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**DECLARATION OF ESTABLISHMENT**

**OF**

**CONDITIONS, COVENANTS AND RESTRICTIONS**

**FOR**

**WARNER CENTER CONDOMINIUMS**

**A Condominium Project**

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**DECLARATION OF ESTABLISHMENT OF  
CONDITIONS, COVENANTS AND RESTRICTIONS  
FOR  
WARNER CENTER CONDOMINIUMS**

THIS DECLARATION OF ESTABLISHMENT OF CONDITIONS, COVENANTS AND RESTRICTIONS FOR WARNER CENTER CONDOMINIUMS is made by WARNER CENTER CONDOMINIUMS, LLC, a Delaware limited liability company ("Declarant"), being the owner of that certain real property subject to this Declaration and hereinafter more particularly described.

**WITNESSETH:**

WHEREAS, Declarant is the owner of the following real property located in the City of Los Angeles, County of Los Angeles, State of California ("Properties"), more particularly described as:

Modules "A", "B", "C" and "D", and Association Property Module "E", as shown on the Condominium Plan for Modules "A" through "G" of Lots 1, 2 and 3 of Tract No. 44600, in the City of Los Angeles, County of Los Angeles, State of California, as per Map recorded in Book 1089, Pages 13 through 18, of Maps, which Condominium Plan was recorded on \_\_\_\_\_, 2005, as Instrument No. \_\_\_\_\_, all in the Office of the County Recorder of said County.

WHEREAS, it is the desire and intention of Declarant to sell and convey interests in said real property to various individuals subject to certain basic protective restrictions, limitations, easements, covenants, reservations, liens and charges between it and the acquirers or users of said property, as hereinafter set forth.

NOW, THEREFORE, Declarant hereby declares that all of the property described above, is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following protective restrictions, limitations, conditions, covenants, reservations, liens and charges, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and sale of Condominiums as defined in Section 783 of the California Civil Code, in a Condominium Project, as that term is defined in Section 1351(f) of the California Civil Code, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Project and every part thereof. Each and all of the restrictions herein contained shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in the described property, or any part thereof. The Condominium Project comprising the real property above described, is intended to be made subject to each and all of the provisions of the Davis-Stirling Common Interest Development Act (Section 1350 et. seq. of the California Civil Code) and any comparable statute or amendment thereto hereinafter enacted. There has been or will be recorded, a Condominium Plan for the real property, as defined herein, which is intended to satisfy the provisions of

Section 1352 of the California Civil Code. The provisions of this Declaration shall be enforceable by any of the Owners of an interest in the real property above described, against any other Owner or Owners thereof, and shall also be enforceable by the Board of Directors, which shall be created for the purpose of governing this Project.

## ARTICLE 1 DEFINITION OF TERMS

**Section 1.1. Terms.** Whenever used in this Declaration, the following terms shall have the following meanings:

1.1.1 Access Easement Area shall mean and refer to those certain Module(s) within the Properties, consisting of the private streets, entry way, access gates, walkways, and related improvements, consisting of Module "F", as more particularly described in that certain Easement Grant Deed described in Article 22 hereof.

1.1.2 Annexation shall mean the addition of real property and improvements thereto to the scheme created by this Declaration. Upon such annexation, the annexed property shall be governed by, and subject to each and every provision of this Declaration. The procedures for annexation of property are set forth in Sections 20.12 and 20.13 hereof.

1.1.3 Annexable Property shall mean and refer to the real property which may be annexed to the Project by Declarant without the consent of the Association, in accordance with the provisions of Section 20.13 hereof. The Annexable Property is that certain real property described in Exhibit "A" attached hereto and incorporated herein by this reference.

1.1.4 Articles shall mean and refer to the Articles of Incorporation of the Association as the same may be amended from time to time.

1.1.5 Association shall mean an incorporated homeowners' association consisting of all Owners of Condominiums in the Project. Each Owner shall be and become a Member of the Association contemporaneously with such Owner's acquisition of a Unit, without further documentation of any kind. Transfer of a membership shall be only by conveyance of the Unit.

