roos Community Facilities Districts which require the levy of special taxes for the repayment of bonds issued for the purpose of paying the cost of services or capital improvements that have been or are being provided. The amount of the special tax and any other information pertaining to

any such district can be obtained from the County Assessor's office. Owners will be obligated to pay these assessments as a part of the annual property tax bill.

SECTION 5. METHANE AND OTHER SOIL GASES. Methane, hydrogen sulfide and BTEX (benzene, toluene, ethylbenzene and xylene) gasses have been detected in areas of Playa Vista. The Neighborhood may be subject to methane gas intrusion from underlying soil. Methane, which is a nontoxic gas, exists in many areas of Los Angeles and other coastal cities, including Playa Vista. Methane is a lighter than air, colorless, odorless gas, which is non-toxic and non-carcinogenic, and which is the primary constituent (about 85%) of the gas burned in kitchen stoves and ranges. Methane is potentially combustible if present within a confined space at concentrations greater than approximately 5.0% by volume or approximately 50,000 parts per million by volume ("*ppmv*"). In very high concentrations, in a confined space, methane gas can dilute the air, thereby lowering the oxygen concentration to the point that the mixture becomes an asphyxiant. City's building code contains guidelines to protect and mitigate the potential dangers associated with these soil gases. The Los Angeles Department of Building and Safety has approved methane mitigation measures for implementation at Playa Vista. Generally, the mitigation measures include an impermeable subslab barrier, passive or active collection and venting systems, and methane sensors. Interested owners may contact the Los Angeles Department of Building and Safety about the specifics of the methane mitigation program for Playa Vista.

(a) Occurrence of Methane Gas. All soils are porous, usually having 20% to 30% void volume. This void area is often filled with soil gas consisting of air and water vapor, but if other substances are present, such as methane gas, they will mix with the other soil gas. In an area such as Playa Vista, methane soil gas may come from several natural sources. The source of methane gas in soil at Playa Vista has not been and may not be precisely determined.

(b) Testing. Testing of the soil at Playa Vista revealed methane soil gas in various concentrations in different areas of Playa Vista. Geotechnical and environmental consulting firms were retained by Participating Builder and Declarant to determine what areas of Playa Vista are affected, the concentrations of methane soil gas present and the appropriate remedial or mitigation actions that should be taken.

(1) EST Testing. The presence of methane soil gas was analyzed in a series of tests conducted by Environmental Support Technologies, Inc. ("*EST*"), and their findings are contained in a letter report addressed to Carlin Environmental Consulting referenced as "Soil Gas Probe Installation and Monitoring Report." EST tested for the presence of methane gas in the shallow soils (less than five feet) within the Neighborhood at eight (8) different points on two consecutive days, and their findings revealed methane concentrations in the fourteen samples as follows: 0.0 ppmv, 0.0 ppmv, 21,000 ppmv, 19,000 ppmv, 0.0 ppmv, 0.0 ppmv, 0.0 ppmv, 0.0 ppmv, 0.0 ppmv, 0.0 ppmv, 0.0 ppmv, 0.0 ppmv, 0.0 ppmv and 0.0 ppmv.

Additional analysis and assessment has been performed for the overall Playa Vista project by various geotechnical and environmental consulting firms for Declarant and the City, and all such reports are available at the City of Los Angeles Department of Building and Safety ("*LADBS*"), 201 North Figueroa Street, Los Angeles, CA 90012.

(c) Mitigation Systems. The LADBS has adopted methane mitigation measures for Playa Vista, entitled the Playa Vista Methane Prevention, Detection and Monitoring Program ("*PVMPDAMP*"), to mitigate the potential impacts of methane soil gas. Based on the

findings in the EST report dated May 5, 2005, the PVMPDAMP has classified the Neighborhood as having a Level III methane concentration. The PVMPDAMP requirements for a Methane Concentration Level III are as follows:

(1) Mitigation Prevention System. Gas collection vent pipes are installed underneath the subterranean parking garage concrete slab. A City-approved sub-slab impermeable methane barrier is applied between the gas collection pipes and the slab to seal the slab from the vertical migration of methane. The gas collection vent pipes pass through a twelve-inch gravel blanket below the concrete slab and extend through the roof of the Condominium Building at six different locations connecting to vent risers. The Condominium Building contains four passive and two active vent risers designed to prevent methane gas from migrating into enclosed building areas. The in-line blowers on the active risers are activated with elevated methane concentrations (i.e, methane concentrations above 37,500 ppmv). There is also a deep vent well which vents gas from the "50 -foot gravel aquifer". There is also a nuisance water system installed which prevents groundwater from infiltrating the methane vent piping system.

(2) Methane Detection System. The methane detection system contains data collecting sensors below the impermeable membrane. There are also methane sensors in the lowest occupied spaces in the subterranean garage. The detection system will activate a visual and audible building alarm if methane concentrations are detected at 12,500 ppmv or higher. Concurrent with the alarm activation, an electronic signal will notify LAFD of the alarm activation. Monitoring of methane concentration levels will be provided for as part of the building prevention systems.

#### SECTION 6. OTHER UNDESIREG GASES AND/OR CONTAMINANTS.

The aging process of soil and other elements created by nature, as well as building materials developed by man, may create unwanted and undesired gases and other contaminants in homes, both new and previously occupied. In addition, a lower air exchange between outdoor and indoor environments has resulted from construction assemblies built in accordance with energy conservation laws and standards enacted by the State of California. A lower air exchange can result in the build-up of unwanted gases and other contaminants in varying degrees. As the quality of the air we breathe can affect health, Participating Builder recommends that Owners frequently ventilate Residences by opening the windows.

SECTION 7. SOUND TRANSMISSION. By acceptance of a Grant Deed, each Owner acknowledges, understands and accepts that living in an attached condominium project within a densely populated City entails living in very close proximity to other persons and businesses, with attendant limitations on solitude. Owner can expect to hear noise from nearby residential and commercial areas in the City. Owner may also experience light entering the Condominium from street lights located in close proximity to the windows and doors of the Condominium. Participating Builder has no control over the transmission of noise or light from outside sources and their potential effects on Condominiums within the Neighborhood. Although the Condominium walls, floors and ceilings have been designed to meet applicable building codes, Owner will hear noise from adjacent Condominiums and from other Condominiums within the Neighborhood, including, but not limited to, noise from showers, bathtubs, sinks, toilets or other sources of running water. Also, Owner may hear airborne noise from items such as vacuum cleaners, stereos or televisions, cabinet doors and drawers, and entry doors opening and closing, or from people running, walking or exercising.

(a) Condominiums. Participating Builder has implemented sound attenuation measures, ("**Noise Mitigation Measures**") including but not limited to the windows and entry doors, of each Condominium. The Noise Mitigation Measures were constructed in conformance with the requirements of the City. Owners are prohibited from interfering with the Noise Mitigation Measures in the Condominium. In the event of replacement, damage or destruction of all or any portion of any Noise Mitigation Measure, the Owner shall repair or rebuild under the same or more stringent standard and with the same or better materials as the original Noise Mitigation Measure. Beyond Participating Builder's adherence to City requirements, Participating Builder does not guarantee that all noise factors have been completely mitigated. All Owners should consider the surrounding uses in the Neighborhood and the potential noise generation from those sources prior to purchase. It should also be understood that there is no completely effective mitigation measure for exterior noise.

(b) Neighborhood Walls. Some Neighborhood Walls were constructed for Noise Mitigation Measures in conformance with the requirements of the City. In the event of damage or destruction of all or any portion of the Neighborhood Walls, such Neighborhood Wall shall be repaired or rebuilt under the same or more stringent standard and with the same or better materials as the original Neighborhood Wall. The specifications for building Neighborhood Walls and their placement are determined by engineering professionals in consideration of site conditions.

SECTION 8. URBAN ENVIRONMENT. Playa Vista is located adjacent to urban areas of Los Angeles and is surrounded by Marina del Rey, Venice, Playa del Rey and Westchester. Much of the property surrounding Playa Vista is zoned for industrial, commercial and retail uses. Many of these areas contain businesses that have been in existence for years. There are some gas stations in the surrounding area. Persons residing in Playa Vista may be impacted by noise, lighting, odor, and other irritants and nuisances from the daily operation of industrial uses and by noise and traffic from the proximity of commercial and retail businesses located near Playa Vista.

SECTION 9. UTILITY IMPROVEMENTS. There may be above-ground and subterranean utility Improvements such as transformers, lift stations, water or sewer facilities, telecommunications vaults and other visible Improvements necessary for the delivery of utilities or other services either on or adjacent to each Condominium in the Neighborhood. Each Owner understands that the placement of such Improvements is dictated by the needs of the applicable utility or service provider, and the presence of such Improvements in the Neighborhood is in accordance with easements created prior to or during the development of the Neighborhood. Each Owner, by accepting a deed to a Condominium in the Neighborhood, understands that each Condominium and portions of the Association Property are subject to one or more such easements for placement of utility Improvements. No Owner may modify, remove or otherwise interfere with utility Improvements on any Condominium or other portion of the Project.



## ARTICLE V

### DUTIES AND POWERS OF THE ASSOCIATION

*The success of the Neighborhood is dependent upon the support and participation of each Owner in its governance and administration. This Declaration establishes the Association as the mechanism through which each Owner is able to provide that support and participation. This Article describes the organization of the Association, its powers, duties, authorized activities and prohibited activities.*

SECTION 1. GENERAL POWERS OF THE ASSOCIATION. All powers relating to the management, operation and maintenance of the Association Property, as well as certain rights, duties and powers relating to the Units, as hereinafter set forth, shall be vested in the Association and in its Board of Directors. The specific and primary purposes and powers of the Association and its Board are to provide for the operation, control, repair, maintenance and restoration of the Association Property, provide architectural and landscape design control of the Neighborhood, provide recreational activities for the Members, and to enforce the provisions of the Governing Documents, and any other instruments relating to the management and control of the Association and the Neighborhood. The Association may do any and all other acts and things that a nonprofit corporation is empowered to do, which may be necessary, convenient or desirable in the administration of its affairs for the specific and primary purposes of meeting its duties as set forth in this Declaration. The Association, through its Board, shall have the authority to delegate its powers to committees, officers of the Association or its employees.

SECTION 2. CONTRACTS OF THE ASSOCIATION. The Association shall have the right and power to employ or engage a manager and other employees or agents and contract for such services, labor and materials as it may deem reasonably necessary to operate and maintain the Neighborhood, the Common Property and the Improvements thereon and to discharge its other duties as herein provided. Any agreement for professional management of the Association or any contract providing for services by the Participating Builder must provide for termination of such contract or agreement by either party with or without cause or payment of a termination fee on ninety (90) days or less written notice and for a maximum contract term not to exceed one (1) year. Any management company or agent that handles funds for the Association should be covered by a fidelity bond, which must provide the same coverage required of the Association under the Article of this Declaration entitled "INSURANCE."

SECTION 3. POWERS AND DUTIES OF ASSOCIATION. In addition to the duties and powers enumerated in the Governing Documents, or elsewhere provided for herein, and without limiting the generality thereof, and subject to the limitations on the power of the Board as set forth in the Sections below entitled "Additional Restrictions on Power of the Board" and "Limitation on Board Authority to Contract" of this Article, the Association acting through the Board shall have the following powers and duties:

(a) Association Property. The power and duty to own, operate, maintain and manage all Association Property in accordance with the provisions of the Governing Documents, BMP's, PVMPDAMP and the requirements of any other authority having jurisdiction over the Neighborhood. The responsibility of the Association to maintain the Association Property

shall commence on the date of commencement of Regular Assessments for each Phase of the Neighborhood;

(b) Utilities. The power and duty to obtain, for the benefit of the Association Property, all utility services unless such services are separately charged to the Owners;

(c) Granting Rights. The power to grant exclusive or nonexclusive easements, licenses, permits, rights of way or fee interests in the Association Property, to the extent any such grant is reasonably allowed pursuant to Section 1363.07 of the Civil Code for: (a) Improvements to serve the Neighborhood; (b) for purposes of conformity with the as-built location of Improvements installed or authorized by Participating Builder or the Association; (c) in connection with any lawful lot line adjustment or boundary adjustment that does not have a significant negative impact upon the Association or the Owners; or (d) for other purposes consistent with the intended use of the Neighborhood. This power includes the right to create and convey easements for one or more Owners over portions of the Association Property. The Association may deannex any portion of the Neighborhood from the encumbrance of the Declaration in connection with any lawful lot line or boundary adjustment.

(d) Employ Personnel. The power to employ persons necessary for the effective operation and maintenance of the Association Property, including legal, management and accounting services,

(e) Drainage Facilities. The power and duty to maintain any private sewer systems, private storm drains, or private drainage facilities located in the Association Property in accordance with the Governing Documents;

(f) Methane Mitigation Systems. The power and duty to inspect, maintain and monitor the Methane Mitigation System;

(g) Taxes and Assessments. The duty to pay taxes and assessments which are or could become a lien on the Association Property, if any, or some portion thereof;

(h) Legal Proceedings. The power and duty to initiate and execute legal proceedings against Members for violations of the Governing Documents in accordance with the procedures set forth in this Declaration and the procedures established in Sections 1363.810 et seq. and 1369.510 et seq. of the California Civil Code.

**SECTION 4. RESTRICTIONS ON POWER OF THE BOARD.** The Association shall be prohibited without the prior vote or written assent of a majority of the voting power of the Association, which shall include a majority of the votes residing in Members other than Participating Builder, from doing any of the following: (a) incurring aggregate expenditures for capital improvements to any portion of the Neighborhood in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year; or (b) selling during any fiscal year of the Association property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for the fiscal year; (c) paying compensation to members of the Board or to officers of the Association for services performed in the conduct of the Association's business; provided, however, that the Board may cause a Member or officer to be reimbursed for expenses incurred in carrying on the business of the Association; or (d) filling of a vacancy on the Board created by the removal of a Board Member.

SECTION 5.      LIMITATION ON BOARD AUTHORITY TO CONTRACT.

The Board of Directors shall be prohibited from taking any of the following actions, except with the assent, by vote at a meeting of the Association or by written ballot without a meeting, pursuant to Corporations Code Section 7513, of a simple majority of the Members, other than the Participating Builder, constituting a quorum consisting of more than 50 percent of the voting power of the Association residing in Members other than the Participating Builder: Entering into a contract with a third person wherein the third person will furnish goods or services for the Common Property, Association Property or the Association for a term longer than one year with the following exceptions: (a) a management contract, the terms of which have been approved by the Federal Housing Administration or Department of Veterans Affairs; (b) a contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate; (c) prepaid casualty and/or liability insurance policies of not to exceed three years duration, provided that the policy permits for short rate cancellation by the insured; (d) a lease agreement for laundry room fixtures and equipment of not to exceed five years duration provided that the lessor under the agreement is not an entity in which Participating Builder has a direct or indirect ownership interest of ten percent (10%) or more; or (e) agreements for cable services and equipment, satellite dish services and equipment, communication services and equipment, high speed data transfer, computer services, telephone and comparable technology, services and equipment with terms not to exceed five years duration provided that the supplier is not an entity in which the Participating Builder has a direct or indirect ownership interest of ten percent (10%) or more; (f) agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services of not to exceed five years duration provided that the supplier or suppliers are not entities in which the Participating Builder has a direct or indirect ownership interest of ten percent (10%) or more; or (g) a contract for a term not to exceed three years that is terminable by the Association after no longer than one year without cause, penalty or other obligation upon ninety (90) days written notice of termination to the other party.

SECTION 6.      LIMITATION ON AUTHORITY TO RESTRICT ACCESS.

Except as otherwise provided by law, an order of the court, or an order pursuant to a final and binding arbitration decision, the Association may not deny an Owner or occupant physical access to their Condominium, either by restricting access through the Common Property to the Owner's Condominium, or by restricting access solely to the Owner's Condominium.

SECTION 7.      DAMAGE BY OWNER OR TENANT OF AN OWNER TO THE COMMON PROPERTY OR OTHER UNITS. In the event the Board shall determine that a Unit Owner or tenant of a Unit Owner has caused damage to another Unit or Common Property by a negligent or willful act (or failure to act), the Owner or tenant causing such damage shall be responsible for the cost of repairing such damage in accordance with such Association Rules. In the event such Owner or tenant fails to pay the cost of any necessary repair to the Unit or the Common Property so damaged, the Association shall charge the cost of such repair to the Owner or tenant who caused the damage and if not paid in a timely manner, such cost shall be deemed a Reimbursement Assessment.

SECTION 8.      ASSOCIATION RULES. The Board shall also have the power to adopt, amend, and repeal such rules and regulations as it deems reasonable which may include the establishment of a system of fines and penalties enforceable as a Reimbursement Assessment, as more fully set forth in the Bylaws of the Association. The Association Rules shall govern such matters in furtherance of the purposes of the Association, including, without limitation, the use of

the Common Property, provided, however, that the Association Rules may not discriminate among Owners, and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Association Rules as they may from time to time be adopted, amended or repealed or a notice setting forth the adoption, amendment or repeal of specific portions of the Association Rules shall be delivered to each Owner. The Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding on the Owners and their successors in interest whether or not actually received thereby. Current copies of the Declaration, the Articles of Incorporation and Bylaws of the Association and Association Rules shall be available for inspection by Owners or by Mortgagees during normal business hours of the Association. Notwithstanding the foregoing, except as otherwise provide in law, an order of the court, or an order pursuant to a final and binding arbitration decision, the Association may not deny an Owner or occupant physical access to their Condominium either by restricting access through the Association Property to the Owner's Condominium, or by restricting access solely to the Owner's Condominium.

SECTION 9. PARTICIPATING BUILDER'S RIGHTS TO ASSOCIATION RECORDS. For a period of ten (10) years after the Close of Escrow for the sale of the last Condominium in the Neighborhood covered by a Final Subdivision Public Report, in addition to Participating Builder's rights as an Owner and a Member in accordance with Section 1365.2 of the Civil Code:

(a) Participating Builder shall be entitled to access to the Association Records, including maintenance records, and to attend and speak at meetings of the Board of Directors and meetings of the Members. Any comments made by Participating Builder at any meeting shall be accurately noted in the minutes prepared for such meetings.

(b) Participating Builder shall also receive notice of its right to have copies of the minutes of meetings and how to obtain such minutes.

(c) Participating Builder shall have the right to receive all distributions of minutes, proposed minutes or summary minutes upon request and reimbursement of the Association's actual copying and mailing costs for making the distribution to Participating Builder.

(d) Participating Builder shall have the same rights as Owners under this Section to inspect, examine and audit the Association Records.

## ARTICLE VI

### DESIGN REVIEW

*Control over design, construction and aesthetic aspects of the Neighborhood is given to the Design Review Committee. The Design Review Committee is committee initially appointed by Participating Builder and eventually appointed by the Board of Directors. In addition to establishing the Design Review Committee, this Article establishes the procedures for approving Improvements, pre-approving certain Improvements, granting variances and appealing decisions of the Design Review Committee.*

SECTION 1. MEMBERS OF THE COMMITTEE. The Design Review Committee shall consist of not less than three (3) members as shall be determined by the Board. The Design Review Committee has the right and duty to promulgate Design Guidelines against which to examine any request made pursuant to this Article. Design Review Committee members appointed by the Board must be Owners, but the Design Review Committee members appointed by Participating Builder need not be Owners. Board members may serve as Design Review Committee members.

### SECTION 2. POWERS AND DUTIES.

(a) General Powers and Duties. The Design Review Committee shall consider and act upon all plans and specifications submitted for its approval. The Design Review Committee also has the power, but not the duty to, inspect work in progress to assure conformance with plans approved by the Design Review Committee. The Design Review Committee shall have the right and duty to promulgate reasonable standards against which to examine any request made pursuant to this Article, in order to ensure that the proposed plans conform harmoniously to the exterior design and existing materials of the buildings in the Neighborhood.