1.1.6 Association Property shall mean all of the real and personal property and improvements to which the Association shall hold fee title. The Association Property in Phase 1 of the Properties shall include Module "A", Module "B", Module "C" and Module "D", except the Residential Units in said Modules, and Module "E" which contains the Exclusive Use Association Property Parking Spaces for the Residential Units, all as shown on the Condominium Plan. Additional Association Property may be annexed to the Properties pursuant to the provisions of Section 20.13 hereof. The term Association Property shall include the Access Easement Area during that period of time prior to the Association's acquisition of fee title to the Access Easement Area, except where such an interpretation is in clear conflict with the provisions of Article 22 hereof, such as in regard to maintenance responsibility. All Association

Property within any Phase (not including Access Easement Area) shall be conveyed to the Association upon the close of escrow for the sale of the first Unit within such Phase.

1.1.6.1 Exclusive Use Association Property shall mean and refer to those portions of the Association Property to which an exclusive right of use is granted to an Owner which shall be appurtenant to such Owner's Unit, as shown and described on the Condominium Plan. The Exclusive Use Association Property in Phase 1 shall consist of: one (1), for one bedroom Units, and two (2), for two and three bedroom Units, Exclusive Use Association Property Parking Spaces outdoors or in the subterranean garages.

1.1.7 Board or Board of Directors shall mean the governing body of the Association.

1.1.8 Bylaws shall mean the duly adopted Bylaws of the Association as the same may be amended from time to time.

1.1.9 Common Area shall mean and refer to the land and real property, including all improvements now or hereafter constructed thereon, within the boundary lines of a Module containing Units, excepting therefrom those portions of such Module shown on the Condominium Plan to be Units or Association Property. The upper vertical boundary of the Common Area is a horizontal plane fifty feet (50') below the ground elevation of the Condominium building in a Module containing Units, and the lower boundary of the Common Area extends indefinitely downwards. The Common Area thus consists of the three-dimensional airspace envelope located 50 feet (50') below the lower vertical boundary of the Units within a Module containing Units, as described in the Condominium Plan.

1.1.10 Common Property shall mean and refer to the Common Area and the Association Property.

1.1.11 Condominium shall mean a Condominium as defined in Section 783 of the California Civil Code, and shall be an estate in real property consisting of (a) a separate fee interest in the space within a Unit as further shown and described in the aforesaid Condominium Plan, and all appurtenances thereto, and (b) an undivided interest as a tenant in common in the Common Area and (c) easements for the exclusive use and enjoyment of any Exclusive Use Association Property appurtenant to such Condominium. The undivided interest in the Common Area hereby established and which shall be conveyed with each respective Unit in any Phase shall be an undivided fractional fee interest described by having a one (1) as its numerator and the total number of Units in the Module in which such Unit is located, as the denominator, with the ownership thereof held as a tenant in common with the other Owners of Units in such Module. Additionally, each Owner of a Condominium shall receive a membership in the Association.

1.1.12 Condominium Plan shall refer to a plan consisting of (a) a description or survey map for the Project, which shall refer to or show monumentation on the ground, (b) a three-dimensional description of the Project, one or more dimensions of which may extend for an indefinite distance upwards or downwards, in sufficient detail to identify the Common Area, the Association Property, each Unit and the Exclusive Use Association Property, if any, and (c) a



certificate consenting to the recordation of the Condominium Plan signed and acknowledged by the record Owner of fee title to the real property included in the Project.

1.1.13 Declarant shall mean WARNER CENTER CONDOMINIUMS, LLC, a Delaware limited liability company, its successors and assigns, if such successors and assigns should acquire any portion of the above described real property from Declarant for the purpose of development and are designated by Declarant or its authorized agent as the Declarant for the purpose hereof by a duly recorded written instrument.

1.1.14 Declarant Party shall mean and refer to any director, officer, partner, member, employer, contractor, design professional, consultant, subcontractor or agent of Declarant.

1.1.15 Declaration shall mean this Declaration of Establishment of Conditions, Covenants and Restrictions, as the same may be amended, changed or modified from time to time.

1.1.16 Eligible Insurer or Guarantor shall mean and refer to an insurer or governmental guarantor who has requested notice from the Association of those matters which such insurer or guarantor is entitled to notice of by reason of this Declaration or the Bylaws of the Association.

1.1.17 Eligible Mortgage Holder shall mean and refer to a holder of a first Mortgage on a Condominium who has requested notice from the Association of those matters of which such holder is entitled to notice by reason of this Declaration or the Bylaws of the Association.

1.1.18 Institutional Lender shall mean a Mortgagee which is a bank or savings and loan association or established mortgage company, or other entity chartered under Federal or State laws, any corporation or insurance company, or any Federal or State agency.

1.1.19 Joint Use Agreement shall mean and refer to that certain agreement between the Association and Declarant pursuant to which the use and costs of maintenance, repair and replacement of the private streets and recreational facilities in the Project are shared by the Owners in the Project and the tenants in the residences in the Annexable Property, during the period of time of development, annexation and sale of Units in the Project and the Annexable Property, until such time as all of the Annexable Property becomes a part of the Project, as further provided therein.

1.1.20 Member shall mean an Owner with a membership in the Association.

1.1.21 Module shall mean and refer to a three-dimensional airspace envelope in a Phase shown, designated and described on and in the Condominium Plan as a "Module". A Module will include either Units, Common Area and Association Property, or only Association Property. Units shall not in and of themselves constitute a Module. Each Phase of development will include one or more Modules containing Units, Common Area and Association Property and may also include one or more Modules containing only Association Property.

1.1.22 Mortgage shall mean and include a deed of trust as well as a mortgage in the conventional issue.

1.1.23 Mortgagee shall mean a person or entity to whom a Mortgage is made, and shall include the beneficiary of a deed of trust.

1.1.24 Mortgagor shall mean a person or entity who mortgages his, her or its property to another, i.e., the maker of a Mortgage, and shall include the trustor of a deed of trust.

1.1.25 Owner shall mean and refer to the record owner or Owners, if more than one, of a Condominium in the Project, including Declarant, so long as any Condominiums remain unsold.

1.1.26 Phase shall mean one of the seven (7) proposed phases of development of this Condominium Project for which a separate Final Subdivision Public Report is issued by the California Department of Real Estate. Phase 1 will include the Units, Common Area and Association Property within Modules "A", "B", "C" and "D", and the Association Property within Module "E", all as shown on the Condominium Plan. Declarant expressly reserves the right to modify Phase 2 and all following Phases including, but not limited to, the right to combine or further divide such phases into additional phases and the right to redesign said phases. Declarant intends to sell certain Units and Common Property improvements according to a general plan of development submitted to the California Department of Real Estate.

1.1.27 Project shall mean and refer to the entire parcel of real property above described, including all improvements erected or to be erected thereon, and such additions as may hereafter be brought within the jurisdiction of the Association.

1.1.28 Residence shall mean and refer to the single family dwelling Unit located within a residential building.

1.1.29 Rules and Regulations shall mean and refer to the rules and regulations adopted by the Association that are not inconsistent with the provisions of this Declaration and that are subject to Civil Code Sections 1357.100 *et seq.* regarding "operating rules." The Rules and Regulations shall include but not be limited to the use of the Common Property.

1.1.30 Unit shall mean and refer to the elements of a Condominium which are not owned in common with Owners of other Condominiums in the Project. The boundaries of the Units are as shown and defined on the Condominium Plan.

Section 1.2. Applicability of Terms. The aforesaid definitions shall be applicable to this Declaration and to any supplements or amendments thereto, filed or recorded pursuant to the provisions of this Declaration, unless the context thereof shall prohibit such definition.

**ARTICLE 2**  
**DESCRIPTION OF PROJECT**

Section 2.1. Purpose of Description. The following description is intended for informational purposes only. In the event of any conflict between this description and the Condominium Plan, the Condominium Plan shall be deemed conclusively to control over this description.

Section 2.2. Project Composition. The Project consists of the underlying real property with Units and all other improvements located thereon. Phase I of the Properties, as proposed, will contain approximately three hundred eighty-four (384) residential dwelling Units. If and upon annexation of the Annexable Property as provided herein there are currently proposed to be a maximum of approximately twelve hundred seventy-nine (1,279) residential dwelling Units.