(b) Issuance of Design Guidelines. The Design Review Committee shall consider and act upon any and all Plans and Specifications (as defined in Section 4 below) submitted for its approval under this Declaration and pursuant to the Design Guidelines; and perform such other duties as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with plans approved by the Design Review Committee. The Design Review Committee may recommend to the Board changes to the Design Guidelines. The Design Guidelines may require a fee to accompany each application for approval and may identify additional factors which the Design Review Committee will consider in reviewing submissions. The Design Review Committee may also issue rules or guidelines setting forth procedures for the submission of plans for approval, requiring a fee payable to the Association to accompany each application for approval, or additional factors which it will take into consideration in reviewing submissions. The Design Review Committee may provide that the amount of such fee shall be uniform, or that it be determined in any other reasonable manner, such as by the reasonable cost of the construction, alterations or additions contemplated.

(c) Retaining Consultants. The Design Review Committee has the power, but not the duty to retain representatives to advise the Design Review Committee in connection with decisions ("Outside Consultant"). The Design Review Committee also has the power to

delegate its decision-making power to such Outside Consultant for approval of plans that are consistent with the Design Guidelines; provided however, that such Outside Consultant may not interpret the Design Review Guidelines, or grant variances from the Design Guidelines. An additional fee may be collected to cover costs of retaining such Outside Consultant to evaluate the proposed modifications to ensure that they are consistent with existing architectural standards or site conditions. The Outside Consultant of the Design Review Committee may be, but need not be, a member of the Design Review Committee.

### SECTION 3.      RIGHTS OF APPOINTMENT.

(a) Initial Appointment. The initial members of the Design Review Committee shall be representatives of Participating Builder until one (1) year after the original issuance of the Public Report ("**First Anniversary**"). After the First Anniversary, Participating Builder shall have the right and power at all times to appoint and remove a majority of the members of the Design Review Committee or to 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 subject to this Declaration and the Annexable Area, or (b) five years following the date of the original issuance of the first Public Report for the Neighborhood ("**Turnover Date**"). Any person appointed to the Design Review Committee by Participating Builder need not be a Member of the Association.

(b) Appointment by the Board. Commencing one (1) year from the date of the first Close of Escrow of a first Condominium, the Board shall have the power to appoint one (1) member to the Design Review Committee, until the Turnover Date. Persons appointed to the Design Review Committee by the Board shall be from the membership of the Association. From and after the Turnover Date, the Board shall have the power to appoint or remove all of the members of the Design Review Committee.

### SECTION 4.      REVIEW OF PLANS AND SPECIFICATIONS.

(a) Improvements Requiring Approval. No construction, alteration, addition, modification, decoration, redecoration or reconstruction of an Improvement in the Neighborhood shall be commenced or maintained, until the Plans and Specifications therefor showing the nature, kind, shape, height, width, color, materials and location of the same shall have been submitted to the Design Review Committee and approved in writing by the Design Review Committee ("**Plans and Specifications**").

(b) Application Procedure. Until changed by the Board, the address for submission of such Plans and Specifications shall be the address of the principal place of business for the Association. The Design Review Committee shall approve Plans and Specifications submitted by an Owner (herein "**Applicant**") for its approval only if it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area of the Neighborhood as a whole, that the appearance of any structure affected thereby will be in harmony with the surrounding structures, and that the construction thereof will not detract from the beauty, wholesomeness and attractiveness of the Association Property or the enjoyment thereof by the Members, and that the upkeep and maintenance thereof will not become a burden on the Association.

(c) Standards for Approval. The Design Review Committee may condition its approval of proposals or Plans and Specifications for any Improvement on any of the following:

(a) on such changes therein as it deems appropriate, (b) Applicant's agreement to submit to grant appropriate easements the Association made necessary by the Improvement to, or (c) upon the agreement of the Applicant to reimburse the Association for the cost of such maintenance. The Design Review Committee may require submission of additional Plans and Specifications or other information prior to approving or disapproving the Improvement. The Design Review Committee may require such detail in Plans and Specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, drainage plans, elevation drawings and description or samples of exterior material and colors. Failure to comply with the requirements for Design Review Committee approval shall be deemed a sufficient basis for the Design Review Committee to refuse to review the submission. Decisions of the Design Review Committee and the reasons therefor shall be transmitted by the Design Review Committee to the Applicant at the address set forth in the application for approval, within thirty days after receipt by the Design Review Committee of all materials required by the Design Review Committee. Any application submitted pursuant to this Section shall be deemed approved, unless written disapproval or a request for additional information or materials by the Design Review Committee shall have been transmitted to the Applicant within thirty (30) days after the date of receipt by the Design Review Committee of such application or additional information.

SECTION 5. MEETINGS OF THE DESIGN REVIEW COMMITTEE. The Design Review Committee shall meet from time to time as necessary to perform its duties hereunder. The Design Review Committee may from time to time, by resolution unanimously adopted in writing, designate an Design Review Committee representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Design Review Committee, except the granting of variances pursuant to the Section entitled "Variance" of this Article. In the absence of such designation, the vote of a majority of the members of the Design Review Committee taken without a meeting shall constitute an act of the Design Review Committee.

SECTION 6. NO WAIVER OF FUTURE APPROVALS. The approval of the Design Review Committee of any proposals or Plans and Specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the Design Review Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, Plans and Specifications, drawings or matter whatever subsequently or additionally submitted for approval or consent.

SECTION 7. NONLIABILITY OF DESIGN REVIEW COMMITTEE MEMBERS. Neither Participating Builder, the Design Review Committee nor any member of the Design Review Committee, the Board nor their duly authorized representative, shall be liable to the Association, or to any Owner for any loss, damage or injury arising out of or in any way connected with the performance of the Design Review Committee's duties hereunder, unless due to the willful misconduct or bad faith of the Design Review Committee. The Design Review Committee shall review and approve or disapprove all plans submitted to it for any proposed Improvement, alteration or addition, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and the Neighborhood generally. The Design Review Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features. The Design Review Committee's approval or disapproval shall be based solely on the considerations set forth in this Article, and the Design Review Committee shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any

plans or design from the standpoint of structural safety or conformance with building or other codes.

SECTION 8. GENERAL PROVISIONS. The members of the Design Review Committee shall not be entitled to any compensation for services performed pursuant to this covenant. The powers and duties of the Design Review Committee shall cease upon the termination of this Declaration. Thereafter the approval described in this covenant shall not be required unless, prior to said date and effective thereon, a written instrument shall be executed and duly recorded by the then record Owners of a majority of the Condominiums appointing a representative or representatives who shall thereafter exercise the same powers previously exercised by the Design Review Committee. Said representatives may be members of the Board of Directors of the Association.

SECTION 9. APPEAL. In the event Plans and Specifications submitted to the Design Review Committee are disapproved thereby, the party or parties making such submission may appeal in writing to the Board. The written request must be received by the Board not more than thirty (30) days following the final decision of the Design Review Committee. The Board shall submit such request to the appropriate Design Review Committee for review, whose written recommendations will be submitted to the Board. In the event Plans and Specifications submitted to the Design Review Committee are approved, such decision shall be final unless the decision is appealed to the Board within ten (10) days of the decision by the Design Review Committee. Such decision may be appealed by any member of the Board, the Design Review Committee or any Owner. Within forty-five (45) days following receipt of the request for appeal, the Board shall render its written decision. The failure of the Board to render a decision within said forty-five (45) day period shall be deemed a decision in favor of the decision made by the Design Review Committee. This Section does not require reconsideration of the decision that is made by the Design Review Committee if the Design Review Committee has the same membership as the Board.

SECTION 10. EXEMPTION. Notwithstanding any other provision of the Governing Documents, Participating Builder need not seek Design Review Committee approval with respect to their construction or development activities.

SECTION 11. GOVERNMENT REQUIREMENTS. The application to and the review and approval by the Design Review Committee or the Board of any proposals, plans or other submittals shall in no way be deemed to be to the satisfaction of or in compliance with any building permit process or any other governmental requirements, the responsibility for which shall lie solely with the respective Owner.

SECTION 12. MASTER ASSOCIATION DESIGN REVIEW. In addition to the provisions of this Article, each Owner of a Condominium within the Neighborhood shall be subject to the architectural and landscaping control restrictions and provisions of the Master Declaration. In the event of any conflict between the decisions of the Board, Master Association and/or the local agencies pertaining to architectural and landscape control, the decisions invoking the most restrictive standard shall prevail to the extent necessary to eliminate such conflict.



ARTICLE VII  
MAINTENANCE AND REPAIR OBLIGATIONS

*To protect the aesthetics of the Neighborhood, the Participating Builder has established standards for maintaining Condominiums and Association Property within the Neighborhood.*

SECTION 1. MAINTENANCE OBLIGATIONS OF OWNERS.

(a) Maintenance of Condominiums. Each Owner is responsible for the care and maintenance of those components of each Owner's Condominium designated for maintenance by the Owner on the Maintenance Responsibility Chart attached hereto as ***Exhibit B***.

(b) Quality of Maintenance. All Improvements shall be maintained in a manner as shall be deemed necessary in the judgment of the Board to preserve an attractive exterior appearance and proper functioning of drainage and all other systems.

(c) Repair and Maintenance of Common Property by or at the Expense of Owners. In the event the Board shall determine that the walls, ceilings, floors, glass or doors forming the boundaries of a Unit have been damaged from within the Unit, notwithstanding that such damage may be to the Common Property, the Owner of the Condominium shall be responsible for repairing such damage in a timely manner and in accordance with such rules as the Board shall from time to time adopt. In the event such repair is not so accomplished by the Owner, the Association or its delegates shall have the right at reasonable times to enter the Condominium to effect such repair, and the cost thereof shall be charged to the Owner of the Condominium and, if not paid in a timely manner, shall be deemed a Reimbursement Assessment.

(d) Owner Compliance With Maintenance Obligations. By accepting a deed to a Condominium, each Owner acknowledges and agrees that each Owner shall comply with all of the maintenance obligations and schedules set forth in this Declaration, the Maintenance Manual and the Maintenance Responsibility Chart, and each Owner shall provide a copy of such Maintenance Manual to any successor purchaser of such Owner's Condominium.

SECTION 2. MAINTENANCE OBLIGATIONS OF ASSOCIATION.

Except as otherwise specifically provided in this Declaration, the Association is responsible for the care and maintenance of those components of the Neighborhood designated for maintenance by the Association on the Maintenance Responsibility Chart attached hereto as ***Exhibit B***. The Association shall keep such portions of the Neighborhood in good condition and repair, provide for all necessary services and cause all acts to be done which may be necessary or proper to assure the maintenance of such areas.

(a) Association's Compliance With Maintenance Obligations. The Association will comply with all the maintenance obligations set forth in the Maintenance Responsibility Chart and the Maintenance Manual for the Common Property.

(b) Neighborhood Walls. The Association shall maintain the Neighborhood Walls within the Neighborhood, including the structural integrity thereof.

(c) Window Washing. The Association shall contract for window cleaning services to be performed on a periodic basis on certain of the windows of the Condominium

Building which are not safely accessible by Condominium Owners. Windows accessible by the Owners from catwalks or patios will be the responsibility of the individual Owners to clean.

SECTION 3. MAINTENANCE MANUALS. The Association shall maintain at the offices of the Association a copy of the Maintenance Manual provided by Participating Builder to the initial Owner and shall make available to every Owner upon request a copy, a copy of the Maintenance Manual for the Owners' residential Condominiums. The Association shall have the right to charge the requesting Owner a fee for the copying of such Maintenance Manual. The Association shall also comply with provisions of the Maintenance Manual provided by Participating Builder to the Association. The Board may, from time to time, make appropriate revisions to the Association's Maintenance Manual based on the Board's review thereof, to update such manual to provide for maintenance according to current industry practices so long as such changes do not reduce the useful life or functionality of the items being maintained. Any such updates to the Maintenance Manual shall be provided to Participating Builder until the expiration of the (10) year period following the Close of Escrow for the sale of the last Condominium in the Neighborhood covered by a Final Subdivision Public Report.

SECTION 4. ASSOCIATION COMPLIANCE WITH MAINTENANCE MANUAL. The Association shall cause such Common Property, to be regularly maintained, painted, repaired, and/or replaced in accordance with the requirements and recommendations of the Maintenance Manual, as revised from time to time and shall perform all remedial maintenance in accordance with the recommendations of the annual inspection reports prepared by Participating Builder's consultant(s). Participating Builder shall provide any updates to the Maintenance Manual to the Association. The Association has the duty and obligation, along with the attendant rights and power to carry out the Participating Builder's and its consultant(s)' required maintenance of the Association Property and keep appropriate records to document that it has performed all inspections and maintained all Improvements in compliance with the Association's Maintenance Manual. The Board shall regularly determine whether the recommended inspections and maintenance activities have been followed, and, if any such recommendations have not been followed, what corrective steps need to be taken to assure proper inspections and maintenance of the Association Property.

SECTION 5. MAINTENANCE OF PUBLIC UTILITIES. Nothing contained herein shall require or obligate the Association to maintain, replace or restore the underground facilities of public utilities which are located within easements in the Common Property owned by such public utilities. However, the Association shall take such steps as are necessary or convenient to ensure that such facilities are properly maintained, replaced or restored by such public utilities.

SECTION 6. ASSOCIATION'S RIGHT TO ENTER AND MAINTAIN. If an Owner fails to maintain an Improvement which that Owner is obligated to maintain pursuant to this Declaration or make the repairs or replacements which are the responsibility of such Owner, as provided in the Section above, then, upon vote of a majority of the Board, and after not less than thirty (30) days' notice to the Owner, the Association shall have the right (but not the obligation) to enter the Condominium and provide such maintenance or make such repairs or replacements, and the cost thereof shall be a Reimbursement Assessment chargeable to such Condominium and shall be payable to the Association by the Owner of a Condominium. However, nothing herein shall be construed to impose any obligation upon the Association to maintain or repair any property to be maintained or repaired by the Owner of any Condominium. Nothing in this Article shall in any

manner limit the right of the Owner to exclusive occupancy and control over the interior of their Unit. However, an Owner shall grant a right of entry to the Board of Directors or any other person authorized by the Board of Directors in case of any emergency originating in or threatening their Condominium, whether the Owner is present or not. Furthermore, an Owner shall permit other Owners, or their representatives to enter their Condominium for the purpose of performing required installations, alterations or repairs to the mechanical, plumbing or electrical services to a Condominium, provided that such requests for entry are made in advance and that such entry is at a time reasonably convenient to the Owner whose Condominium is to be entered. In case of an emergency, such right of entry shall be immediate. Any damage caused by an entry into a Condominium shall be repaired by the entering party to as near the same condition as it was prior to such entry to the extent practicable; provided, however, the Association shall not be responsible for damage to the extent such damage could not be reasonably avoided in connection with such entry for authorized purposes.

## ARTICLE VIII

### EASEMENTS AND OWNERS' RIGHTS OF ENJOYMENT

*The property rights acquired by Owners and other persons in the Neighborhood are described in this Article along with limits on the exercise of those rights.*

**SECTION 1. OWNERS' EASEMENTS OF ENJOYMENT.** Participating Builder hereby reserves, with the right to grant and transfer same, for the benefit of every Owner in the Neighborhood, a right and easement of ingress and egress and of enjoyment in, to and over the Association Property (except slope areas on the Association Property, if any) which easement shall be appurtenant to and shall pass with title to every Unit, subject to the following provisions:

(a) Right of Access. The right of the Association, acting through the Board, to reasonably limit the number of guests of Owners using the Association Property facilities or otherwise restrict access to the Association Property;

(b) Exercise of Powers. The right of the Association to establish uniform rules and regulations pertaining to the use of the Association Property and exercise its powers;

(c) Borrow Money. The right of the Association in accordance with the Governing Documents, to borrow money for the purpose of improving the Common Property and the Improvements thereon, facilities and in aid thereof, and, subject to the provisions of the Article of this Declaration entitled "RIGHTS OF MORTGAGEES," to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of such Mortgagees shall be subordinated to the rights of the Owners;

(d) Transfer of Property. Subject to the provisions of the Article of this Declaration entitled "RIGHTS OF MORTGAGEES," the right of the Association to dedicate, release, alienate or transfer the Common Property to any public agency, authority, utility or other person for such purposes and subject to approval of the Members pursuant to Section 1363.07 of the Civil Code. No such dedication, release, alienation or transfer shall be effective, unless an instrument signed by Members entitled to cast at least a majority of the total voting power of the Association, which shall include a majority of the votes residing in Members other than the Participating Builder, agreeing to such dedication, release, alienation or transfer has been recorded;

(e) Participating Builder's Rights. The rights and reservations of Participating Builder as set forth in this Declaration, including the right of Participating Builder and its sales agents, representatives and prospective purchasers, to the non-exclusive use of the Common Property and any facilities thereof, without cost, for access, ingress, egress, use and enjoyment, in order to dispose of the Neighborhood as provided herein, until the first to occur of (i) the expiration of the originally issued Final Subdivision Public Report from the California Department of Real Estate for the final Phase of the Neighborhood, or (ii) upon the Close of Escrow for the sale of the last Condominium in the Neighborhood; provided, however, that such use shall not unreasonably interfere with the rights of enjoyment of the other Owners as provided herein;

(f) Restricted Access. The right of the Association, acting through the Board, to reasonably restrict access to areas of the Association Property;

(g) Corporation Property. The rights of the Master Association, Participating Builder, the "Declarant" under the Master Declaration, their respective members and guests, and others of access, ingress and egress for maintenance, use and enjoyment of those portions of the Association Property which also comprise Corporation Property, if any. The Master Association shall have exclusive jurisdiction over and control of any portions of the Association Property which also comprise Corporation Property, if any. The Association shall not interfere with the Master Association as it performs its obligations pursuant to the Master Declaration; and

(h) Suspension of Privileges. The right of the Board to suspend the rights and easements of use and enjoyment of any Member of the Association's services and facilities, if any, located on the Common Property, and the persons deriving such rights and easements from any Member, for any period during which the payment of any Assessment against such Member and their Condominium remains delinquent; and, after notice and hearing with an opportunity to be heard, to impose monetary penalties or suspend such use rights and easements for a reasonable period of time as determined by the Board for any violation of the Governing Documents, it being understood that any suspension for either non-payment of any Assessment or breach of such restrictions shall not constitute a waiver or discharge of the Member's obligation to pay Assessments as provided herein.

(i) Easements. The right of the Association to grant permits, licenses and easements over the Common Property for utilities, roads and other purposes necessary for the proper operation of the Neighborhood.

(j) Delegation of Use. Any Member may delegate their right of enjoyment to the Common Property to the members of their family or their tenants who reside on their Condominium, or to their Invitees, subject to rules and regulations contained in the Governing Documents.

(k) Waiver of Use. No Member may exempt themselves from personal liability for Assessments duly levied by the Association, nor release the Condominium owned by them from the liens, charges and other provisions of this Declaration, the Articles, Bylaws and Association Rules, by waiver of the use and enjoyment of the Common Property, or the abandonment of their Condominium.

**SECTION 2. EASEMENTS FOR UTILITIES.** Easements over the Neighborhood for the installation and maintenance of electric, telephone, water, gas and sanitary sewer lines and facilities, and for drainage facilities as shown on the recorded map of the Neighborhood, and as may be hereafter required or needed to service the Neighborhood are hereby created by Participating Builder for the benefit of each Owner and the Association and shall be governed by the following:

(a) Easements over the Neighborhood for public and private utility purposes of ingress or egress over the Association Property for purposes of reading and maintaining meters, and using and maintaining fire hydrants located in the Neighborhood.

(b) Easements over the Neighborhood for the installation and maintenance of electric, telecommunications, water, gas and sanitary sewer lines and facilities, and for drainage facilities as shown on the recorded map of the Neighborhood, and as may be hereafter required or needed to service the Neighborhood are hereby created by Participating Builder for the benefit of each Owner and the Association.

(c) Wherever sewer connections, water connections, electricity, gas, telecommunications lines, or other utility lines or drainage facilities are installed within the Neighborhood, the Owners of Condominiums served by such connections, lines or facilities shall have an easement to the full extent necessary for the full use and enjoyment of such portion of such connections which service their Condominium, and to enter upon the Condominiums owned by others, or to have utility companies enter upon the Condominiums owned by others, in or upon which said connections, lines or facilities, or any portion thereof lie, to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below, provided that such Owner or utility company shall promptly repair any damage to a Condominium caused by such entry as promptly as possible after completion of work thereon.