Section 2.3. Physical and Legal Description. Declarant, in order to establish a plan of condominium ownership for the Project, hereby declares that it has divided and hereby divides the Project into the following estates:

Each Unit shall be a separate freehold estate, as defined in Section 1351 of the California Civil Code, and as shown and described on the Condominium Plan, consisting of the dwelling space bounded by and contained within the interior unfinished surfaces of the perimeter walls, floors, ceilings, windows and doors of said spaces, each such space being defined and referred to herein as a "Unit." Each Unit includes both the portion of the building so described and the airspace so encompassed, and all windows and doors in said Unit, but the following are not a part of the Unit: bearing walls, columns, floors, roofs, foundations, balcony railings, pipes, ducts, flues, chutes, conduits, wires, exterior lighting, and other utility installations, wherever located (except all utility installations and/or outlets thereof when located within the Units). In interpreting this Declaration, the Condominium Plan and conveyances, the existing physical boundaries of the Unit, when the boundaries of the Unit are contained within a building, or of a Unit reconstructed in substantial accordance with the original Condominium Plan thereof, shall be conclusively presumed to be its boundaries rather than the metes and bounds (or other description) expressed in the Declaration, Condominium Plan or conveyance, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown on the Condominium Plan or in the deed and Declaration and those of the building.

2.3.1 The Common Area shall include the entire Project, excepting therefrom the Units and Association Property. Control of the Common Property within each Phase shall be turned over to the Association upon the closing of the sale of the first Condominium in each Phase of the Project.

2.3.2 Exclusive Use Association Property shall mean and refer to those portions of the Association Property to which an exclusive right of use is granted to an Owner which shall be appurtenant to such Owner's Unit as shown and described on the Condominium Plan and shall consist of either one (1) or two (2) parking spaces outdoors or in the subterranean garages.

2.3.3 The Project, as currently proposed, shall have approximately eight hundred ninety-one (891) Association Property parking spaces for guest parking purposes.

2.3.4 The undivided interest in the Common Area hereby established and which shall be conveyed with each respective Condominium in Phase I shall be an undivided fractional fee interest described by having a one (1) as its numerator and the total number of Units in the Module in which such Unit is located, as the denominator, with the ownership thereof held as a tenant in common with the other Owners of Units in such Module. The above-referenced undivided interests established and to be conveyed with the respective Condominiums, cannot be changed, and Declarant, their successors, assigns, and grantees, covenant and agree that the undivided interest in the Common Area and the fee title to the respective Condominium conveyed therewith, shall not be separated from or separately conveyed or encumbered without its respective Unit, even though the description in the instrument of conveyance may refer only to the fee title to the Unit.

### ARTICLE 3 OWNERS' PROPERTY RIGHTS

Section 3.1. Owner's Easements of Enjoyment. Each Owner shall have a nonexclusive easement appurtenant to such Owner's Condominium for ingress, egress, use and enjoyment on and over the Association Property and all improvements thereon. Said easement shall include, but not be limited to, the reasonable right of access for the purposes of maintaining internal and external telephone lines appurtenant to the Condominium; provided, however, that the Association may condition its approval, which shall not be unreasonably withheld, upon submission of plans showing such external wiring within the Association Property and such other conditions as the Association deems reasonable. Said easement shall be appurtenant to and shall pass with the title to every Condominium.

Section 3.2. Owner's Easements for Vehicular Access. In addition to the general right to use and enjoy said easements for ingress and egress granted herein, there shall be and Declarant hereby covenants for itself and its successors and assigns that each and every Owner shall have a nonexclusive easement appurtenant to such Owner's Condominium for vehicular traffic over all private streets and drives, if any, within the Project.

Section 3.3. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, such Owner's right to the use and enjoyment of the Association Property to the members of such Owner's family, guests, invitees, tenants, or contract purchasers who reside within the Project.

Section 3.4. Personal Liability of Owner. No Member may be exempt from personal liability for assessments duly levied by the Association, nor release the Condominium owned by such Member from the liens and charges thereof, by waiver of the use and enjoyment of the Association Property and the facilities thereon or by abandonment of such Member's Condominium.

Section 3.5. Leasing of Units. Any Owner may lease such Owner's Unit subject to the following:

3.5.1 No Owner shall be permitted to lease such Owner's Unit for transient or hotel purposes or for a period of less than thirty (30) days.

3.5.2 No Owner may lease less than the entire Unit.

3.5.3 Any lease agreement is required to provide that the terms of said lease shall be subject in all respects to the provisions of the Declaration and the Bylaws and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease.