(d) Whenever sanitary sewer, water, or gas connections, television cables, electricity or telecommunications are installed within the Neighborhood, and said connections, cables and/or lines serve more than one (1) Condominium, the Owner of each Condominium served by such connections, cables and/or lines shall be entitled to the full use and enjoyment of such portion of such connection as served by such Owner's Condominium.

(e) In the event of a dispute between Owners with respect to the repair or rebuilding of said connections, or with respect to the sharing of the cost thereof, then upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board of Directors who shall decide and make an Assessment against any or all of the Owners involved, which Assessment shall be collected and enforced in the manner provided by this Declaration.

SECTION 3. COMMON PROPERTY EASEMENTS. Each Owner within the Neighborhood subject to this Declaration is hereby declared to have an easement over all of the Common Property, for the benefit of the Condominiums, the Owners of the Condominiums, and each of them, and for their respective Invitees and contract purchasers, for all of the purposes and uses set forth in this Article, and without limiting the generality of the foregoing, for ingress and egress over and through the Common Property. Such ingress, egress and use shall further be subject to the terms, limitations, restrictions and conditions set forth in this Declaration or in the Association Rules.

SECTION 4. DRAINAGE. There will be no interference with the established drainage pattern within any Exclusive Use Property or the Association Property of the Neighborhood, unless an adequate alternative provision is made for proper drainage which is first approved in writing by the Design Review Committee. For the purposes hereof, "established" drainage is defined as the drainage which exists at the time that such Condominium is conveyed to a purchaser from Participating Builder, or that which is shown on any plans subsequently approved by the Design Review Committee, which may include drainage from the Association Property or natural drainage occurring into the Association Property, over any Condominium or Condominiums within the Neighborhood or drainage from one Condominium until reaching the drainage facilities located within the Association Property. No Owner shall create excessive water flow from

Exclusive Use Property onto any other Owner's Exclusive Use Property. Additionally, any alteration to the drainage facilities that would affect Master Association maintained areas, must first be approved by the Mater Association.

SECTION 5. EASEMENTS TO PARTICIPATING BUILDER AND ASSOCIATION. There is hereby reserved to Participating Builder, together with the right to grant and transfer the same to the Association, rights to grant easements for the following purposes: the right to (a) grant utility easements under, through or across Common Property, other than Exclusive Use Property, which are reasonably necessary to the ongoing development and operation of the Neighborhood; (b) grant and transfer easements over the Neighborhood for the purpose of permitting the Association to perform emergency repairs or to do other work reasonably necessary for the proper maintenance of the Neighborhood, (c) perform any necessary service or repair to the fire sprinkler system located in a Condominium which serves more than one Condominium including the sprinkler heads that protrude into the airspace of the Condominiums; and (d) discharge any other obligations and powers as described in this Declaration. Participating Builder's rights under this paragraph shall not be for a period beyond the earlier of (a) expiration of the originally issued subdivision Public Report from the DRE for the Neighborhood, or (b) the sale by Participating Builder of all Condominiums within the Neighborhood; however, this limitation shall not restrict the right of the Association to grant permits, licenses and easements as set forth herein.

SECTION 6. EASEMENTS AFFECTING ASSOCIATION PROPERTY.

(a) Participating Builder hereby reserves for itself, with the right to grant and transfer the same to the Association non-exclusive easements for maintenance purposes over, under, along and across the Association Property for the purposes of installation, maintenance, repair and replacement of Improvements located within the Association Property and an easement for ingress and egress.

(b) The Association Property easements shall include, but not by way of limitation, the right to install, construct, reconstruct, remove, replace, renew, inspect, maintain, repair, improve and relocate the Improvements within the Association Property as necessary. Participating Builder's rights under this Section shall terminate upon the sale by Participating Builder of all Condominiums within the Neighborhood; however, this limitation shall not restrict the right of the Association to grant permits, licenses and easements as set forth herein.

(c) In order to carry out these obligations, the Association and its agents shall have the right to enter a Condominium as reasonably necessary from time to time, for the purpose of inspecting, maintaining, repairing and replacing the Improvements within the Association Property. The Association shall be responsible for all such costs of inspecting, maintaining, repairing and replacing the Association Property facilities.

(d) The Association shall repair any damage caused by an entry into a Condominium pursuant to this section by or on behalf of the Association to as near the same condition as it was prior to such entry to the extent practicable; provided, however, the Neighborhood Corporation shall not be responsible for damage to the extent such damage could not be reasonably avoided in connection with such entry for authorized purposes.

SECTION 7. SHARED WALKWAY EASEMENT. Participating Builder has entered into an agreement with Len-Playa Vista, LLC, a Delaware limited liability company

("Lennar"), to share the use, cost of construction and maintenance of the pedestrian walkway ("Walkway") located within the Lennar property, and which lies adjacent to and provides pedestrian ingress and egress to the Neighborhood. Within that same instrument Lennar has granted to Participating Builder an easement ("Easement") over the Walkway as further set forth in the Grant of Easement and Agreement Between Landowners attached hereto as *Exhibit D*.

SECTION 8. AIR CONDITIONING EASEMENTS. All air conditioning units servicing a Condominium within the Neighborhood shall be the property of the Owner. An easement over the Association Property is hereby created where the air conditioning unit is installed outside the Condominium Unit. The Association can establish Associating Rules governing access to the air-conditioning unit located on the roof. Each Owner shall bear full responsibility for the cost of maintaining their air conditioning unit.

SECTION 9. INTERNAL AND EXTERNAL TELEPHONE EASEMENTS. Notwithstanding the provisions of this Declaration, each Owner of a Condominium shall be entitled to reasonable access to the Common Property for the purpose of maintaining the internal and external telephone wiring which services their Condominium. The access shall be subject to the consent of the Association, whose approval shall not be unreasonably withheld, and which may include the Association's approval of telephone wiring upon the exterior of the Common Property, and other conditions as the Association determines reasonable.

SECTION 10. MAILBOX EASEMENTS. Participating Builder hereby creates easements over the Neighborhood, for the benefit of the Owners, the Association and the United States Postal Service for delivery, deposit and pick up of United States mail, for maintenance, repair and replacement of such mailboxes, and for ingress and egress to and across those portions of the Neighborhood to the extent necessary for all such purposes. The easement rights and obligations of each Owner shall be limited to the mailbox that services such Owner and any appurtenances thereto and the portion of the Neighborhood on which such mailbox and appurtenances are located and to the extent necessary to access said mailbox for all the foregoing purposes. Mailboxes may be provided in clusters and/or groups of clusters in and along the sidewalks, in conformity with current Federal postal regulations. The configuration and precise location of such cluster mailboxes shall be determined by the United States Postal Service, over which Participating Builder has no control.

SECTION 11. EASEMENTS FOR COMPLETION OF CONSTRUCTION. There is hereby reserved to Participating Builder, (including, without limitation, Participating Builder's agents, employees, representatives, contractors and prospective purchasers of Condominiums), over the Property as the same may from time to time exist, easements for construction, display, maintenance, sales and exhibit purposes in connection with the erection and sale or lease of Condominiums within the Property; provided, however, that such use shall not be for a period beyond the sale by Participating Builder of all Condominiums within the Property, and provided further that no such use by Participating Builder and others shall otherwise restrict the Members in the reasonable use and enjoyment of the Property. Participating Builder, its contractors, subcontractors, agents, employees and representatives, the easement shall include the right to: (a) complete or modify Improvements to and on the Common Property and any portion of the Neighborhood owned or leased solely or partially by Participating Builder; (b) obtain reasonable access over and across the Common Property and/or within any Condominium owned or controlled by Participating Builder to perform any work in connection with the completion of the Neighborhood; (c) erect, construct and use on the Common Property of the Neighborhood and/or within any Condominium owned or controlled by Participating Builder such structures as may be



reasonably necessary to conduct the sale and marketing of Condominiums and dispose of the Condominiums in parcels by sale, lease or otherwise and (d) modify Participating Builder's development plan for the Neighborhood, including reshaping the Condominiums and Common Property, and constructing Condominiums of larger or smaller sizes, values, and of different types. Participating Builder may temporarily erect barriers, close off and restrict access to portions of the Common Property as reasonably necessary to allow Participating Builder to exercise the rights reserved in this Section so long as Owner's access to his Condominium is not eliminated. Each Owner acknowledges that: (i) the construction of the Neighborhood may occur over an extended period of time; (b) the Owner's quiet use and enjoyment of the Owner's Condominium may be disturbed as a result of the noise, dust, vibrations and other nuisances associated with construction activities; and (c) the nuisances will continue until the completion of the construction of the entire Neighborhood.

## SECTION 12. EASEMENTS FOR MARKETING AND SALES.

(a) General Rights. The Participating Builder may use any of the Condominiums within the Neighborhood owned by it for model home sites and incidental parking. The Participating Builder shall have the right and an easement to enter upon, use and enjoy and designate and permit others (including, without limitation, Participating Builder's agents, employees, representatives, contractors and prospective purchasers) to enter upon, use and enjoy the Common Property for any purpose in connection with or incidental to the construction, development, sale, lease or other transfer of property within or adjacent to the Neighborhood (including, without limitation, the erection, construction and maintenance of displays, sales offices and incidental parking, exhibits, signs and other structures); provided, however, that such use shall not be for a period beyond the sale by Participating Builder of all Condominiums within the Neighborhood, and provided further that the exercise of such right and easement shall not unreasonably interfere with the reasonable use and enjoyment of the Common Property by the Members.

(b) Agreement for Extended Use. If following the fifth (5th) anniversary of the original issuance of a Public Report for the Neighborhood Participating Builder requires exclusive use of any portion of the Common Property in connection with or incidental to the construction, development, sale, lease or other transfer of property within or adjacent to the Neighborhood, Participating Builder may use the Common Property only if an agreement is entered into between Participating Builder and the Association. The agreement must specifically provide for a limited duration for such use and must provide for a specific reasonable rate of compensation to the Association by Participating Builder. Compensation shall be commensurate with the nature, extent and duration of the use proposed by Participating Builder. In no event, however, shall Participating Builder be denied the rights to use the Association Property and any Condominiums owned by Participating Builder, as an Owner.

SECTION 13. ESTABLISHMENT OF EASEMENTS. Each of the easements provided for in this Declaration shall be deemed to be established upon the recordation of this Declaration, and shall thenceforth be deemed to be covenants running with the land for the use and benefit of all of the Condominiums and the Common Property, as the case may be, superior to all other encumbrances applied against or in favor of any portion of the Neighborhood which is the subject of this Declaration, with the exception of easements created in favor of a public agency after the recordation of this Declaration. In furtherance of the easements provided for in this Declaration, the individual deeds to Condominiums may, but shall not be required to, set forth said easements.

SECTION 14. EASEMENTS ON MAP. Participating Builder, reserves with the right to grant and transfer same, the easements as shown on the recorded Map over any portion of the Project for the benefit of the Owners and the Association.

SECTION 15. EASEMENTS FOR ENCROACHMENT. The Participating Builder, its successors and assigns, and all future Owners of Condominiums, by acceptance of their respective deeds, covenant and agree as follows:

(a) If any portion of the Common Property encroaches upon the Units, a valid easement into the Unit in order to accommodate the encroachment and for the maintenance of same, so long as it stands, shall and does exist. In the event a Unit is partially or totally destroyed, and then rebuilt, the Owners of Units agree that minor encroachments of parts of the Unit into the Common Property due to construction shall be permitted and that valid easements for said encroachment and the maintenance thereof shall exist.

(b) The Common Property and each Unit are and shall always be subject to easements for minor encroachments thereon of the Unit or the Common Property as a result of construction, reconstruction, repairs, shifting, settlement or movement, minor engineering variances and any encroachment of eaves, roof overhangs and architectural features comprising parts of the original construction of any Unit and a valid easement for the encroachment and for the maintenance of the same shall exist as long as the encroachment exists.

SECTION 16. CONSTRUCTION BY PARTICIPATING BUILDER. Nothing in this Declaration shall limit the right or easements reserved herein by Participating Builder to commence and complete construction of improvements to the Neighborhood or to alter the foregoing or the Units or Common Property or to construct such additional improvements as the Participating Builder deems advisable prior to the completion and sale of all of the Neighborhood.

SECTION 17. AMENDMENT TO ELIMINATE EASEMENTS. This Declaration cannot be amended to modify or eliminate the easements reserved to Participating Builder without prior written approval of Participating Builder, and any attempt to do so shall have no effect. Any attempt to modify or eliminate this Section shall likewise require the prior written approval of Participating Builder.

## ARTICLE IX

### MEMBERSHIP AND VOTING RIGHTS

*Each person who purchases a Condominium in the Neighborhood becomes a Member of the Association with certain rights and privileges. Methods for transferring memberships in the Association, Members' voting rights and the Participating Builder's voting rights are described in this Article.*

SECTION 1. ORGANIZATION. The Association is organized as a California corporation under the California Nonprofit Mutual Benefit Corporation Law. The Association is charged with the duties and vested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed so as to be inconsistent with this Declaration. In the event that there should exist any ambiguity in any provision of the Articles or Bylaws, then such provision shall be interpreted so as to be consistent with the provisions of this Declaration.

SECTION 2. MEMBERSHIP. Every Owner shall be a Member of the Association and ownership of a Condominium shall be the sole qualification for membership in the Association. For each Condominium there shall be on file with the Association an address of record for an Owner, if different from the Condominium address, and a phone number or numbers in case of emergency, all of which shall be kept current by the Owner. The Association membership of each person or entity who owns, or owns an interest in, one or more Condominiums shall be appurtenant to each such Condominium, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except on a transfer of title to each such Condominium or interest in it and then only to the transferee. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Condominium or interest in it shall operate automatically to transfer the appurtenant membership right in the Association to the new Owner. The Board of Directors shall have the right to impose a reasonable fee against the selling Owner equal to the cost to the Association of effectuating any such transfer of their membership upon the books of the Association.

SECTION 3. TRANSFER. The membership held by any Owner shall not be transferred, pledged or alienated in any way, except upon the sale of their Condominium, and then only to the purchaser of said Condominium. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. A Class A Member who has sold their Condominium to a contract purchaser under an agreement to purchase shall be entitled to delegate to such contract purchaser their membership rights in the Association. Such delegation shall be in writing and shall be delivered to the Board before such contract purchaser may vote. However, the contract seller shall remain liable for all charges and Assessments attributable to their Condominium until fee title to the Condominium sold is transferred, as provided in this Declaration. In the event the Owner of any Condominium should fail or refuse to transfer the membership registered in their name to the purchaser of such Condominium, the Board of Directors shall have the right to record the transfer upon the books of the Association. The Board of Directors shall have the right to impose a reasonable fee against the selling Owner equal to the cost to the Association of effectuating any such transfer of their membership upon the books of the Association.

SECTION 4. VOTING RIGHTS. The Association shall have two (2) classes of voting membership:

(a) Class A. Class A Members shall be all Owners with the exception of Participating Builder as long as there exists a Class B membership. Each Class A Member shall be entitled to one (1) vote for each Condominium owned. When more than one person holds an interest in any Condominium, all such persons shall be entitled to all rights and privileges of membership. The vote for such Condominium shall be exercised as its Owners collectively determine, but in no event shall more than one (1) vote be cast with respect to any Condominium.

(b) Class B. The Class B Member shall be the Participating Builder and shall be entitled to three (3) votes for each Condominium owned. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

(1) On the second anniversary of the conveyance of the first Condominium in the most recent Phase of the Neighborhood in a transaction that requires the delivery of a Final Subdivision Public Report; or

(2) On the fourth anniversary of the conveyance of the first Condominium in the first Phase of the Neighborhood in a transaction that requires the delivery of a Final Subdivision Public Report.

Notwithstanding the foregoing, Participating Builder shall be solely entitled to elect a majority of the members of the Board until the day after the first annual meeting of the Members of the Association as further provided in the Bylaws; provided that during the initial three-year term of said Board members, Participating Builder shall be entitled to replace any member of the Board initially elected by Participating Builder upon the death, resignation or removal of any such Board member.

SECTION 5. CLASSES OF MEMBERSHIPS. Any action by the Association which must have the approval of the membership of the Association before being undertaken, shall require the vote or written assent of both a majority of the Class B membership as well as a majority of the Class A membership so long as there are two outstanding classes of membership, unless a specific provision of this Declaration or the Bylaws or Articles of the Association requires the approval of a greater percentage of the voting membership.

SECTION 6. SPECIAL CLASS A VOTING RIGHTS. Notwithstanding the provisions of this Article, if the Class A Members do not have sufficient voting power pursuant to the voting rights set forth in this Declaration and the Bylaws to elect at least one (1) director at any meeting at which directors are to be elected, and at which Class A Members are entitled to vote, then such Class A Members shall, by majority vote, among themselves, elect one (1) director. In no event shall the Class A Members be entitled to elect more than one (1) director to the Board pursuant to the provisions of this special Class A voting right.

SECTION 7. VESTING OF VOTING RIGHTS. All voting rights which are attributable to a specific Condominium pursuant to the terms of this Declaration shall not vest until such time as Regular Assessments for said Condominium have been levied by the Association; provided, however, Participating Builder shall have the right at any time, and from time to time, to

commence the payment of Regular Assessments on all Condominiums within a Phase of the Neighborhood prior to the close of the first escrow therein in order to have the voting rights with respect to such Condominiums.

SECTION 8. MASTER ASSOCIATION AND DELEGATES. Master Association votes attributable to the Owners in the Neighborhood shall be exercised by a "Delegate" as further provided in the Master Declaration. Subject to Section 4.3.2 of the Master Association Bylaws (as defined in the Master Declaration) which addresses qualification of Delegates, the Delegate is the President of the Subassociation. The Board of Directors of the Subassociation shall appoint one of the Board members as the alternate Delegate. The terms of office of the Delegate and alternate Delegate are concurrent with their terms of office as President and member of the Board of Directors of the Subassociation.

## ARTICLE X

### COVENANT FOR MAINTENANCE ASSESSMENTS

*The Association funds its operations through the collection of different kinds of assessments: Regular Assessments, Reimbursement Assessments, Reconstruction Assessments and Special Assessments. This Article describes how the different types of Assessments are collected and used by the Association. This Article also sets limits on the amount of certain Assessments that can be charged to Owners.*

**SECTION 1. COVENANT TO PAY ASSESSMENT.** Participating Builder, for each Condominium owned within the Neighborhood, hereby covenants, and each Owner of any Condominium by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in such conveyance, is deemed to covenant and agree to pay to the Association: (1) Regular Assessments or charges, (2) Special Assessments for capital improvements, (3) Reconstruction Assessments, and (4) Reimbursement Assessments, all such Assessments to be established and collected as hereinafter provided. Each of such Assessments, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Condominium at the time the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to such person's successors in title unless expressly assumed by them. The Association shall not impose or collect an Assessment, penalty or fee that exceeds the amount necessary for the purpose for which it is levied.

**SECTION 2. PURPOSE OF ASSESSMENTS.** The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Neighborhood and for the improvement, operation and maintenance of the Common Property and the Project and the performance of the duties of the Association as set forth in this Declaration and in the Association's Articles and Bylaws.

**SECTION 3. REGULAR ASSESSMENTS.** The Association shall levy Regular and Special Assessments sufficient to perform its obligations under the Governing Documents and this Article:

(a) Amount of Regular Assessments. The amount and time of payment of Regular Assessments against each Condominium shall be determined by the Board of Directors of the Association giving due consideration to the current maintenance costs and future needs of the Association.

(b) Date of Commencement of Regular Assessments: Due Dates. The Regular Assessments provided for herein shall commence as to all Condominiums within a Phase of the Neighborhood (including those Condominiums owned by Participating Builder) no later than (but earlier at the discretion of Participating Builder) the first day of the month following the first conveyance of a Condominium within the Phase of the Neighborhood. Once Regular Assessments have commenced, such Assessment may not cease and such Condominiums shall be subject at all times to the provisions of the Declaration, including the power of the Association to collect such Assessment through the enforcement of a lien as provided in this Declaration. The first Regular

Assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association.