3.5.4 All leases are required to be in writing.

Section 3.6. Right to Sell, Partition, Encroach and Support. The Declarant, its successors and assigns, and all future Owners of the Condominiums, by their acceptance of their respective deeds, covenant and agree as follows:

3.6.1 No Owner may sell, assign, lease or convey (i) such Owner's interest in the Common Area separate and apart from such Owner's Unit, nor (ii) such Owner's interest in any Exclusive Use Association Property, if any, separate and apart from such Owner's interest in the Common Area and such Owner's Unit.

3.6.2 Each of the Owners of a Condominium, whether such ownership is in fee simple or as a tenant in common, is hereby prohibited from partitioning or in any other way severing or separating such ownership from any of the other ownerships in the Project except upon the showing that: (i) more than three (3) years before the filing of the action, the Project was damaged or destroyed so that a material part thereof was unfit for its use and the Project has not been rebuilt or that Owners holding in aggregate more than a fifty percent (50%) interest in the Common Area are opposed to repair or restoration of the Project, or (ii) that the Project has been in existence in excess of fifty (50) years, that it is obsolete and uneconomic, and that Owners holding in aggregate more than a fifty percent (50%) interest in the Common Area are opposed to repair or restoration of the Project.

3.6.3 In the event a Unit or any part thereof is partially or totally destroyed, and then rebuilt, all Owners agree that minor encroachments of parts of the Association Property due to construction shall be permitted and that valid easements for said encroachment and the maintenance thereof shall exist.

3.6.4 A nonexclusive easement for ingress, egress and support through the Association Property shall be appurtenant to each Unit.

Section 3.7. Right of Owner to Improve and Modify Unit. Subject to the provisions of this Declaration and other applicable provisions of law, if the boundaries of a Unit are contained within a building, the Owner of a Unit shall have the right to do the following:

(1) Make any improvements or alterations within the boundaries of his or her Unit that do not impair the structural integrity or mechanical systems or lessen the support of any portions of the Project.

(2) Modify the Unit, at the Owner's expense, to facilitate access for persons who are blind, visually handicapped, deaf, or physically disabled, or to alter conditions which could be hazardous to the persons. These modifications may also include modifications of the route from the public way to the door of the Unit for the purposes of this Section if the Unit is on the ground floor or already accessible by an existing ramp or elevator. The right granted by this Section is subject to the following conditions:

(a) The modifications shall be consistent with applicable building code requirements.

(b) The modifications shall be consistent with the intent of otherwise applicable provisions of this Declaration pertaining to safety or aesthetics.

(c) Modifications external to the dwelling shall not prevent reasonable passage by other residents and shall be removed by the Owner when the Unit is no longer occupied by persons requiring those modifications who are blind, visually handicapped, deaf, or physically disabled.

(d) Any Owner who intends to modify a Unit pursuant to this Section shall submit his or her plans and specifications to the Architectural Control Committee for review to determine whether the modifications will comply with the provisions of this Section. The Committee shall not deny approval of the proposed modifications under this Section without good cause.

(3) Any change in the exterior appearances of a Unit shall be in accordance with this Declaration and applicable provisions of law.

Section 3.8. Liens Against Other Property. No labor performed or services or materials furnished with the consent of, or at the request of, an Owner or his or her agent or his or her contractor shall be the basis for the filing of a lien against any other property of any other Owner in the Project unless that other Owner has expressly consented to or requested the performance of the labor or furnishing of the materials or services. However, express consent shall be deemed to have been given by the Owner of any Condominium in the case of emergency repairs thereto. Labor performed or services or materials furnished for the Association Property, if duly authorized by the Association, shall be deemed to be performed or furnished with the express consent of each Owner. The Owner of any Condominium may remove his or her Condominium from a lien against two or more Condominiums or any part thereof by payment to the holder of the lien of the fraction of the total sum secured by the lien which is attributable to his or her Condominium.

Section 3.9. Owner's Duty to Maintain. Each Owner is responsible for maintaining his or her separate Unit and any Exclusive Use Association Property appurtenant to the Unit.

Section 3.10. Completion of Improvements. Declarant expressly reserves the right and easement for ingress and egress to enter the Association Property in order to complete any

improvements thereon, to enter any portion of the Properties in order to perform necessary repair work thereon, and to enter any adjacent portion of the Properties in connection with the development of additional phases of the overall project; provided, however, that such use shall not be for a period of more than three (3) years after the conveyance of the first Condominium and such use of the Association Property by Declarant and its agents shall not unreasonably interfere with the use thereof by the Members of the Association.

**ARTICLE 4**  
**HOMEOWNERS' ASSOCIATION**  
**A CALIFORNIA NONPROFIT CORPORATION**

Section 4.1. Formation, Membership and Voting Rights. Declarant has, at its cost and expense, formed an incorporated association known as "Warner Center Condominiums," a California nonprofit mutual benefit corporation, which has the powers, rights and duties hereinafter set forth:

4.2.1 There shall be one membership in the Association for each Unit owned in the Project, which membership shall be appurtenant to the Unit.

4.2.2 All of such memberships shall initially be the property of Declarant or its successors in interest, and shall pass automatically to the respective purchasers of Units in the Project.

4.2.3 Each Member shall be obligated promptly, fully and faithfully to comply with the provisions of this Declaration, and the Bylaws of the Association, and all Rules and Regulations which may be prescribed from time to time by its officers or directors.

4.2.4 The Association shall have two (2) classes of voting membership, as follows:  
Class A. Class A Members shall be all Owners, with the exception of the Declarant, and 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 Members. The vote for such Condominium shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Condominium.

Class B. The Class B Member shall be Declarant and shall be entitled to three (3) votes for each Condominium owned in the Project upon which Declarant is then paying the appropriate annual assessments provided for hereinbelow. The Class B membership shall cease and be converted to Class A membership upon the happening of the earliest of the following to occur:

(a) Two (2) years from the date of the first conveyance of a subdivision interest in the most recent Phase of the overall development; or

(b) Four (4) years from the date of the first conveyance of a subdivision interest in the first Phase of the overall development

4.2.5 Any provision in this Declaration, the Articles, Bylaws and Rules and Regulations of the Association calling for membership approval of action to be taken by the Association, except provisions with respect to the action to enforce the obligations of the Declarant under any completion bond, shall expressly require the vote or written assent of the prescribed percentage of each class of membership during the time that there are two outstanding classes of membership. Any requirement elsewhere in the Articles, Bylaws, and Declaration, except with respect to the action to enforce the obligations of the Declarant under any completion bond, that the vote of the Declarant shall be excluded in any such determination, shall be applicable only if there has been a conversion of Class B Members to Class A Members, and the same shall be read as requiring the vote of the prescribed percentage of the Class A Members and the vote of the prescribed percentage of the Class A Members other than the Declarant.

4.2.6 The voting rights attributed to any given Condominium in the Project as provided for herein, shall not vest until the assessments provided for hereinbelow have been levied by the Association as against said Condominium.

4.2.7 The Association membership held by any Owner of a Condominium shall not be transferred, pledged, or alienated in any way, except upon the sale or encumbrance of such Condominium. In the event of such sale or encumbrance, the Association membership may only be transferred, pledged or alienated to a bona fide purchaser of the Condominium, or to the Mortgagee (or third-party purchaser) of such Condominium upon a foreclosure sale. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association.

4.2.8 Membership is not intended to apply to those persons or entities who hold an encumbrance on an interest as security for the performance of an obligation to pay money.

4.2.9 The purpose of the Association is to further and promote the common interests and welfare of its Members, and to operate, preserve and maintain the Project.

## ARTICLE 5 POWERS OF THE ASSOCIATION

Section 5.1. Powers of the Association. The management and control of the Association's affairs and the Project itself will be the responsibility of the Board of Directors, which is to consist of Members of the Association who will be elected by the total Membership. The Association, in its sole and absolute discretion, and as more fully set forth in its Bylaws, shall have the power to perform the following acts:

5.1.1 The Association shall have the sole and exclusive right and duty to manage, operate, control, repair, replace, or restore, all the improvements, trees, shrubbery, plants and grass of the Project.

5.1.2 The Association shall have the right and power to levy and collect assessments.



5.1.3 The Association shall pay the taxes and assessments, if any, which may be levied by any governmental authority on the Project or any part thereof.

5.1.4 The Association shall maintain a bank account or accounts for funds coming under the control of the Association.

5.1.5 The Association shall have the right and power to adopt and enforce architectural guidelines ("Architectural Guidelines") for the Project.

5.1.6 The Association shall adopt rules and regulations ("Rules and Regulations") that are not inconsistent with the provisions of this Declaration and that are subject to Civil Code Sections 1357.100 *et seq.* regarding "operating rules." The Rules and Regulations shall include but not be limited to the use of the Association Property and of the Project.