(c) Budgeting. The Board of Directors shall fix the amount of the Regular Assessment against each Condominium at least sixty (60) days in advance of each fiscal year of the Association at an amount not in excess of the maximum as provided in this Declaration. Written notice of the amount of the Regular Assessments against each Condominium shall be sent to every Owner subject thereto. The due dates for Regular Assessments shall be established by the Board. In the event the Board shall determine at any time that the estimate of the Regular Assessment for the current fiscal year is, or will become, inadequate to meet the expenses of the Association for any reason, it shall immediately determine the approximate amount of such inadequacy and issue a supplemental estimate of the total Association expenses and determine the revised amount of the Regular Assessment against each Condominium.

(d) Delinquent Assessments. Regular Assessments shall be deemed delinquent fifteen (15) days after the due dates established by the Association.

(e) Limitation On Increases In Regular Assessments. Annual increases in Regular Assessments for any fiscal year, as authorized by subdivision (b) of Section 1366 of the California Civil Code, shall not be imposed unless the Board has complied with subdivision (a) of Section 1365 of the California Civil Code, the provisions of which are set forth in the Article of this Declaration entitled "ASSOCIATION RECORDS," with respect to that fiscal year, or has obtained the approval of Owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code. Notwithstanding more restrictive limitations placed on the Board by the Governing Documents, and except for those limitations as provided for in the Section below entitled "EXCEPTIONS FROM LIMITATION ON ASSESSMENT INCREASES," the Board of Directors may not impose a Regular Assessment that is more than twenty percent (20%) greater than the Regular Assessment for the Association's preceding fiscal year against each Condominium without the vote or written assent of Members, constituting a quorum, casting a majority of the votes at a meeting or election of the Association. For purposes of this Section, quorum means more than fifty percent (50%) of the Owners of the Association. The Association shall provide notice by first-class mail to the Owner of each Condominium of any increase in the Regular Assessments of the Association not less than thirty (30) nor more than sixty (60) days prior to the increased Assessment becoming due.

SECTION 4. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS AND LIMITATION ON INCREASES IN SPECIAL ASSESSMENTS. In addition to the Regular Assessments authorized above, the Association may levy, in any Assessment year, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any installation, construction, reconstruction, repair or replacement of any Common Property, including fixtures and personal property related thereto or any other action or undertaking on behalf of the Association, provided that any Special Assessment for all Condominiums for the fiscal year in the aggregate in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year shall be approved by the vote or written assent of Members, constituting a quorum, casting a majority of the votes of the Association at a meeting or election of the Association. This limitation on Special Assessments shall not apply to any Reimbursement Assessment which is authorized by the provisions of this Declaration. The Association shall provide notice by first-class

mail to the Owner of each Condominium of any increase in the Special Assessments of the Association not less than thirty (30) nor more than sixty (60) days prior to the increased Assessment becoming due.

SECTION 5. SPECIAL QUORUM AND MEETING REQUIREMENTS FOR INCREASES IN ASSESSMENTS. For purposes only of Section 3 and Section 4 of this Article, a quorum means more than fifty percent (50%) of the Members of the Association. Any meeting or election of the Association for purposes of complying with Sections 3 and 4 of this Article shall be conducted in accordance with the provisions of Chapter 5 of Part 3, Division 2 of Title 1 of the California Corporations Code dealing with meetings and voting and Section 7613 of the California Corporations Code dealing with proxies.

SECTION 6. EXCEPTIONS FROM LIMITATION ON ASSESSMENT INCREASES. The limitation on percentage increases of Regular and Special Assessments under Sections 3 and 4 above shall not limit Assessment increases necessary for addressing emergency situations. For purposes of this Section, 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 repair or maintain the Neighborhood or any part thereof for which the Association is responsible where a threat to personal safety on the Neighborhood is discovered;
- (c) An extraordinary expense necessary to repair or maintain the Neighborhood or any part thereof for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the Budget, as required under the Article of this Declaration entitled "ASSOCIATION RECORDS." However, prior to the imposition or collection of an increased Assessment under this Section, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Members with the notice of Assessment;
- (d) An extraordinary expense in making the first payment of the earthquake insurance surcharge pursuant to Section 5003 of the Insurance Code.

SECTION 7. REIMBURSEMENT ASSESSMENTS. The Association shall levy a Reimbursement Assessment against an Owner as a monetary penalty for failure to comply with the terms of this Declaration, the determinations of the Board or the Design Review Committee, or any rule or regulation adopted by the Association, or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to the Association Property for which the Owner or Invitee is allegedly responsible, or as a means to force an Owner or Invitee to comply with the terms of this Declaration, the determinations of the Design Review Committee, the Association's Articles or Bylaws, or any rule or regulation adopted by the Association if such failure results in the expenditure of monies by the Association in carrying out its functions hereunder. Except for collection of fines, such Assessment shall be for the purpose of reimbursing the Association, shall be limited to the amount so expended, and shall be due and payable to the Association when levied.



SECTION 8. RATE OF ASSESSMENTS. Regular and Special Assessments for each Condominium shall be uniform, except that portion of the assessments which shall be variable as set forth in *Exhibit C* attached hereto. Regular Assessments shall be collected on a monthly basis unless some other period for collection is established by the Board.

SECTION 9. COMMITMENT BY PARTICIPATING BUILDER TO PAY ASSESSMENTS.

(a) Reserves For Use of Condominiums. Participating Builder for itself and its successors and assigns covenants and agrees to pay to the Association, concurrently with the closing of the escrow for the first sale of a Condominium in a Phase of the Neighborhood, appropriate amounts for reserves for replacement or deferred maintenance of Association Property improvements necessitated by or arising out of the use and occupancy of the Condominiums in such Phase under a rental program conducted by the Participating Builder which has been in effect for a period of at least one year as of the date of closing of escrow for the first sale of a Condominium in the Phase of the Neighborhood.

(b) Reserves for Association Property. Participating Builder for itself and its successors and assigns further covenants and agrees to pay to the Association, concurrently with the closing of the escrow for the first sale of a Condominium in the Phase of the Neighborhood, appropriate amounts for unfunded reserves for replacement or deferred maintenance of completed Association Property improvements in the Phase of the Neighborhood necessitated by or arising out of the use of such Association Property Improvements for a period of at least one year prior to the conveyance of such Association Property to the Association

SECTION 10. RESERVES. The Regular Assessments shall include reasonable amounts as determined by the Board collected as reserves for the future periodic maintenance, repair or replacement of all or a portion of the Common Property that must be repaired or replaced on a periodic basis, or any other purpose as determined by the Board. All amounts collected as reserves, whether pursuant to this Section or otherwise, shall be deposited by the Board in a separate bank account to be held in trust for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. Such reserves shall be deemed a contribution to the capital account of the Association by the Members.

SECTION 11. EXEMPT PROPERTY. The following property is exempt from all Assessments imposed pursuant to this Declaration:

(a) Condominiums. Those areas governed by Regulation 2792.16(c)(2) of the Regulations of the Real Estate Commissioner shall be exempt from the payment of that portion of the Regular Assessments which is for the purpose of defraying expenses and reserves directly attributable to the existence and the use of the residential structural improvements. This exemption from the payment of Regular Assessments attributable to the Condominiums shall be in effect only until the earliest of the following events: (a) a notice of completion of the structural Improvements on the Condominium has been recorded; (b) occupation or use of the Condominium; (c) completion of all elements of the residential structures of the Condominium which the Association is obliged to maintain; or (d) upon request of the Participating Builder if necessary to comply with any regulations of any of the Federal Agencies.

(b) Common Property. The Participating Builder and any other Owner of a Condominium shall be exempt from the payment of that portion of the Regular Assessments which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of a Common Property facility that is not complete at the time the Regular Assessments commence. Any exemption from the payment of Regular Assessments attributable to Common Property facilities shall be in effect only until the earliest of the following events: (a) a notice of completion of the Common Property facility has been recorded; (b) the Common Property facility has been placed into use; or (c) upon request of the Participating Builder if necessary to comply with any regulations of any of the Federal Agencies.

(c) Public Property. All portions of the Neighborhood dedicated to and accepted by any local public authority or agency.

SECTION 12. CERTIFICATE OF PAYMENT. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Condominium have been paid. Said signed certificate shall be conclusive evidence as to all third parties relying thereon to show that all Assessments acknowledged therein have been paid but shall not relieve any Owner of the responsibility for Assessments not in fact paid.

SECTION 13. DELIVERY BY OWNER. Each Owner of a Condominium shall, before the execution of an offer to purchase or lease, make available for examination by the prospective purchaser or lessee, and any First Mortgagee and as soon as practicable before transfer of the interest being acquired, give to each purchaser or lessee (a) a copy of the Governing Documents, (b) copies of any other instruments which define the rights and responsibilities of the Owner as a Member of the Association, (c) to the extent available, a copy of the most recent Budget, financial statement and other documents distributed by the Association in accordance with the Article of this Declaration entitled "ASSOCIATION RECORDS".

## ARTICLE XI

### INSURANCE

*This Article establishes minimum requirements for insurance kept by the Association and the Owners in the Neighborhood.*

**SECTION 1. GENERAL INSURANCE LIMITATIONS.** The Board shall make every reasonable effort to obtain the insurance policies described in this Section and maintain them in full force and effect. All insurance policies shall be subject to and where applicable, shall contain the following provisions and limitations:

(a) Named Insured. Such insurance shall be maintained by the Board of Directors for the benefit of the Association, the Owners, and First Mortgagees, as their interests may appear as named insured, subject, however, to loss payment requirements as set forth herein.

(b) Loss Payable. The "loss payable" clause of said policies shall show the Association or the insurance trustee as a trustee for each Owner and the Mortgagee.

(c) Rate of Insurance. Nothing shall be done or kept in the Neighborhood which will increase the rate of insurance on any property insured by the Association without the approval of the Board, nor shall anything be done or kept in the Neighborhood which would result in the cancellation of insurance on any property insured by the Association or which would be in violation of any law.

(d) Mortgagee Clause. Each such policy shall contain a standard mortgagee clause which must be endorsed which provides that any proceeds shall be paid to the Association for the use and benefit of mortgagees as their interest may appear. The policy of public liability insurance covering Common Property shall contain a "Severability of Interest" endorsement which shall preclude the insurer from denying the claim of any Owner because of negligent acts of the Association or other Owners.

(e) Notice of Cancellation or Modification of Coverage. All insurance policies and fidelity bonds maintained by the Association must provide that such policies or bonds may not be cancelled, reduced or substantially modified without at least ten (10) days' prior written notice to the Association, and in the case of fidelity bonds, to each mortgage servicing contractor acting on behalf of any of the Federal Agencies.

**SECTION 2. TYPES OF COVERAGE.** The Board of Directors on behalf of the Association shall obtain and continue in effect the following insurance coverages:

(a) Liability Insurance. Adequate blanket public liability insurance with limits and coverages which satisfy the requirements of Section 1365.9 of the California Civil Code.

(b) Property Insurance. A policy of casualty insurance and fire insurance with extended coverage, in an amount equal to one hundred percent (100%) of the full insurable replacement cost of the Neighborhood, without depreciation.

(c) Fidelity Bond Coverage. Blanket fidelity bond coverage providing for coverage of losses resulting from dishonest or fraudulent acts on the part of anyone who handles or is responsible for funds held or administered by the Association, including directors, officers, trustees, employees or volunteers of the Association. Where the Association delegates some or all of the responsibility for the handling of funds to a management agent, fidelity bonds are required for its officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association whether or not such persons receive compensation for services. A management agent who handles funds for the Association should also be covered by its own fidelity bond which must provide the same coverage required by the Association and must submit evidence of such coverage to the Association. The fidelity bond should cover the maximum funds that will be in the custody of the Association or its management agent at any time while the bond is in force, but must be written in an amount of not less than a sum equal to three (3) months' Regular Assessments on all Condominiums, plus reserve funds. The bond shall name the Association as obligee and shall cover persons serving without compensation by endorsement to the policy if not otherwise covered under the policy.

(d) Other Insurance. The Board of Directors may purchase such other insurance as it may deem necessary, including, but not limited to, plate glass insurance, medical payments, malicious mischief and vandalism insurance, worker's compensation, and directors and officer's liability equal to at least the minimum amount specified in Section 1365.7 (a) (4) of the California Civil Code, or such other types of fidelity bonds, insurance policies, coverage and endorsements as may be required from time to time pursuant to the Article herein entitled "RIGHTS OF MORTGAGEES."

SECTION 3. WAIVER OF CLAIMS AGAINST ASSOCIATION. As to each policy of insurance maintained by the Board of Directors, the Owners hereby waive and release all claims against the Association, the Board of Directors and Participating Builder, only to the extent of the insurance proceeds available to the Owners, whether or not the insurable damage or injury is caused by the negligence of or breach of any agreement by said persons.

SECTION 4. INDIVIDUAL FIRE INSURANCE PROHIBITED AND RIGHTS AND DUTY OF CONDOMINIUM OWNER TO INSURE. Except as expressly provided in this Section of this Article to the contrary, no Owner will separately insure their Condominium or any part thereof against loss by fire or other casualty covered by any insurance carried by the Association. Each Owner shall provide insurance on their personal property and upon all other property and Improvements within their Condominium. Nothing herein shall preclude any Owner from carrying any public liability insurance as they may deem desirable to cover their individual liability for damage to person or property occurring inside their individual Condominium or elsewhere upon the Neighborhood. All such other policies as may be carried by Owners shall contain waivers of subrogation of claims against Participating Builder, the Association, the Board of Directors of the Association, the Officers of the Association and all other Owners. Such other policies shall not adversely affect or diminish any liability under any insurance obtained by the Association, and duplicate copies of such other policies shall be deposited with the Board of Directors. If any loss intended to be covered by insurance carried by the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by Owner, such Owner shall assign the proceeds of such insurance carried by him to the Association, to the extent of such reduction, for application by the Board of Directors to the same purposes as the reduced proceeds are to be applied.

SECTION 5. NOTICE OF TERMINATION OR SUBSTANTIAL CHANGE IN COVERAGE. All of the policies of insurance described herein shall contain a provision that said policy or policies shall not be canceled, reduced or the coverage substantially changed without ten (10) days' prior written notice to the Board of Directors and holders of First Mortgages named in the mortgage clause, and with respect to fidelity bond coverage, to each mortgage servicing contractor acting on behalf of any of the Federal Agencies.

SECTION 6. INSURANCE PREMIUMS. Insurance premiums for any blanket insurance coverage obtained by the Association and any other insurance deemed necessary by the Board of Directors shall be a common expense to be included in the Regular Assessments levied by the Association, collected from the Owners; and the portion of the Regular Assessment necessary to pay the insurance premiums shall be used solely for the payment of the insurance premiums as such premiums become due.

SECTION 7. TRUSTEE FOR POLICIES. The Association, acting through its Board of Directors, is hereby appointed and shall be deemed trustee of the interests of each Owner and their Mortgagee under policies of insurance purchased and maintained by the Association. All insurance proceeds under any such policies as provided for in the section entitled "Types of Coverage" of this Article shall be paid to the Board of Directors as Trustees. Each Owner hereby appoints the Association, acting through its Board of Directors, as their attorney-in-fact for purposes of acting on behalf of each Owner in any proceedings, negotiations, settlements or agreements regarding insurance matters. The Board of Directors shall have full power to receive and to receipt for the proceeds and to deal therewith as provided herein. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried or otherwise disposed of as provided in this Declaration. The Board of Directors is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers, with participation by First Mortgagees who have filed written requests with the Association that they desire to participate in any such settlements. Any two Directors of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on all the named insureds.

SECTION 8. ACTIONS AS TRUSTEE. Except as otherwise specifically provided in this Declaration, the Board of Directors, acting on behalf of the Association and all Owners, shall have the exclusive right to bind such parties in respect to all matters affecting insurance carried by the Association, the settlement or negotiation of a loss claim, and the surrender, cancellation, and modification of all such insurance, in a manner satisfactory to seventy-five percent (75%) of the First Mortgagees of Condominiums who have filed requests with the Association that they desire to participate in such decisions. Duplicate originals or certificates of all policies of fire and casualty insurance carried by the Association and of all renewals thereof, together with proof of payment of premiums, shall be delivered by the Association to all First Mortgagees who have requested the same in writing.

SECTION 9. ANNUAL INSURANCE REVIEW. The Board of Directors shall review the insurance carried by the Association at least annually, for the purpose of determining the amount of the casualty and fire insurance referred to in this Article. The Board of Directors shall obtain a current appraisal of the full replacement value of the buildings and Improvements in the Neighborhood, except for foundations and footings and masonry walls, without deduction for depreciation, by a qualified independent insurance appraiser, prior to each such annual review.

SECTION 10. REQUIRED WAIVER. All policies of hazard and physical damage insurance shall provide, but only if available at a reasonable cost to the Association as determined by the Board, for waiver of the following rights, to the extent that the respective insurers would have the rights without such waivers:

- (a) Any defense based on co-insurance;
- (b) Any right of set-off, counterclaim, apportionment, proration or contribution by reason of other insurance not carried by the Association;
- (c) Any invalidity, other adverse effect or defense on account of any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act, neglect, or omission of any named insured, or the respective agents, contractors and employees of any insured;
- (d) Any right of the insurer to repair, rebuild or replace, and, in the event the building 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 or the fair market value thereof;
- (e) Notice of the assignment of any Owner of its interest in the insurance by virtue of a conveyance of any Condominium; and
- (f) Any right to require any assignment of any Mortgage to the insurer.

SECTION 11. ANNUAL NOTIFICATION OF INSURANCE. The Board shall prepare and distribute to all Members a summary of the Association's general liability, earthquake and flood and fidelity insurance policies as required by Section 1365 of the California Civil Code which shall be distributed no more than ninety (90) days preceding the beginning of the Association's fiscal year. The Association shall, upon issuance or renewal of insurance, but no less than annually, notify its Members as to the amount and type of insurance carried by the Association, and it shall accompany this notification with statements to the effect that the Association is or is not insured to the levels specified by this Article, and that if not so insured, Owners may be individually liable for the entire amount of a judgment, and if the Association is insured to the levels specified above, then Owners may be individually liable only for their proportional share of Assessments levied to pay the amount of any judgment which exceeds the limits of the Association's insurance.

SECTION 12. REQUIREMENTS OF FEDERAL AGENCIES. Notwithstanding any other provision contained herein, the Association shall obtain and maintain in effect such fidelity bonds and insurance policies, coverages and endorsements which shall be required for condominium projects established by the Federal Agencies, except to the extent that any such policies, coverages and endorsements are not available or have been waived in writing by any of the Federal Agencies that had imposed the requirements. These may include, but are not limited to, the following: (a) Fidelity Bond; (b) Hazard Insurance; (c) Liability; (d) Flood Insurance; and (e) Earthquake Insurance. All insurance policies must have the "standard mortgagee clause" or equivalent endorsement providing that coverage of a mortgagee under the insurance policy will not be adversely affected or diminished by an act or neglect of the Mortgagor, which is commonly accepted by private institutional mortgage investors in the area in which the Neighborhood is located, unless such coverage is prohibited by applicable law. A mortgagee clause in favor of

mortgagees holding Mortgages on Condominiums is not required on a policy insuring the Association Property.

SECTION 13. PARTICIPATING BUILDER'S RIGHTS TO REVIEW

INSURANCE. For a period of ten (10) years after the Close of Escrow for the sale of the last Condominium in the Neighborhood covered by a Final Subdivision Public Report, the Association's obligations under this Article to provide summaries of insurance, notices of significant changes in coverage and notice if a policy is not renewed to its Members shall also extend to Participating Builder.