5.1.7 The Association shall have the right and power to enforce the provisions of this Declaration; provided, however, that nothing contained in this Section shall be construed to prohibit enforcement of this Declaration by any Owner.

5.1.8 The Association has the right and power to contract for and maintain fire, casualty, liability, worker's compensation, medical, hospital, and other insurance insuring Owners, members of the Board, and other persons.

5.1.9 The Association has the right and power to contract, provide and pay for (i) maintenance, utility, gardening and other services benefiting the Project; (ii) payment of persons necessary to accomplish the obligations of the Association; and (iii) legal and accounting services.

5.1.10 The Association has the right and power to contract, provide and pay for any commonly metered utilities, such as water utility service and trash collection, for the common use and benefit of all Owners. In such event, each Owner shall pay a proportionate share of the costs thereof as a part of the annual assessments.

5.1.11 The Association shall have the right and power to enter into the Joint Use Agreement with Declarant to provide for the shared use of, and the sharing of the costs of maintenance, repair and replacement of, the private streets and recreational facilities in the Project, between the Members of the Association and the tenants of the residences in the Annexable Property, during the period of development, annexation and sale of the Units in the Project and the Annexable Property, until such time as all of the Annexable Property becomes a part of the Project, as further provided therein.

5.1.12 Notwithstanding any of the foregoing, the Association, acting through its Board, may not enter into any contract binding for a term longer than one (1) year from the effective date thereof without the vote or written consent of a majority of a quorum consisting of more than fifty percent (50%) of the voting power of the Members of the Association other than the Declarant, except as specifically authorized herein or in the Articles or Bylaws.

5.1.13 The Association has the right and power to contract and pay for the purchase of tools, equipment, materials, supplies and other personal property and services for the maintenance and repair of the facilities and improvements of the Project.

5.1.14 The Association has the right and power to contract and pay for reconstruction of any portion or portions of the Project damaged or destroyed.

5.1.15 The Association has the right and power to delegate its powers to others where such delegation is proper.

5.1.16 The Association has the right and power to prosecute or defend, and to perform any act reasonably necessary to resolve by alternative dispute resolution proceedings, under the name of the Association, any action affecting or relating to the Project or the personal property thereon, or any action in which all of the Owners have an interest in the subject of the action.

5.1.17 Subject to the vote or written consent therefor from a majority of the voting power of the membership, excluding the vote of the Declarant, the Association may borrow money, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

5.1.18 The Association may do any and all things that a nonprofit, mutual benefit corporation organized under the laws of the State of California may lawfully do, and generally may do and perform any and all other acts which may be either necessary for, or incidental to, the exercise of any of the foregoing powers, and any other such powers as are granted by the provisions of the laws of the State of California to such a corporation.

5.1.19 The Association may acquire by gift, purchase or otherwise, own, hold, enjoy, lease, operate, maintain, convey, sell, transfer, mortgage, or otherwise encumber, dedicate for public use, or otherwise dispose of real and personal property in connection with the business of the Association; provided, however, that the Association shall not acquire or sell any real property by purchase or lease without first obtaining the vote or written consent therefor from a majority of the voting power of the membership, excluding the vote of the Declarant.

5.1.20 The Association shall have the right and power to suspend a Member's voting rights and the right to use the Association Property and recreational facilities, if any, for any period during which any assessment against such Member's Condominium remains unpaid and delinquent; and for a period not to exceed thirty (30) days for any single infraction of the Rules and Regulations of the Association, provided that any suspension of such voting rights or right to use the recreational facilities, except for failure to pay assessments, shall be made only by the Association or a duly appointed committee thereof, after notice and hearing is given and held in accordance with the Bylaws of the Association.

5.1.21 The Association may not cause a forfeiture of an Owner's right to use and enjoy such Owner's Condominium for failure of a Member to comply with the provisions of this Declaration, or the Bylaws or Rules and Regulations of the Association, except (1) by judgment .

of a court or decision arising out of arbitration, or (2) on account of a foreclosure or sale under a power of sale for failure of the Owner to pay assessments duly levied by the Association, as set forth in Article 8 hereof.