## ARTICLE XII

### PARTITION

*In order to maintain a harmonious and orderly community, Owners of Condominiums are prohibited from severing their membership interest in the Association from their ownership of such Condominium. This Article describes the rights and restrictions governing partition of the Condominiums, Common Area and Association Property.*

SECTION 1. PARTITION AND SEVERABILITY OF INTERESTS. An action may be brought by one or more Owners of the Condominiums for partition of the Neighborhood in which their Condominium is located by sale of the Neighborhood as a whole, as if the Owners of all of the Condominiums in such Neighborhood were tenants-in-common in the entire Neighborhood in the same proportion as their interests in the Common Area; provided, however, that a partition shall be made only upon the showing of the occurrence of any one of the events provided in Section 1359 of the California Civil Code, as the same may be modified, amended or superseded. Nothing herein contained shall prevent the partition or division of interests between joint or common Owners of any Condominium. Notwithstanding anything to the contrary contained in this Declaration, no Condominium in the Neighborhood may be partitioned or subdivided without the prior written approval of the First Mortgagee on such Condominium.

SECTION 2. POWER OF ATTORNEY. The Association is hereby granted an irrevocable power of attorney to sell the Neighborhood for the benefit of all the Owners thereof when partition of the Owners' interest in said Neighborhood may be had pursuant to this Section. The power of attorney herein granted may be exercised upon the vote or written consent of Owners holding in the aggregate at least two-thirds (2/3) of the interest in the Common Area by any two (2) members of the Board who are hereby authorized to record a Certificate of Exercise in the Official Records of the County, which Certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith.

SECTION 3. DISTRIBUTION OF PROCEEDS. The proceeds from the partition or liquidation of the Neighborhood or from the termination of the Neighborhood shall be distributed among the Owners and the individual lenders by the Board as their respective interest may appear; provided that the balance then due on any valid encumbrance of record shall be first paid in order of priority, before the distribution of any proceeds to an Owner whose Condominium is so encumbered. The proportionate interest of the Owners of the respective Condominiums sharing in any such distribution shall be based upon the respective fair market value that each of the Condominiums bears to the total fair market value of all of the Condominiums in the Neighborhood sharing in the distribution. The proportionate value of the Owners of the respective Condominiums for purposes of this Section shall be based upon the respective fair market value of each Condominium at the time of partition as determined by the Board based on an appraisal prepared by an appraiser who is an M.A.I. member of the American Institute of Real Estate Appraisers.

SECTION 4. PROHIBITION AGAINST SEVERABILITY. No Owner shall be entitled to sever their Unit from their equal undivided interest in the Common Area nor shall the respective undivided interests established and to be conveyed with each respective Unit be changed.



The equal undivided interest or interests in the Common Area and Association Property and the fee title to the respective Units conveyed therewith together with any exclusive easements appurtenant to each Unit shall not be separated, severed or separately conveyed, encumbered or otherwise transferred, and each such equal undivided interest in the Common Area shall conclusively be deemed to be conveyed, transferred or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit. It is intended hereby to restrict severability of the various components of a Condominium in the manner provided by Section 1359 of the California Civil Code. Nothing herein contained shall be construed to preclude an Owner of any Unit from creating a co-tenancy in the ownership of a Unit with any other person or persons.

## ARTICLE XIII

### RIGHTS OF MORTGAGEES

*This Article gives various rights to lenders. Notwithstanding any provisions to the contrary as may be provided elsewhere in this Declaration, Mortgagees shall have the following rights:*

SECTION 1. NOTICE TO MORTGAGEES. Any Mortgagee, insurer or guarantor of any Mortgage on a Condominium shall be entitled to receive, upon delivery of written request to the Association, written notice of:

(a) Any condemnation or casualty loss that affects either a material portion of the Neighborhood or the Condominium securing its mortgage;

(b) Any 60-day delinquency in the payment of Assessments or charges owed by the Owner of any Condominium on which it holds the First Mortgage;

(c) A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

(d) Any proposed action that requires the consent of a specified percentage of First Mortgagees.

Written request to the Association for the above-referenced information must include the following: Mortgagee's name and address, the address and/or Unit number of the Condominium for which it holds, insures or guarantees the Mortgage.

SECTION 2. ASSESSMENTS ON FORECLOSURE. Any First Mortgagee who comes into possession of any Condominium pursuant to the remedies provided in the Mortgage, or through foreclosure of the Mortgage, shall take title to such Condominium free of any claims for unpaid Assessments or charges against such Condominium which accrued prior to the time the Mortgagee acquired title to the Condominium.

### SECTION 3. MATERIAL AMENDMENTS TO DECLARATION.

(a) Limitations on Amendments of a Material Nature. Amendments of a material nature must be approved by Owners who represent at least sixty-seven percent (67%) of the total allocated votes in the Association and Mortgagees who represent at least fifty-one percent (51%) of the votes of Condominiums that are subject to Mortgages held by First Mortgagees. A change to any of the provisions of this Declaration governing the following shall be considered as material:

(1) Voting rights;

(2) Increases in Assessments that raise the previously assessed amount by more than 25 percent, Assessment liens, or the priority of Assessment liens;

- of Common Property;
- (3) Reductions in reserves for maintenance, repair and replacement
- (4) Responsibility for maintenance and repairs;
- the Association Property;
- (5) Reallocation of interests in the Common Area, or rights to use
- (6) Redefinition of any Unit boundaries;
- (7) Convertibility of Units into Common Property or vice versa;
- (8) Expansion or contraction of the Neighborhood, or the addition, annexation or withdrawal of property to or from the Neighborhood;
- (9) Hazard or fidelity insurance requirements;
- (10) Imposition of any restrictions on the leasing of Condominiums;
- (11) Imposition of any restrictions on a Condominium Owner's right to sell or transfer their Condominium;
- (12) A decision by the Association of a condominium project that consists of 50 or more units to establish self-management if professional management had been required previously by this Declaration or by a First Mortgagee;
- (13) Restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in this Declaration or otherwise provided by statute;
- (14) Any action to terminate the legal status of the Neighborhood after substantial destruction or condemnation occurs, except as otherwise provided by statute; or
- (15) Any provisions that expressly benefit First Mortgagees, insurers or guarantors.

The approval of First Mortgagees representing at least sixty-seven percent (67%) of the votes of the mortgaged Condominiums is required for termination of the legal status of the Neighborhood for reasons other than substantial destruction or condemnation of the Neighborhood.

For purposes of this section, whenever the approval of a specified percentage of First Mortgagees is required, it shall be deemed to mean the vote or written consent of a specified percentage only of those First Mortgagees which have delivered written notice to the Board requesting to be notified of any proposed action that requires their consent. When written approval or consent of First Mortgagees is required pursuant to the terms of this Section, such approval may be implied when such First Mortgagee fails to submit a response to any written proposal for an amendment within sixty (60) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

(b) Limitations on Actions of Association. Except as provided by statute, in case of condemnation or substantial loss to the Units and/or Common Property of the Neighborhood, unless at least sixty-seven percent (67%) of the First Mortgagees (based on one vote for each First Mortgage owned) or Owners (other than the Participating Builder) have given their prior written approval, the Association may not:

(1) By act or omission seek to abandon or terminate the Condominium status of the Neighborhood, except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;

(2) Change the pro rata interest or obligations of any Condominium for the purposes of levying Assessments and charges or allocating distributions of hazard insurance proceeds or condemnation awards, or determining the pro rata share of ownership of each Unit in the Association Property;

(3) Partition or subdivide any Condominium or the Common Property of the Neighborhood;

(4) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Property of the Neighborhood. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Property of the Neighborhood shall not be deemed a transfer within the meaning of this provision;

(5) Use hazard insurance proceeds for losses to any portion of the Neighborhood (whether to Units or to Common Property) for other than the repair, replacement or reconstruction of such Improvements, except as provided by statute in case of substantial loss to the Units and/or Common Property of the Neighborhood;

(6) By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design of the exterior appearance of the Units, the exterior maintenance of the Units, the maintenance of the Common Property, including walks, fences, driveways and landscaping;

(7) Fail to maintain fire and extended coverage on insurable Common Property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost).

SECTION 4. ADDITIONAL RIGHTS OF FIRST MORTGAGEES. Any First Mortgagee, or insurer or guarantor of a First Mortgage, will, upon written request, be entitled to: (a) inspect the books and records of the Association during normal business hours; and (b) receive an annual audited financial statement of the Association within one hundred twenty (120) days following the end of any fiscal year of the Association if such financial statement is required of the Association pursuant to the terms of this Declaration or the California Civil Code; and (c) written notice of all meetings of Owners of the Association and be permitted to designate a representative to attend all such meetings.

SECTION 5. RIGHT OF FIRST REFUSAL. Any First Mortgagee who comes into possession of a Condominium pursuant to the remedies provided in such Mortgage, or

foreclosure of the Mortgage, or deed (assignment) in lieu of foreclosure, shall be exempt from any right of first refusal, and any right of first refusal shall not impair the rights of a First Mortgagee to:

(a) Foreclose or take title to a Condominium pursuant to the remedies provided in the Mortgage, or

(b) Accept a deed (or assignment) in lieu of foreclosure in the event of default by the trustor or mortgagor of the Mortgage, or

(c) Sell or lease a Condominium acquired by the Mortgagee.

SECTION 6. PRIORITY ON DISTRIBUTION OF PROCEEDS. No Owner or any other party shall have priority over any rights of First Mortgagees on individual Condominiums pursuant to their Mortgages in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Units and/or Common Property.

SECTION 7. INSURANCE. The Owners and the Association shall procure and maintain fire and liability insurance and such other insurance as may from time to time be required by First Mortgagees on Condominiums within the Neighborhood. All such insurance shall contain loss payable clauses naming the Mortgagees which encumber a Condominium by a First Mortgage, as their interests may appear.

SECTION 8. NOTICE OF CONDEMNATION AND DESTRUCTION. The Association shall provide to all First Mortgagees who have requested it written notice of any condemnation proceedings or casualty loss affecting a material portion of the Neighborhood or the Condominium securing the Mortgage. The Association shall also provide to all Mortgagees who have requested it written notice of substantial damage to or destruction of any Unit or any portion of the Common Property of the Neighborhood.

SECTION 9. NOTICE OF LOSS OR CONDEMNATION TO FHLMC. The Association agrees to give written notice to the Federal Home Loan Mortgage Corporation ("**FHLMC**") or its designated representative of any loss to, or taking of, the Common Property of the Neighborhood if such loss or taking exceeds \$10,000.00 or damage to or taking of a Unit covered by a First Mortgage purchased in whole or in part by the FHLMC if such loss or taking exceeds \$1,000.00.

SECTION 10. NO OBLIGATION TO CURE DEFAULT. Any First Mortgagee who acquires title by foreclosure or deed in lieu of foreclosure shall not be obligated to cure any breach of this Declaration which is noncurable or of a type which is not practical or feasible to cure.

SECTION 11. INFORMATION. Any First Mortgagee is authorized to furnish information to the Board of Directors concerning the status of any loan encumbering a Condominium.

SECTION 12. PRIORITY OF MORTGAGE LIEN. No breach of the covenants, conditions or restrictions contained in this Declaration, nor the enforcement of any lien provisions created herein, shall affect, impair, defeat or render invalid the lien of any first mortgage or first deed of trust made in good faith and for value, but all of said covenants, conditions and

restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise, with respect to a Condominium.

SECTION 13. FHLMC AND FNMA INSURANCE REQUIREMENTS. If any loan secured by a Mortgage encumbering a Condominium is owned by the Federal National Mortgage Association ("**FNMA**") or the Federal Home Loan Mortgage Corporation ("**FHLMC**"), or their successors or assigns, or is tendered to FNMA or FHLMC, or their successors or assigns, for purchase, the Association and the Owners shall obtain and maintain in full force and effect all insurance coverages which may at any time and from time to time be required by FNMA or FHLMC, or their successors or assigns; and shall otherwise comply in all respects with all insurance requirements of FNMA or FHLMC which may be in effect at any time and from time to time.

SECTION 14. PAYMENT OF TAXES OR PREMIUMS BY FIRST MORTGAGEES. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Property, unless such taxes or charges are separately assessed against the Owners, in which case the rights of First Mortgagees shall be governed by the provisions of their Mortgages. First Mortgagees may, jointly or singly, also pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Property and the First Mortgagee making such payments shall be owed immediate reimbursement therefor from the Association.

SECTION 15. PRIORITY OF THIS ARTICLE. If there is any conflict between any provision of this Article and any other provision in this Declaration, the provisions contained in this Article shall control.

## ARTICLE XIV

### DESTRUCTION OF IMPROVEMENTS

*This Article describes the procedure to which the Association may restore and reconstruct the Improvements including the Units within the Neighborhood in the event of destruction and damage.*

**SECTION 1. RESTORATION OF NEIGHBORHOOD.** Except as otherwise provided in this Declaration, in the event of any destruction of any portion of the Neighborhood, it shall be the duty of the Association to restore and repair the same to its former condition, as promptly as practical. The proceeds of any insurance maintained pursuant to this Declaration shall be used for such purpose, unless otherwise provided herein. The Board of Directors shall be authorized to have prepared the necessary documents to effect such reconstruction as promptly as practical. Any reconstruction or repair of a Condominium undertaken pursuant to this Article shall substantially conform to the Condominium Plan and the original construction plans if they are available, and any reconstruction or repair of the Association Property or Common Property undertaken pursuant to this Article shall substantially conform to the original construction plans, if they are available, unless changes recommended by the Board have been approved in writing by sixty-seven percent (67%) of the voting power of the Association. If the amount available from the proceeds of such insurance policies for such restoration and repair is sufficient to cover at least eighty-five percent (85%) of the estimated cost of such restoration and repair, a Reconstruction Assessment shall be levied against each Owner by the Board of Directors to provide the additional funds required to cover such cost of restoration and repair over and above the amount of any insurance proceeds available for such purpose. The Reconstruction Assessment to be levied against an Owner for such purpose shall be levied on the basis that the ratio of the square footage of the floor area of the Unit of such Owner bears to the total square footage of floor area of all Units to be assessed. For purposes of this calculation, the square footage of the floor area of shared Exclusive Use Property, if any, shall be equally apportioned among the Units that share the use thereof. In the event that the amount available from the proceeds of such insurance policies for such restoration and repair shall be less than eighty-five percent (85%) of the estimated cost of restoration and repair, the Owners entitled to vote, in person or by proxy, at a duly constituted meeting of the Members of the Association shall, by the vote of not less than sixty-seven percent (67%) of the total voting power of the Association, together with the approval of sixty-seven percent (67%) of the First Mortgagees upon Condominiums in the Neighborhood, determine whether the Association shall be authorized not to proceed with such restoration and repair. In the event of a determination by the Owners and the First Mortgagees as provided above that the cost of such restoration and repair would be substantial and that it would not be in their best interests to proceed with the same, the Owners may, at their discretion, proceed as provided in Section 2 below.

**SECTION 2. SALE OF NEIGHBORHOOD.** A certificate of the resolution authorizing such reconstruction shall be filed with the Official Records of the County within six (6) months from the date of such destruction and in the event of a failure to record such certificate within said period, it shall be conclusively presumed that the Owners have determined not to rebuild said Improvements. The insurance proceeds, if any, received by the Association as a result of such destruction shall be distributed among the Owners and the individual lenders by the Board as their respective interest may appear; provided that the balance then due on any valid encumbrance of record shall be first paid in order of priority, before the distribution of any proceeds to an Owner

whose Condominium is so encumbered. The proportionate interest of the Owners of the respective Condominiums sharing in any such award shall be based upon the respective fair market value that each of the Condominiums bears to the total fair market value of all of the Condominiums in the Neighborhood sharing in the distribution. The proportionate value of the Owners of the respective Condominiums for purposes of this Section shall be based upon the respective fair market value of each Condominium at the time of the destruction as determined by the Board based on an appraisal prepared by an appraiser who is a M.A.I. member of the American Institute of Real Estate Appraisers.

SECTION 3. RIGHT TO PARTITION. No Owner shall have the right to partition of their interest in their Condominium and there shall be no judicial partition of the Neighborhood, or any part thereof; except that in the event that a certificate of a resolution to rebuild or restore has not been recorded as provided above, within six (6) months from the date of any partial or total destruction, or if restoration has not actually commenced within said period, then conditions for partition as set forth in Section 1359 of the California Civil Code shall be deemed to have been satisfied. Nothing herein shall be deemed to prevent the 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 benefits 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 Neighborhood, and do further covenant that no action for such judicial partition shall be instituted, prosecuted or reduced to judgment.

SECTION 4. INTERIOR DAMAGE. Restoration and repair of any damage to the interior of any individual Unit, including without limitation all fixtures, cabinets and Improvements therein, together with restoration and repair of all interior paint, wall coverings and floor coverings, shall be made by and at the individual expense of each Owner of the Condominium so damaged. In the event of a determination to rebuild the Neighborhood after partial or total destruction, 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 herein.

SECTION 5. NOTICE TO CONDOMINIUM OWNERS AND FIRST MORTGAGEES. The Board of Directors, immediately upon having knowledge of any damage or destruction that affects a material portion of the Neighborhood, or a Condominium securing a Mortgage, shall promptly notify all affected Owners, all affected First Mortgagees on Condominiums in the Neighborhood, and all other affected Mortgagees who have filed a written request for such notice with the Board of Directors. In the event of a determination to rebuild the Neighborhood after partial or total destruction as provided in this Article, the number of Units in the Neighborhood as rebuilt may not exceed the number of Units as shown on the Condominium Plan.

SECTION 6. AMENDMENT OF CONDOMINIUM PLAN. In the event that reconstruction is to take place pursuant to this Article, the Board shall have the power to record an amendment to the Condominium Plan so that the Units conform to the Units as designed to be reconstructed; provided, however, the Board shall not file an amendment to the Condominium Plan without the prior authorization of all of the record fee Owners of the portion of the Neighborhood described on such Condominium Plan, and by either the trustee or the beneficiary of all of the recorded First Mortgages encumbering any Condominium shown on said Condominium Plan. In



the event that the Board, together with said Owners and Mortgagees, if appropriate, decide to record such amendment to the Condominium Plan, all Owners within A Phase of the Neighborhood and the First Mortgagees in such Phase of the Neighborhood shall execute and acknowledge said amendment so that it will comply with Section 1351 of the California Civil Code or any similar statute then in effect. The Owners and First Mortgagees shall also execute such other documents or take such other actions as required to make such amendment effective.

SECTION 7.     DAMAGE FROM WOOD-DESTROYING PESTS. The Association shall be responsible for the repair and maintenance of the Common Property occasioned by the presence of wood-destroying pests or organisms. The costs of temporary relocation during the repair and maintenance of the Common Property shall be borne by the Owner of the Unit being repaired. The Association may cause the temporary, summary removal of any occupant of a Condominium for such periods and at such times as may be necessary for prompt, effective treatment of wood-destroying pests or organisms. In the event of such removal, the Association shall give notice as specified in California Civil Code Section 1364, and such notice by the Association shall be deemed complete when given as specified therein.

## ARTICLE XV

### DAMAGE AND CONDEMNATION

*This Article describes a taking by eminent domain and establishes a procedure for the Board to obtain and distribute proceeds after condemnation within the Neighborhood.*

SECTION 1. DEFINITION OF TAKING. The term "*Taking*" as used in this Article shall mean condemnation by eminent domain, or by sale under threat thereof, of all or part of the Neighborhood.

SECTION 2. REPRESENTATION BY BOARD IN CONDEMNATION PROCEEDING. In the event of a Taking, the Board shall, subject to the right of all First Mortgagees who have requested the right to join the Board in the proceedings, represent all of the Members in an action to recover all awards. No Member shall challenge the good faith exercise of the discretion of the Board in fulfilling its duties under this Article. The Board is further empowered, subject to the limitations herein, as the sole representative of the Members, in all aspects of condemnation proceedings not specifically covered herein. In furtherance thereof, each Owner hereby appoints the Association, acting through its Board of Directors, as their attorney-in-fact for purposes of acting on behalf of each Owner in any proceedings, negotiations, settlements or agreements regarding condemnation matters.

SECTION 3. AWARD FOR CONDOMINIUM. In the event of a Taking of Condominiums, the Board shall distribute the award forthcoming from the Taking authority according to the provisions of this Section after deducting therefrom fees and expenses related to the condemnation proceeding including, without limitation, fees for attorneys and appraisers and court costs. In the event that the Taking is by judgment of condemnation and said judgment apportions the award among the Owners and their respective First Mortgagees, the Board shall distribute the amount remaining after such deductions among such Owners and First Mortgagees on the allocation basis set forth in such judgment. In the event that the Taking is by sale under threat of condemnation, or if the judgment of condemnation fails to apportion the award, the Board shall distribute the award among the Owners based upon the proportionate fair market value that each of the Condominiums bears to the total fair market value of all of the Condominiums in the Neighborhood. The value of the respective Condominiums for purposes of this Section shall be based upon the relative estimated value of each Condominium as determined by the Board based on an appraisal prepared by an appraiser who is a M.A.I. member of the American Institute of Real Estate Appraisers. Nothing contained herein shall entitle an Owner to priority over the First Mortgagee on their Condominium as to the portion of the condemnation award allocated to their Condominium. In no event shall any portion of such award be distributed by the Board to an Owner and/or the First Mortgagee on their Condominium in a total amount greater than the portion allocated hereunder to such Condominium.

SECTION 4. INVERSE CONDEMNATION. The Board is authorized to bring an action in inverse condemnation. In such event, the provisions of this Article shall apply with equal force.

SECTION 5. REVIVAL OF RIGHT TO PARTITION. Upon a Taking which renders more than fifty percent (50%) of the Condominiums in any Neighborhood incapable of being restored to at least ninety-five percent (95%) of their floor area and substantially their condition prior to the Taking, the right of any Owner within such Neighborhood to partition through legal action as described in the Article hereof entitled "Partition" shall forthwith revive. The determination as to whether Condominiums partially taken are capable of being so restored shall be made by the Board, whose decision shall be final and binding on all Owners and First Mortgagees.

SECTION 6. AWARDS FOR MEMBERS' PERSONAL PROPERTY AND RELOCATION ALLOWANCES. Where all or part of the Neighborhood is taken, each Member shall have the exclusive right to claim all of the award made for their personal property, and any relocation, moving expense, or other allowance of a similar nature designed to facilitate relocation. Notwithstanding the foregoing provisions, the Board shall represent each Member in an action to recover all awards with respect to such portion, if any, of Members' personal property as is at the time of any Taking, as a matter of law, part of the real estate comprising any Condominium, and shall allocate to such Member so much of any awards as is attributable in the Taking proceedings, or failing such attribution, attributable by the Board to such portion of Members' personal property.

SECTION 7. NOTICE TO MEMBERS. The Board, immediately upon having knowledge of any Taking or threat thereof with respect to the Neighborhood, or any portion thereof, shall promptly notify all Members.

SECTION 8. CHANGE OF CONDOMINIUM INTEREST. In the event of a Taking, the Board may amend the Condominium Plan to reflect the change in the Neighborhood affected by a Taking. In the event that the Board decides to record such amendment to the Condominium Plan, all Owners within such Phase or Phases of the Project affected thereby and the record holders of all security interests in such Phase or Phases of the Project shall execute and acknowledge said amendment so that it will comply with Section 1351 of the California Civil Code or any similar statute then in effect. Said Owners and First Mortgagees shall also execute such other documents or take such other actions as required to make such amendment effective. The Board shall cause a notice of change in the Condominium Plan to be sent to each Owner and First Mortgagee in the affected Phase or Phases of the Project within ten (10) days of the filing of such amendments in the Official Records of the County, California.

## ARTICLE XVI

### ANNEXATION

#### SECTION 1. DEANNEXATION BY PARTICIPATING BUILDER.

Participating Builder may delete all or any portion of any real property annexed to the Neighborhood from coverage of this Declaration as long as Participating Builder is the Owner of all of the real property to be deannexed within such Phase or portion of a Phase of the Neighborhood, and provided that (a) a Notice of Deletion of Territory or Termination of Supplementary Declaration is recorded in the Office of the Los Angeles County Recorder in the same manner as the applicable Supplementary Declaration was recorded as to such real property; (b) Participating Builder has not exercised any Association vote with respect to such real property; (c) assessments have not yet commenced with respect to any portion of such Phase of the Neighborhood; (d) no escrow has closed for the sale of any Unit requiring the delivery of a Final Subdivision Public Report in such Phase of the Neighborhood; and (e) the Association has not made any expenditures or incurred any obligations with respect to any portion of such Phase of the Neighborhood.

SECTION 2. ANNEXATION WITH CONSENT. Additional Units and Association Property may be annexed to the Neighborhood with the written consent of not less than 66-2/3% of the total voting power of the Association residing in Association members other than the Participating Builder unless the proposed annexation is in substantial conformance with a detailed plan submitted to the Department of Real Estate with the application for a Public Report for Phase 1 of the Neighborhood as set forth below.

SECTION 3. ANNEXATION WITHOUT CONSENT. If, at any time the Participating Builder should wish to re-annex all or any portion of the Project which may have been deannexed pursuant to Section 1 of this Article, such property may be annexed to the Neighborhood without the assent of the Class A Members and be made subject to the Declaration and thereby become subject to the jurisdiction of the Association; provided, however, that the development of such property described in this Section shall be in accordance with the general plan set forth in this Article. Detailed plans for the development of such property must be submitted to the California Department of Real Estate prior to such development of such property. If the California Department of Real Estate determines that such detailed plans are not in accordance with the general plan on file and such agency so advises the Association and the Participating Builder, the annexation of such property must be in accordance with Section 2 immediately above. A Supplementary Declaration covering all or any portion of the Project shall be executed and recorded by the Owner of such property to be annexed. All Units and Association Property to be annexed pursuant to this Article must be substantially complete prior to annexation and shall be consistent with all existing improvements in terms of quality of construction.

SECTION 4. SUPPLEMENTARY DECLARATION. The additions authorized under the foregoing section shall be made by filing of record a Supplementary Declaration, or similar instrument, with respect to the additional property which shall extend the plan of this Declaration to such property. Such Supplementary Declarations contemplated above may contain such complementary additions or modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added property as are not inconsistent with the plan of this Declaration. In no event,

however, shall any such Supplementary Declaration revoke, modify or add to the covenants established by this Declaration within the existing Neighborhood, except as hereinafter otherwise provided. Upon the effective date of annexation as provided in Section 5 of this Article, that portion of the Neighborhood subject to such Supplementary Declaration shall become subject to this Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter all of the Owners of Units in such property shall be Members of the Association, in accordance with the terms and provisions of this Declaration and such Supplementary Declaration. Upon the effective date of the annexation as provided in Section 5 of this Article, all Owners of Units within a Phase of the Neighborhood for which assessments have commenced shall have an equal and reciprocal right to the use of all of the Association Property within the Phases of the Neighborhood which are Annexed Phases.

SECTION 5. EFFECTIVE DATE OF ANNEXATION. Notwithstanding anything to the contrary as may be contained herein, any annexation pursuant to the provisions of this Article shall only be effective upon the recordation of a Supplementary Declaration for a particular Phase in accordance with the provisions of this Declaration; provided, however, the powers, duties, obligations and other covenants, conditions and restrictions as set forth herein or in such Supplementary Declaration shall not commence as to such Annexed Phase until the commencement of Regular Assessments for such Phase pursuant to the provisions of this Declaration.

## ARTICLE XVII

### ASSOCIATION RECORDS

*One of the obligations of the Board is to prepare certain financial reports, budgets and studies for the Neighborhood. This Article describes the types of accounting procedures for Assessments and provides for the review and distribution of those Association Records.*

**SECTION 1. TYPES OF ACCOUNTS.** Assessments collected by the Association shall be deposited into at least two (2) separate accounts with a responsible financial institution, which accounts shall be clearly designated as (i) the current operation account and (ii) the reserve account. The Board shall deposit those portions of the Assessments collected for current maintenance and operation into the current operation account and shall deposit those portions of the Assessments collected as reserves for replacement and deferred maintenance of major components which the Association is obligated to maintain into the reserve account.

(a) Reserve Account. Withdrawal of funds from the reserve account shall require the signatures of either two (2) Directors or one (1) Director and one (1) officer of the Association who is not a Director. The Association may expend funds from the reserve account only for the purposes set forth in Section 1365.5 of the California Civil Code.

(b) Current Operation Account. All other costs properly payable by the Association shall be paid from the current operation account.

**SECTION 2. BUDGETS AND ASSOCIATION RECORDS.** The Board of Directors of the Association shall annually prepare, adopt and distribute a Budget and Association Records in accordance with the requirements of Section 1365 and 1365.2 of the California Civil Code to (a) all Members of the Association as provided herein regardless of the number of Members or the amount of assets of the Association, and (b) Participating Builder for a period terminating ten (10) years after the closing of the final sale escrow for a Condominium in the Neighborhood or an extended period of time as may be required in writing by Participating Builder.

**SECTION 3. ANNUAL REPORT.** The Board shall annually prepare and distribute an annual report in accordance with the requirements of Section 1365 of the California Civil Code.

**SECTION 4. ASSESSMENTS AND FORECLOSURE.** During the ninety (90) day period preceding the beginning of each Association fiscal year, the Association shall prepare and distribute the following notices to Owners by first-class mail:

(a) The notice required by Section 1365.1 of the California Civil Code;

(b) The statement of the Association's policies and practices in enforcing its remedies against Members for defaults in the payment of Regular and Special Assessments, including the recording and foreclosing of liens against Condominiums required by Section 1365 of the California Civil Code; and

(c) Notice of any increase in Regular Assessments or the levy of any Special Assessments in accordance with the provisions of California Civil Code Section 1366.

SECTION 5. QUARTERLY RECONCILIATION. If then required by Section 1365.5 of the California Civil Code, the Board shall:

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

(b) Cause a current reconciliation of the Association's reserve accounts to be made and review the same on at least a quarterly basis;

(c) Review, on at least a quarterly basis, the current year's actual reserve revenues and expenses compared to the current year's Budget;

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

(e) Review an income and expense statement for the Association's operating and reserve accounts on at least a quarterly basis.

SECTION 6. RESERVE ACCOUNT STUDY. The Board shall (i) cause a study of the reserve account to be conducted, (ii) review the study annually and (iii) consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review in compliance with the provisions of California Civil Code Section 1365.5.

SECTION 7. ASSESSMENT AND RESERVE FUNDING DISCLOSURE SUMMARY. All disclosures relating to the Association or a Condominium shall be summarized on a form in accordance with the provisions of Civil Code Section 1365.2.5. Such form shall accompany each Budget or summary thereof delivered pursuant to the section above entitled "Budgets and Association Records".

(a) The form may be supplemented or modified to clarify the information, so long as the minimum information is provided for as set forth in subdivision (a) of Civil Code Section 1365.2.5.

(b) For the purpose of the report and summary, the amount of reserves needed to be accumulated for a component at a given time shall be computed as the current cost of replacement or repair multiplied by the number of years the component has been in service divided by the useful life of the component. This shall not be construed to require the Board to fund reserves in accordance with this calculation.

SECTION 8. STATEMENT OF OUTSTANDING CHARGES. Within ten (10) days of a written request by an Owner, the Association shall provide a written statement to the Owner which sets forth all information required by California Civil Code Section 1368. A charge for the statement may be made by the Association, not to exceed the reasonable costs of preparation and reproduction of the statement.

SECTION 9. SCHEDULE OF MONETARY PENALTIES. If the Board adopts a policy imposing any monetary penalty on or charging any fee to any Owner for a violation

of the Governing Documents by that Owner or that Owner's Invitee, the Board shall adopt a schedule of the monetary penalties that may be assessed for those violations. The penalties must be consistent with the Governing Documents. A copy of the schedule shall be personally delivered or mailed by first-class mail, postage prepaid, to each Owner by the Board. Each time the schedule is modified, the Board shall again deliver a copy to each Owner, either personally or by first-class mail, postage prepaid.

SECTION 10. DELIVERY OF ASSOCIATION RECORDS BY THE ASSOCIATION. Any document required by the terms of this Declaration, or the California Civil Code, to be delivered by the Association to an Owner shall be delivered pursuant to Civil Code Section 1350.7, 1368 and 1365.2. The Association may charge the requesting Member for the direct and actual costs of copying and mailing such Association Records in the amounts provided for in Section 1365.2 of the Civil Code.



## ARTICLE XVIII

### ENFORCEMENT

*This Article establishes procedures for enforcing the provisions of the Governing Documents, collecting delinquent assessments and enforcing certain bonded obligations.*

**SECTION 1. DISPUTE RESOLUTION.** All Disputes, as defined in Section 12.4 of the Master Declaration, as amended by the section of the Superseding Supplemental Master Declaration of Covenants, Conditions, Restrictions and Reservation of Easements affecting the Neighborhood entitled "Amendments to Master Declaration" ("**Dispute Resolution Supplemental Declaration**"), other than Disputes which are arbitrated pursuant to the Home Builder's Limited Warranty, shall be resolved in accordance with the dispute resolution procedures set forth in the Dispute Resolution Supplemental Declaration, all of which are incorporated herein by reference.

NOTICE IS HERBY GIVEN TO OWNER THAT PARTICIPATING BUILDER HAS ELECTED TO USE THE DISPUTE RESOLUTION PROCEDURES SET FORTH IN THE DISPUTE RESOLUTION SUPPLEMENTAL DECLARATION IN LIEU OF THE STATUTORY PRE-LITIGATION PROCEDURES CONTAINED IN CALIFORNIA CIVIL CODE SECTIONS 910 THROUGH 938.

### **SECTION 2. ENFORCEMENT OF NONPAYMENT OF ASSESSMENTS.**

Each Owner of any Condominium shall be deemed to covenant and agree to pay to the Association each and every Assessment provided for in this Declaration; and agrees to the enforcement of all such Assessments in the manner herein specified.

(a) Exceptions. Notwithstanding anything to the contrary contained in this Article or elsewhere in this Declaration, in the event the Association imposes an Assessment as a monetary penalty for failure of an Owner to comply with the terms of the Declaration or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to the Association Property for which the Owner was allegedly responsible, such Assessment, late charges, interest or any costs in connection with the collection of such Assessment, shall not be characterized or treated as an Assessment which may become a lien against an Owner's Condominium enforceable in the manner provided under Sections 2924, 2924(b), and 2924(c) of the California Civil Code.

(b) Late Charges and Interest on Delinquent Assessments. 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 as set forth below) 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).

(c) Attorneys Fees. In the event an attorney or attorneys are employed for collection of any Assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, each Owner agrees to pay

reasonable attorneys' fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against said Owner.

(d) Enforcement Procedures. In addition to any other remedies herein or by law provided, the Board, or its authorized representative, may enforce the obligations of the Owners to pay the Assessments provided for in this Declaration, and each of them, in any manner provided by Section 1367.4 of the Civil Code:

(1) Enforcement by Alternative Dispute Resolution. An Owner may dispute the Assessments 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 ("**Notice of Delinquent Assessment**") as required by and in compliance with the provisions of Section 1367.1 of the California Civil Code. On receipt of written notice, the Association shall inform the Owner in writing that the dispute may be resolved through alternative dispute resolution "meet and confer" program as established in Civil Code Sections 1363.810 et seq. and/or alternative dispute resolution with a neutral third party established by Section 1369.510 et seq., as prescribed by 1367.1 of the Civil Code. Enforcement by alternative dispute resolution to recover a money judgment for unpaid Assessments shall be maintainable without foreclosing or waiving the Assessment lien.

(2) Enforcement by Lien. Prior to recording a lien against an Owner's Condominium for failure to pay Assessments, the Association shall prepare and serve the Notice of Delinquent Assessment. The Association shall not foreclose on such Owner's Condominium if the amount of such delinquent assessment is less than the amount or time period prescribed in Section 1367.4 of the Civil Code. The Board, through a majority vote of the Board of Directors may commence and prosecute proceedings to establish and/or foreclose Assessment liens in accordance with the provisions of California Civil Code Section 1367.1 and the following provisions:

(A) Satisfaction of Lien. Any payments made by the Owner of a Condominium toward the debt set forth, as required in this Article, shall first be applied to the Assessments owed, and, only after the Assessments owed are paid in full shall the payments be applied to the fees and costs of collection, attorney's fees, late charges, or interest. Within twenty-one (21) days of payment or other satisfaction of a delinquent Assessment for which a Notice of Delinquent Assessment was recorded pursuant to Civil Code Section 1367.1(d), the Association shall record a certificate stating the satisfaction and release of the Assessment lien.

(B) Priority of Lien. A lien created pursuant to this Section shall be prior to all other liens recorded subsequent to the Notice of Delinquent Assessment, except that this Declaration may provide for the subordination thereof to any other liens and encumbrances. Mortgages recorded before a Notice of Delinquent Assessment have lien priority over the Notice of Delinquent Assessment. Sale or transfer of any Condominium shall not affect any Assessment lien, except that the sale or transfer of any Condominium pursuant to a judicial or nonjudicial foreclosure of a First Mortgage extinguishes any Assessment lien which has attached and become effective prior to the time of 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 Assessments chargeable to such Condominium which became due before

the acquisition of title to the Condominium by such person. Such unpaid share of the Assessment shall be collectible from all Owners including such person.

**SECTION 3. ENFORCEMENT OF GOVERNING DOCUMENTS.** The Association, or any Owner or the successor in interest of an Owner, shall have the right to enforce by proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Governing Documents, and any amendment thereto, including the right to prevent the violation of any such restrictions, conditions, covenants or reservations contained in the Governing Documents and the right to recover damages or other dues for such violation. Failure by the Association or by any Owner to enforce any covenant, condition or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

(a) Disputes by Members. Prior to filing a civil action by a Member solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages, related to the enforcement of the Governing Documents, the Members shall be required to comply with California Civil Code Section 1369.510 et seq., if applicable. Failure to comply with the dispute resolution requirements of Section 1369.510 et seq. of the Civil Code may result in the loss of the right to sue regarding enforcement of the Governing Documents.

(b) Disputes by Association and Members. Prior to filing a civil action by either the Association or by a Member solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages, (other than for nonpayment of Assessments), related to the any of the following matters (1) enforcement of the Governing Documents; (2) damage to the Association property; (3) damage to a separate interest that arises out of, or is integrally related to, damage to the Association Property or a separate interest that the Association is obligated to maintain or repair; the Association shall be required to perform any act reasonably necessary to resolve any civil claim or action through alternative dispute resolution proceedings such as mediation, binding arbitration, or non-binding arbitration proceedings. Any dispute resolution procedure imposed by the Association shall satisfy the requirements of Sections 1363.810 through 1363.830 of the California Civil Code. In the event the Association does not comply with the minimum requirements of a fair, reasonable and expeditious dispute resolution procedure, the Association or any Member may invoke the procedures provided for in Civil Code Section 1363.840. The Board may impose any of the remedies provided for in the Bylaws.

(c) Notice Requirements. Members of the Association shall annually be provided a summary of the provisions of Section 1363.810 et seq. of the California Civil Code which specifically references the provisions of Section 1369.590 of the California Civil Code. The summary shall be provided either at the time the Budget required by Section 1365 is distributed or in the manner specified in Section 5016 of the Corporations Code. The summary shall include a description of the Association's internal dispute resolution procedure, as required by Section 1363.850.

**SECTION 4. ENFORCEMENT OF BONDED OBLIGATIONS.** In the event that the Improvements to the Association Property have not been completed prior to the issuance of a Final Subdivision Public Report to which the Association is subject and the Association is obligee under a bond or other arrangement ("**Bond**") to secure performance of the

commitment of Participating Builder to complete such Improvements, the following provisions shall apply:

(a) Improvements Complete. If all Improvements in the planned construction statement appended to the Bond are covered by one or more recorded notices of completion, the Board shall execute whatever documents are required by the surety to release the Bond.

(b) Improvements Not Complete. If 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, the Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond. If the Association has given an extension in writing for the completion of any Association Property Improvements, the Board shall consider and vote on the aforesaid question if a Notice of Completion has not been filed within thirty (30) days after the expiration of such extension.

SECTION 5. ACTION BY MEMBERS. In the event that the Board determines not to act or fails to initiate action to enforce the obligations under the Bond, the Board shall call a special meeting of the Members for the purpose of voting to override such decision or such failure to act by the Board. Such meeting shall be called according to the provisions of the Bylaws dealing with meetings of the Members, but in any event such meeting shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such meeting, signed by Members representing five percent (5%) or more of the total voting power of the Association. The only Members entitled to vote at such meeting shall be the Owners. A vote at such meeting of a majority of the voting power of such Members, other than Participating Builder, 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 name of the Association.

## ARTICLE XIX

### AMENDMENT AND TERM

*This Article provides the procedure to amend this Declaration during its term.*

SECTION 1. TERM OF DECLARATION. The covenants and restrictions of this Declaration shall run with and bind the Neighborhood and the Neighborhood, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any Condominium subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of fifty (50) years from its date of recordation, after which time said covenants, conditions and restrictions shall automatically be extended for successive periods of ten (10) years, unless an instrument signed by a majority of the then Owners of the Condominiums has been recorded agreeing to terminate said covenants, conditions and restrictions in whole or in part.

SECTION 2. AMENDMENTS PRIOR TO THE CLOSE OF FIRST SALE. Before the close of the first sale of a Condominium to a purchaser other than Participating Builder, this Declaration and any amendments to it may be amended or revoked by the execution by Participating Builder and any Mortgagee of record amending or revoking this Declaration.

(a) Notwithstanding any of the provisions of this Declaration, so long as Participating Builder owns any portion of the Neighborhood, Participating Builder may unilaterally amend this Declaration by recording a written instrument signed by Participating Builder in order to (a) conform this Declaration to the requirements of the City, County, State or Federal laws, or any other governmental authority, (b) amend or supplement this Declaration with provisions which pertain to the rights and obligations of Participating Builder or Owners arising under Section 895 through 945.5 of the California Civil Code, (c) amend or supplement provisions or exhibits necessary to conform to "as-built" conditions, (d) amend, terminate or add to any portions of the disclosures set forth in ARTICLE IV, and (e) correct any typographical error or (f) change any exhibit or any portion of an exhibit depicting property that is not a part of a Phase for which Assessments have commenced.

(b) Vote To Amend. Unless amended pursuant to subsection (a) above, this Declaration may be amended only by the affirmative assent or vote of both (a) sixty-seven percent (67%) of the voting power of the Association, including the voting power of the Participating Builder, and (b) sixty-seven percent (67%) of the voting power of Members other than Participating Builder; provided, however, that the percentage of voting power necessary to amend a specific clause or provision shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause; provided further, if Class B voting is still in effect this Declaration may not be amended without the vote or written assent of sixty-seven percent (67%) of the total voting power of each class of Members. Any amendment to this Declaration shall be held by secret ballot in accordance with the procedures set forth in Section 1363.03(b) of the Civil Code. This amendment provision shall not be amended to allow amendments by the assent or vote of less than the prescribed percentage of voting power required for amendments hereof; provided, however, that in compliance with Civil Code Section 1356(a), the Board of Directors of the Association or any Owner of a Condominium may petition the Superior Court of such County for an order reducing the percentage of the affirmative votes necessary for such amendment. An amendment or

modification shall be effective when executed by the President and Secretary of the Association who shall certify that the amendment or modification has been approved as hereinabove provided, and recorded in the Official Records of the County, California.

(c) Amendment of Condominium Plan. In the event that the Board, together with said Owners and Mortgagees, if appropriate, decide to record an amendment to the Condominium Plan, all Owners within a Phase of the Neighborhood and the First Mortgagees in such Phase of the Neighborhood shall execute and acknowledge such amendment so that it will comply with Section 1351 of the California Civil Code or any similar statute then in effect. The Owners and First Mortgagees shall also execute such other documents or take such other actions as required to make such amendment effective.

SECTION 3. AMENDMENT TO CONVEY ASSOCIATION PROPERTY.

This Declaration may be amended to grant exclusive use of the Association Property to any Member upon the assent of sixty-seven percent (67%) of the voting power of the Members, unless the requirement for such vote is otherwise exempt as provided for in Section 1363.07 of the Civil Code.

## ARTICLE XX

### GENERAL CONDITIONS

*This Article includes general provisions applicable to this Declaration that will allow the Neighborhood to adapt to changes in the future, as well as provide for notification and interpretation of this Declaration.*

SECTION 1. STATUTORY REFERENCES. Any reference to a specific statute or law in this Declaration shall be deemed to include a reference to any successor statutes and/or regulations which may be adopted or applied to implement such statute or law.

SECTION 2. 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 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 shall have been furnished, then to the street address of such Owner's Condominium. Such notice is deemed delivered forty-eight (48) hours after such deposit. Any notice to be given to the Association may be delivered personally to any member of the Board, or delivered in such other manner as may be authorized by the Association. Any notice to be given to the Association shall be delivered by the United States mail, certified or registered, postage prepaid, return receipt requested, and any notice so deposited in the mail within the County and shall be deemed delivered forty-eight (48) hours after such deposit.

SECTION 3. SEVERABILITY OF COVENANTS. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

SECTION 4. NUISANCE. The result of every act or omission, whereby any provision, condition, restriction, covenant, easement or reservation contained in this Declaration is violated in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result, and may be exercised by the Design Review Committee, the Association, or any other Owner in the Neighborhood. Such remedy shall be deemed cumulative and not exclusive.

SECTION 5. GOVERNING DOCUMENT CONFLICTS. In case of any conflict between provisions of any of the Governing Documents with the provisions of another Governing Document, the order of superiority of such documents shall be (1) Declaration, (2) Articles, (3) Bylaws, (4) Design Guidelines, and (5) Association Rules, and the provisions of any such documents shall be superseded by the provisions of the documents shown to be the superior to such document to the extent of such conflict.

SECTION 6. CONFLICTS BETWEEN GOVERNING DOCUMENTS AND THE RESTRICTIONS. In case of any conflict between the Restrictions (as such term is

defined in the Master Declaration) and the provisions of the Governing Documents, the Restrictions shall control to the extent necessary to eliminate such conflict.

SECTION 7. CONSTRUCTION OF DECLARATION. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a Condominium residential Neighborhood and for the maintenance of the Neighborhood recreational facilities and Common Property. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

SECTION 8. NONLIABILITY OF OFFICIALS. To the fullest extent permitted by law, neither the Board, the Design Review Committee, any other committees of the Association or any member of such Board or committee shall be liable to any Member of the Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, omission, error, negligence or the like made in good faith within which such Board, committees or persons reasonably believed to be the scope of their duties.

SECTION 9. COMMON PLAN DECLARATION. The covenants, conditions and restrictions set forth in this Declaration constitute a general scheme for the development, protection and maintenance of the property to enhance the value, desirability and attractiveness of the Condominiums for the benefit of all Owners of Condominiums therein. By acceptance of a deed or by acquiring any ownership interest in any Condominium subject to this Declaration, each person or entity, for themselves, their heirs, personal representatives, successors, transferees and assigns, agrees to be subject to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the Neighborhood covered hereby, and hereby evidences their intent that all the restrictions, conditions, covenants, rules and regulations contained herein shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners.

*[Signatures on Following Pages]*



IN WITNESS WHEREOF, the undersigned, being the Participating Builder herein,  
executed this Declaration the day and year first above written.

WARMINGTON PV 325 ASSOCIATES, LLC,  
a Delaware limited liability company

BY: WARMINGTON HOMES CALIFORNIA,  
a California corporation,  
Its Managing Member

By: Brian L. Sinderhoff BRIAN L. SINDERHOFF  
Its: President - CC/CA/V Div

By: Judith C. Reid JUDITH C. REID  
Its: VP

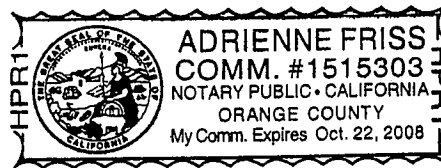
State of California  
County of Orange

On February 26, 2008, before me, Adrienne Friss, Notary Public,  
(insert name and title of the officer)  
Notary Public, personally appeared Brian L. Sinderhoff and Judith C. Reid,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument, and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument  
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Adrienne Friss  
Notary Public



(seal)

**EXHIBIT A**  
**PHASES OF NEIGHBORHOOD**

All that real property in the City of Los Angeles, County of Los Angeles, State of California described as Lots 9, 10, 11 and 12 and a portion of Parcel O of Tract No. 49104-01, as per map recorded in Book 1233, Pages 51 through 64 of Maps, Records of Los Angeles County, California, and as further set out in a Covenant and Agreement to Hold Property as One Parcel recorded August 3, 2005 as Instrument No. 05-1848333, in Official Records of Los Angeles County, California. The Phases of the Neighborhood are hereby designated as follows:

Phase 1 of the Neighborhood: (31 Units)

Units 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 237, 238, 239, 240, 241, 330, 332, 334, 336, 337, 338, 339, 340, 341, 430, 432, 434 and 436, AP-1, AP-4 and CA-1, as shown on a Condominium Plan recorded concurrently herewith in the Official Records of Los Angeles County, California, affecting the above-mentioned property.

An undivided 1/31st interest as tenant in common in CA-1 will be conveyed to each Owner in this Phase.

Phase 2 of the Neighborhood: (26 Units)

Units 101, 102, 103, 106, 107, 108, 109, 110, 111, 112, 201, 202, 203, 204, 205, 301, 302, 303, 304, 305, 308, 310, 312, 408, 410 and 412, AP-2 and CA-2, as shown on a Condominium Plan recorded concurrently herewith in the Official Records of Los Angeles County, California, affecting the above-mentioned property.

An undivided 1/26th interest as tenant in common in CA-2 will be conveyed to each Owner in this Phase.

Phase 3 of the Neighborhood: (32 Units)

Units 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 314, 316, 318, 320, 322, 324, 326, 328, 414, 416, 418, 420, 422, 424, 426 and 428, AP-3 and CA-3, as shown on a Condominium Plan recorded concurrently herewith in the Official Records of Los Angeles County, California, affecting the above-mentioned property.

An undivided 1/32nd interest as tenant in common in CA-3 will be conveyed to each Owner in this Phase.

**EXHIBIT B**  
**MAINTENANCE RESPONSIBILITY CHART**

Condominium Maintenance. Each Owner is responsible for the maintenance, repair and replacement of all elements of the Condominium, except as otherwise set forth below or in the Governing Documents. The following is intended as a general list of the Owner's obligations for maintenance and is not intended to supersede any other provisions contained in the Governing Documents. The Maintenance Manual may also expand on the scope of the maintenance responsibilities set forth below. *Note: Maintenance by Owners which involves Common Property may require approval by the Association.* Notwithstanding the foregoing, in the event of a casualty covered by the Association's insurance, the Association shall repair and replace all items covered by the Association's insurance.

MAINTENANCE ITEM	OWNER RESPONSIBILITIES	ASSOCIATION RESPONSIBILITIES
RESIDENTIAL AREA OF CONDOMINIUM	The Owner maintains all Improvements within the Unit boundaries as shown on the Condominium Plan, including the frames and hardware of all entry doors and all glass portions of the windows and doors that are constructed at Unit boundaries.	
WINDOWS IN THE UNIT	Each Owner is responsible for maintaining all windows within the Unit, including the frame, screens, locking mechanism for the screen, weather stripping, caulking, panes and sheathing.	The Association shall clean any exterior of windows that are not safely accessible by Condominium Owners
FIREPLACE IN THE UNIT	The Owner maintains all portions and components of the fireplace, including the interior surface of the chimney and firebox	N/A
EXCLUSIVE USE PROPERTY PATIO DOORS SERVING THE UNIT	The Owner maintains all portions of the Exclusive Use Property Patio doors, including the locking mechanism, weatherproofing, sheathing, painting, staining, sealing or replacing the frame and any glass	Door sash is Association maintenance responsibility
DRAINS	Owner shall be responsible for maintenance stoppage of drains when attributable to a specific Condominium	The Association shall maintain all Common Property drainage devices

EXTERIOR LIGHT FIXTURES AND FANS	The Owner maintains the light fixtures and fans, if any, actuated from switches controlled from or separately metered to the Owner's Unit.	The Association maintains all other fixtures as controlled from the Association's meter
EXCLUSIVE USE PROPERTY PATIO	The Owner sweeps the Exclusive Use Property Patio regularly and keeps it free from dirt and reasonably protected against damage.	The Association maintains the exterior painted surfaces of any solid railings, all railings (e.g., iron or tubular steel railings), and the structure. The Association is also responsible for maintaining the waterproof membrane and deck surface.
WATER PRESSURE REGULATOR, PLUMBING OUTLETS AND FIXTURES, FURNACES, DUCTS (DRYER, STOVE, OVEN) ELECTRICAL WIRING AND CIRCUIT BREAKERS	The Owner maintains the portions which exclusively serve the Unit.	The Association shall be responsible for the repair and maintenance of any portion serving more than one Unit.
HVAC (INCLUDING AIR CONDITIONING COMPRESSORS AND RELATED EQUIPMENT MOUNTED ON ROOF SERVING INDIVIDUAL UNITS	Owner obligation for those components exclusive servicing the Unit	Association controls access to roof for performance of maintenance
TELEPHONE WIRING	The Owner maintains telephone wiring exclusively serving a Condominium	Association controls Owner access to Association Property for performance of maintenance
UTILITIES	Owners maintain utilities serving the Units that are separately metered.	Association controls Owner access to Association Property for performance of maintenance. The Association maintains the utilities serving the Common Property and all utilities which serve individual Condominiums but which are subject to a common meter (i.e., fire sprinkler, main sewer and water line, boiler).
CONDOMINIUM BUILDINGS	N/A	The Association shall maintain the exterior surfaces of all Condominium Buildings, including the front doors of each Condominium Unit, exterior walls and roofs.

ALL IMPROVEMENTS LOCATED WITHIN THE COMMON PROPERTY	N/A	The Association maintains Association Property, including but not limited to the drives, parking areas, elevators, recreational facilities, landscaping except for those portions of the Exclusive Use Property Patio areas as designated in the Governing Documents to be maintained by Owners
MAILBOXES	N/A	Association maintains repairs and replaces the mailboxes.

**EXHIBIT C**  
**VARIABLE ASSESSMENT SCHEDULE**

Regular and Special Assessments for each Unit shall be uniform except for that portion of the assessment which the Department of Real Estate requires to be variable consisting of expenses in the Association budget which include, but may not be limited to, insurance, gas, water, hot water heater, refuse disposal, and reserves for roof and painting. The portion of the variable expenses for each Unit is based upon the following formula:

Variable expenses divided by the total square footage of the Phase(s) of Neighborhood paying Assessments equals the variable expense per square foot. The variable expense per square foot times the square footage within a Unit equals the monthly variable expense for the Unit.

For purposes of computing the variable portion of the assessment for each Unit, the square footage to be used for each Unit shall be as set forth below regardless of the actual square footage within each Unit and the total square footage of the Units per cumulative Phase shall be as follows regardless of the actual square footage of the Units per the cumulative Phases:

Phase 1:	30,645 square feet
Phases 1 and 2:	59,202 square feet
Phases 1 through 3:	101,352 square feet

All expenses, other than those required by the Department of Real Estate to be variable, shall be uniform for each Unit. The total monthly assessment for each Unit is calculated by adding the monthly variable expenses and the monthly fixed expenses attributable to each Unit. Regular Assessments shall be collected on a monthly basis unless some other period for collection is established by the Board.

[SEE FOLLOWING PAGE FOR UNIT SQUARE FOOTAGE SCHEDULE]

UNIT NO.	UNIT TYPE	SQ. FT.	UNIT NO.	UNIT TYPE	SQ. FT.
101	3B	845	237	1A	595
102	3B	845	238	2A	596
103	3B	845	239	3A	780
106	6N(T)	1375	240	3A	780
107	6M (T)	1371	241	3A	780
108	7A(T)	1753	301	3B	845
109	5C(R)(T)	1135	302	3B	845
110	6J(T)	1210	303	3B	845
111	5C(T)	1135	304	3B	845
112	6P(T)	1212	305	4A	1010
113	5C(R)(T)	1135	308	8C(R)	1188
114	6L(T)	1210	310	8C(R)	1188
115	5C(T)	1135	312	8E	1188
116	6K(T)	1212	314	8D	1195
117	5E(R)(T)	1135	316	8B(R)	1188
118	6J(T)	1210	318	8C(R)	1188
119	5E(T)	1135	320	9A	1414
120	6H(T)	1212	322	11A	1799
121	6G(T)	1437	324	8C	1188
122	6F(T)	1436	326	8B	1188
123	5D(T)	1297	328	8F	1175
124	6C(T)	1199	330	8H	1184
125	5B(T)	1135	332	8C	1188
126	6B(T)	1210	334	8B	1188
127	5C(T)	1135	336	8A	1222
128	6E(T)	1175	337	1A	595
129	5C(R)(T)	1135	338	2A	596
130	6D(T)	1374	339	3A	780
131	5B(R)(T)	1135	340	3A	780
132	6R(T)	1198	341	3A	780
133	5B(T)	1135	408	10C(M)	1435
134	6S(T)	1307	410	10C(M)	1435
135	5A(T)	1008	412	10B(M)	1435
136	6A(T)	1223	414	10C(M)	1435
137	1A	595	416	10B(M)	1435
138	2A	596	418	10C(M)	1435
139	3A	780	420	10B(M)	1435
140	3A	780	422	12A(M)	2544
141	3A	780	424	10C(M)	1435
201	3B	845	426	10B(M)	1435
202	3B	845	428	10D(M)	1415
203	3B	845	430	10B(M)	1435
204	3B	845	432	10C(M)	1435
205	4A	1010	434	10B(M)	1435
			436	10A(M)	1470

EXHIBIT D  
GRANT OF EASEMENT AND  
AGREEMENT BETWEEN LANDOWNERS



This page is part of your document - DO NOT DISCARD



20070251139

Pages:  
0010



Recorded/Filed in Official Records  
Recorder's Office, Los Angeles County,  
California

Fees:	\$35.00
Taxes:	\$0.00
Other:	\$60.00
<b>Paid:</b>	<b>\$95.00</b>

02/05/07 AT 11:47AM

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Counter

TITLE(S) :



LEAD SHEET

FEE

D.T.T.

CODE  
20

CODE  
19

CODE  
9

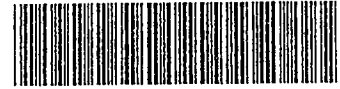
Assessor's Identification Number (AIN)

To be completed by Examiner OR Title Company in black ink.

Number of AIN's Shown

THIS FORM IS NOT TO BE DUPLICATED

EXHIBIT "D"



20070251139

RECORDING REQUESTED BY:

WHEN RECORDED RETURN TO:

PALMIERI, TYLER, WIENER,  
WILHELM & WALDRON LLP (DGT)  
2603 Main Street  
East Tower - Suite 1300  
Irvine, CA 92614

**GRANT OF EASEMENT  
AND AGREEMENT BETWEEN LANDOWNERS**

THIS GRANT OF EASEMENT AND AGREEMENT BETWEEN LANDOWNERS ("Agreement") is made as of the 16 day of Jan, 2007, by and between WARMINGTON PV 325 ASSOCIATES, LLC, a Delaware limited liability company, its successors and assigns ("Warmington"), and LEN-PLAYA VISTA, LLC, a Delaware limited liability company ("Lennar"), its successors and assigns (collectively, the "Declarants").

**RECITALS:**

A. Warmington is the fee simple owner of that certain real property in the City of Los Angeles, County of Los Angeles, State of California, described as Lot 12 of Tract No. 49104-01, as per map recorded in Book 1233, Pages 51 through 64 of Maps, in the Office of the County Recorder of Los Angeles County (the "Warmington Property").

B. Lennar is the fee simple owner of that certain real property in the City of Los Angeles, County of Los Angeles, State of California, described as Lot 16 of Tract No. 49104-01, as per map recorded in Book 1233, Pages 51 through 64 of Maps, in the Office of the County Recorder of said County (the "Lennar Property").

C. The Warmington Property and the Lennar Property (collectively referred to herein as the "Properties") are contiguous. Lennar intends to construct a walkway on the Lennar Property (the "Walkway") which lies adjacent to the Warmington Property, as described on **Exhibit A** and depicted on **Exhibit B** attached hereto (the "Easement Area").

D. Lennar desires to grant an easement to Warmington over the Easement Area for use of the Walkway.

E. Warmington will impose upon the Warmington Property that certain Declaration of Covenants, Conditions and Restrictions for Concerto Lofts Maintenance Corporation, to be recorded in the Official Records of Los Angeles County, California, as may be further supplemented or amended (the "Concerto Lofts Declaration"). The Concerto Lofts Declaration establishes upon the Warmington Property a condominium community as defined in California Civil Code Section 1351, and shall invest the Concerto Lofts Maintenance Corporation, a California nonprofit mutual benefit corporation ("Concerto Lofts

Corporation") with the power and duty to manage and operate certain Association Property (as such term is defined in the Declaration) within the Warmington Property.

F. Lennar has imposed upon the Lennar Property that certain Declaration of Covenants, Conditions and Restrictions for Serenade Community Association, recorded in the Office of the Los Angeles County Recorder, as may be further supplemented or amended (the "Serenade Declaration"). The Serenade Declaration shall establish upon the Lennar Property a condominium community as defined in California Code Section 1351, and shall invest the Serenade Community Association ("Serenade Association") with the power and duty to manage and operate the community developed on the Lennar Property, including the maintenance of the Easement Area.

G. It is the intent of the Declarants that Lennar and Warmington shall share the cost and responsibility for constructing and maintaining the Walkway.

H. Warmington and Lennar intend by this Agreement to establish rights and obligations with respect to the use and maintenance of the Easement Area, in accordance with Section 1468 of the California Civil Code.

I. Except as otherwise defined herein, the capitalized terms set forth in this document shall have the same meaning as set forth in the Concerto Lofts Declaration.

#### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, Declarants hereby agree as follows:

1. Easement. Lennar hereby establishes and grants to Warmington, and its successors and assigns, a nonexclusive perpetual easement over the Easement Area for pedestrian ingress and egress and use of the Walkway ("Easement").

2. Scope of the Easement. The scope of the Easement shall include, without limitation, pedestrian ingress and egress across the Easement Area, in addition to the right of the Declarants to jointly provide for the maintenance of the Easement Area. The scope of the Easement created herein shall be interpreted in a broad manner for the purpose of allowing all activity consistent with providing the use and enjoyment and maintenance of the Easement Area.

3. Easement Construction Costs. Lennar shall construct the Walkway in accordance with the depiction contained in ***Exhibit B*** attached hereto and in accordance with its approved plans. Lennar shall pay the costs of construction; provided, however, that upon completion of construction, Warmington shall reimburse Lennar for twelve percent (12%) of the total costs to construct the walkway ("Reimbursement"). Upon completion of the construction, Lennar shall send a written notice of completion to Warmington, which notice shall clearly state the total cost to construct the Walkway. Within thirty (30) days from receipt of Lennar's written notice, Warmington shall tender payment of the Reimbursement to Lennar.

4. Easement Documentation Costs. Concurrently with execution of this Agreement, Warmington shall deliver to Lennar the amount of Seven Hundred Dollars (\$700) as reimbursement for legal and administrative costs incurred by Lennar in documenting this Agreement.

5. Maintenance and Repair of Easement Area and Maintenance Costs. The maintenance responsibility and the cost of the maintenance, replacement and repair of the Walkway improvements within the Easement Area shall be shared equally by the Declarants. The Walkway shall be

maintained in accordance with the standards of maintenance as are common within the community. The maintenance obligations for the Walkway shall include, but shall not be limited to, keeping the Easement Area free from weeds, debris and obstructions, repairing damage due to ordinary wear and tear or the elements, and maintaining and replacing as needed any portion of the Walkway, and any appurtenances thereto.

6. Use of Easement Area. Declarants agree that neither they nor any Owner within the Properties, nor any other person, may erect any structure or conduct any activity, or otherwise cause or permit any activity or situation to exist that will unreasonably inhibit or impair the use of the Easement created in this Agreement.

7. Affected and Benefitted Land. The land ("Affected Land") affected by the covenants contained in this Agreement is the Warmington Property and the Lennar Property. The land ("Benefitted Land") benefitted by the covenants contained in this Agreement is the Warmington Property and the Lennar Property.

8. Persons Bound by this Agreement. The Easement granted herein shall be appurtenant to the Warmington Property. Each successive owner of the Warmington Property and the Lennar Property, or any portion thereof, and each person having any interest therein derived through any such owner shall be bound by the covenants contained in this Agreement for the land.

9. Recordation. Warmington, at its sole expense and obligation, shall cause this Agreement to be recorded in the Official Records of Los Angeles County, California.

10. Enforcement. The Declarants, and upon assignment, the Concerto Lofts Corporation and the Serenade Association, as applicable, may employ any lawful means to enforce the provisions of this Agreement.

11. Assignment. Warmington and Lennar shall have the right to assign their rights and obligations set forth in this Agreement affecting all or any portion of the Easement Area to the Concerto Lofts Corporation or the Serenade Association, respectively.

12. Successors and Assigns. This Agreement shall run with the land and shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of the Owners of the Properties. The Declarants hereby covenant and agree for themselves, and for their successors and assigns, that the conveyance of any interest in any of the Properties to any other person or entity shall constitute an assumption by such successors, assigns or transferees of all of the duties and obligations arising under this Agreement, and upon any such conveyance, the predecessor-in-interest of such assuming party shall be deemed relieved from any and all obligations or responsibilities arising under this Agreement.

13. Attorney's Fees. In the event any action is brought by any party or parties hereto against any other party or parties hereunder by reason of any breach of any agreements or provisions on the part of the other party or parties arising under this Agreement, the party or parties in whose favor final judgment is entered shall be entitled to have and recover from the other party or parties all costs and expenses of suit, including reasonable attorneys' fees.

14. ARBITRATION OF DISPUTES. IF A DISPUTE OCCURS BETWEEN WARMINGTON AND LENNAR WHICH ARISES OUT OF THIS AGREEMENT, THEN EITHER PARTY MAY ELECT BY WRITTEN NOTICE TO THE OTHER PARTY TO HAVE THE DISPUTE RESOLVED BY BINDING ARBITRATION IN ACCORDANCE WITH THE AMERICAN ARBITRATION ASSOCIATION'S COMMERCIAL ARBITRATION RULES EXCEPT THAT THE ARBITRATION SHALL BE CONDUCTED BY ONE (1) ARBITRATOR WHO IS A RETIRED JUDGE WITH EXPERIENCE IN REAL ESTATE MATTERS OR AN ATTORNEY WITH NOT LESS THAN TEN (10) YEARS EXPERIENCE IN REAL ESTATE MATTERS. THE JUDGMENT UPON THE ARBITRATION AWARD SHALL BE FINAL AND BINDING UPON THE PARTIES AND MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. IF THE PARTIES DO NOT AGREE UPON AN ARBITRATOR WITHIN TEN (10) DAYS AFTER DELIVERY OF A WRITTEN DEMAND FOR ARBITRATION, THEN THE ARBITRATOR SHALL BE CHOSEN BY THE AMERICAN ARBITRATION ASSOCIATION. THE ARBITRATOR MAY AWARD THE FEES AND COSTS OF ARBITRATION, AND COURT COSTS, INCLUDING REASONABLE ATTORNEYS' FEES, TO THE PREVAILING PARTY. IN THE ABSENCE OF A DETERMINATION BY THE ARBITRATOR OF THE PREVAILING PARTY, EACH PARTY SHALL BEAR ONE-HALF (1/2) OF THE COSTS OF THE ARBITRATION AND THE ARBITRATOR AND ALL OF ITS OWN COSTS AND ATTORNEYS' FEES.

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.



WARMINGTON'S INITIALS



LENNAR'S INITIALS

15. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Declarants have executed this Agreement as of the date set forth above.

WARMINGTON PV 325 ASSOCIATES, LLC,  
a Delaware limited liability company

BY: WARMINGTON HOMES CALIFORNIA,  
a California corporation

BY:  SCOTT STONE

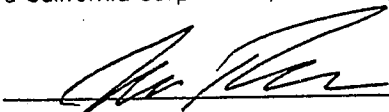
Its Vice-President Proj. Dev.

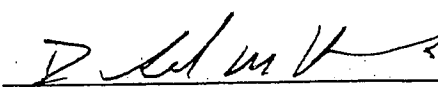
BY:  WILL WILKINSON

Its Vice President operations

LEN-PLAYA VISTA, LLC,  
a Delaware limited liability company

BY: LENNAR HOMES OF CALIFORNIA, INC.,  
a California corporation, Its Managing Member

BY:  JOHN PARKER  
Its VP of Urban Dev

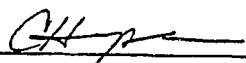
BY:  DON HANCOCK  
Its S.A.V.P. - URBAN

State of California }  
County of Los Angeles }

On January 30, 2007 before me, C. Heape, Notary Public,  
(Insert Name of Notary Public and Title)  
personally appeared Scott Stone & Will Wilkinson

personally known to me (or proved to me 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.

Signature 

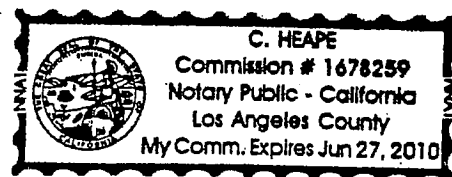


EXHIBIT "A/B"

EASEMENT AREA

EXHIBIT "D"



# EXHIBIT "A"

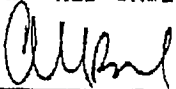
## PEDESTRIAN ACCESS EASEMENT LOT 16, TRACT 49104-01

A STRIP OF LAND OF VARYING WIDTH OVER A PORTION OF LOT 16 OF TRACT 49104-01 IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN BOOK 1233, PAGES 51 TO 64, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID LOS ANGELES COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE SOUTHWESTERLY 8.83 FEET OF THE SOUTHEASTERLY 24.00 FEET OF SAID LOT 16.  
EXCEPTING THEREFROM THE SOUTHWESTERLY 2.83 FEET OF THE SOUTHEASTERLY 17.00 FEET OF SAID LOT 16.

EXHIBIT "B" IS ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

PREPARED UNDER THE SUPERVISION OF:



ANNA M. BEAL, P.L.S. 4955  
REGISTRATION EXPIRES: 12-31-07

7-30-06  
DATE

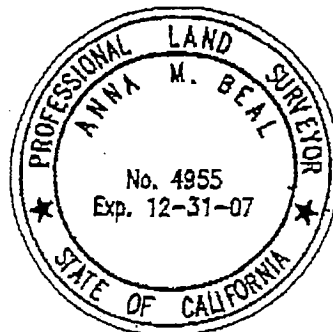
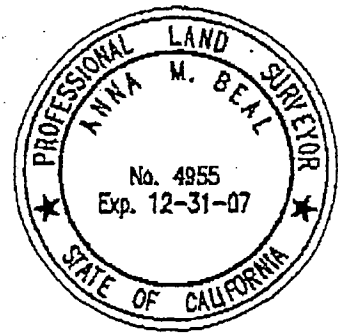
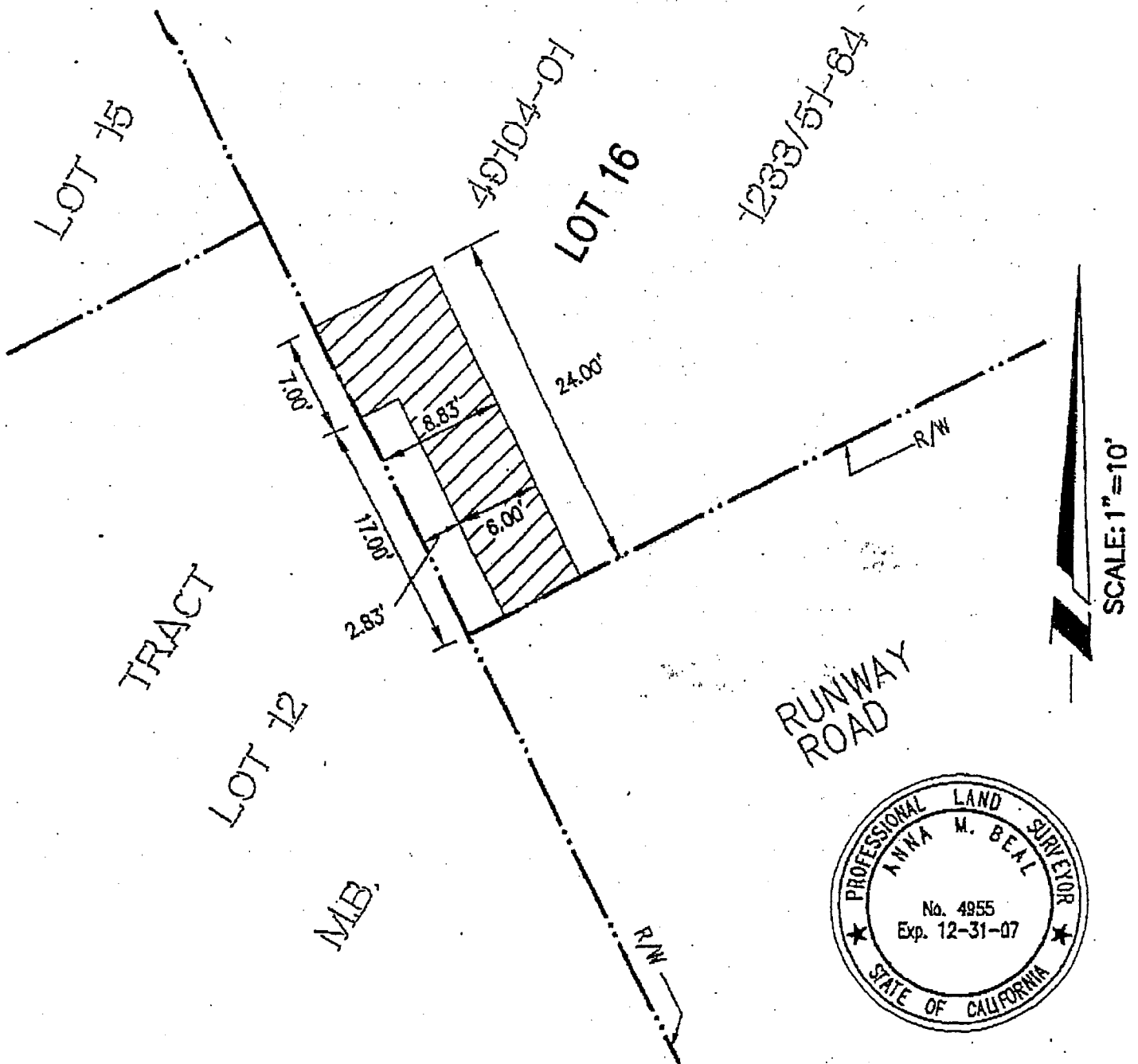


EXHIBIT "D"

**EXHIBIT "B"**



PREPARED UNDER THE SUPERVISION OF:

*Anna M. Beal*

ANNA M. BEAL, P.L.S. 4955  
REGISTRATION EXPIRES: 12-31-07

7-30-06  
DATE

**EXHIBIT "D"**

## SUBORDINATION AGREEMENT

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

CALIFORNIA NATIONAL BANK, a National Banking Association, the beneficiary under the Deed of Trust recorded on March 28, 2006 as Instrument No. 06-0653588, in Official Records of Los Angeles County, California, of which WARMINGTON PV 325 ASSOCIATES, LLC, a Delaware limited liability company, is named Trustor, which Deed of Trust is a lien upon the property subject to the foregoing Declaration of Covenants, Conditions and Restrictions for Concerto Lofts Maintenance Corporation, and any amendments or annexations thereto (collectively the "Declaration"), hereby consents to said Declaration and agrees that the Declaration shall be and remain at all times a lien or charge on the real property subject to said Declaration superior to the lien or charge of the Deed of Trust described above provided.

Dated: February 20, 2008

CALIFORNIA NATIONAL BANK,  
a National Banking Association

By: Andrew Zinn

Its: Vice President

By: John R. Houten

Its: Senior Vice President

State of California

County of Orange

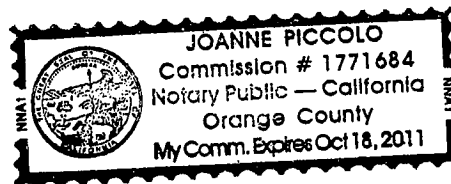
On February 20, 2008, before me, Joanne Piccolo, Notary Public  
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

[Signature]  
Notary Public



(seal)

## SUBORDINATION AGREEMENT

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

RFC CONSTRUCTION FUNDING LLC, a Delaware limited liability company, the beneficiary under the Deed of Trust recorded on June 23, 2005 as Instrument No. 05-1480892, by assignment thereof recorded June 15, 2007 as Instrument No. 07-1452913, in Official Records of Los Angeles County, California, of which WARMINGTON PV 325 ASSOCIATES, LLC, a Delaware limited liability company, is named Trustor, which Deed of Trust is a lien upon the property subject to the foregoing Declaration of Covenants, Conditions and Restrictions for Concerto Lofts Maintenance Corporation, and any amendments or annexations thereto (collectively the "Declaration") hereby consents to said Declaration and agrees that the Declaration shall be and remain at all times a lien or charge on the real property subject to said Declaration superior to the lien or charge of the Deed of Trust described above.

Dated: February 29, 2008.

RFC CONSTRUCTION FUNDING LLC,  
a Delaware limited liability company  
BY: PLAYA CAPITAL COMPANY, LLC,  
a Delaware limited liability company,  
as authorized signatory pursuant to  
authorization dated June 30, 2006, and  
Recorded on August 11, 2006 as  
Instrument No. 06-1789073

By:

Randy Johnson  
RANDY JOHNSON  
Its Co-President/CFO

State of California  
County of Los Angeles

On February 29, 2008, before me, J. Swank, Notary Public,  
(insert name and title of the officer)

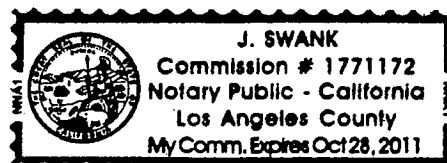
Notary Public, personally appeared Randy Johnson,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by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

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

WITNESS my hand and official seal.

(seal)

J. Swank  
Notary Public



## SUBORDINATION AGREEMENT

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

PLAYA CAPITAL COMPANY, LLC, a Delaware limited liability company, the beneficiary under the Deed of Trust recorded on June 23, 2005 as Instrument No. 05-1480891, in Official Records of Los Angeles County, California, of which WARMINGTON PV 325 ASSOCIATES, LLC, a Delaware limited liability company, is named Trustor, which Deed of Trust are a lien upon the property subject to the foregoing Declaration of Covenants, Conditions and Restrictions for Concerto Lofts Maintenance Corporation, and any amendments or annexations thereto (collectively the "Declaration"), hereby consents to said Declaration and agrees that the Declaration shall be and remain at all times a lien or charge on the real property subject to said Declaration superior to the lien or charge of the Deed of Trust described above.

Dated: February 29, 2008

PLAYA CAPITAL COMPANY, LLC,  
a Delaware limited liability company

By: [Signature]  
Its: Co-President / CFO

By: [Signature]  
Its: [Signature]

State of California  
County of Los Angeles

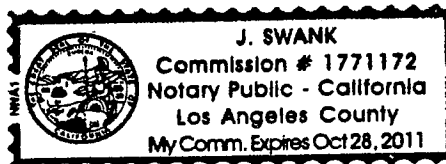
On February 29, 2008, before me, J. Swank, Notary Public,  
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

[Signature]  
Notary Public



(seal)