5.1.22 The Association may take any and all lawful action which may be advisable, proper, authorized or permitted by the Association under and by virtue of any condition, covenant, restriction, reservation, charge or assessment affecting the Project, or any portion thereof, and to do and perform any and all acts which may be either necessary for or incidental to the exercise of any of the foregoing powers, or for the peace, health, comfort, safety or general welfare of its Members.

5.1.23 The Association, through its duly authorized agents or employees, shall have the right after reasonable notice to the Owner to enter into any Unit in the Project for the purpose of maintaining and repairing the Association Property, as authorized herein.

5.1.24 The Association, through its duly authorized agents or employees, shall also have the right to enter into any Unit, without the necessity of advance notice, in order to effect emergency or other repairs necessary to mitigate or prevent damage, which the Owner thereof has failed to perform.

5.1.25 The Association may impose monetary penalties upon Owners as a disciplinary measure (1) for failure of an Owner to comply with this Declaration or the Bylaws or Rules and Regulations of the Association, or (2) as a means of reimbursing the Association for costs incurred by the Association in the repair of damages to Association Property and facilities for which the Owner is allegedly responsible, or (3) to bring an Owner or its Condominium into compliance with this Declaration or the Bylaws or Rules and Regulations of the Association.

Section 5.2. Fidelity Bond. The Association shall maintain a fidelity bond or insurance in an amount at least equal to the sum of three months' assessments on all Units in the Project, which names the Association as obligee and insures against loss by reason of acts of members of the Board of Directors, officers and employees of the Association and any management agent and its employees, whether or not such persons are compensated for their services.

Section 5.3. Membership Meetings.

5.3.1 Meetings of the membership of the Association shall be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the Association may adopt. Notwithstanding any other provision of law, notice of meetings of the Members shall specify those matters the Board intends to present for action by the Members but, except as otherwise provided by Law, any proper matter may be presented at the meeting for action. Members of the Association shall have access to Association records in accordance with Article 3 (commencing with Section 8330) of Chapter 13 of Part 3 of Division 2 of Title 1 of the Corporations Code. Any Member of the Association may attend meetings of the Board of Directors of the Association, except when the Board adjourns to executive session to consider litigation, matters that relate to the formation of contracts with third parties, Member discipline, or personnel matters. Any matter discussed in executive session shall be generally noted in the

minutes of the Board of Directors. In any matter relating to the discipline of a Member, the Board of Directors shall meet in executive session if requested by that Member, and the Member shall be entitled to attend the executive session.

5.3.2 The minutes, minutes proposed for adoption that are marked to indicate draft status or a summary of the minutes, of any meeting of the Board of Directors of the Association, other than an executive session, shall be available to Members within thirty (30) days of the meeting. The minutes, proposed minutes, or summary minutes shall be distributed to any Member of the Association upon request and upon reimbursement of the Association's costs in making that distribution.

5.3.3 Members of the Association shall be notified in writing at the time that the Budget required in Section 17.2 below is distributed or at the time of any general mailing to the entire membership of the Association of their right to have copies of the minutes of meetings of the Board of Directors and how and where those minutes may be obtained, and the cost of obtaining such copies.

## ARTICLE 6 MANAGEMENT OF THE PROJECT

Section 6.1. Management Responsibility. The management and complete control of the Association's affairs and the Project itself will be the direct responsibility of the Board of Directors, which is to consist of Members of the Association who will be elected by the total membership of the Association.

6.1.1 The Association's responsibility to maintain the Association Property shall commence concurrently with the recordation of first the Grant Deed conveying a Condominium to an Owner. Notwithstanding the foregoing, if the contractors or subcontractors of Declarant are contractually obligated to maintain or warrant the landscaping or other improvements on the Association Property for a specified period in which said contractors or subcontractors shall perform such maintenance, the Association shall not interfere with the performance of such warranty or other contractual maintenance obligations. Maintenance performed by such contractors or subcontractors shall not serve to postpone the commencement of assessments pursuant to this Declaration, nor entitle an Owner to claim any offset or reduction in the amount of such assessments.

6.1.2 The nature, design, quality and quantity of all improvements in the Association Property shall be determined by Declarant in its sole discretion. The Association shall be obligated to accept, and shall assume and undertake, all maintenance responsibilities for the Association Property when title is conveyed to the first Owner and/or maintenance responsibilities are tendered by Declarant. In the event that a dispute arises between Declarant and the Association with respect to the nature, design, quality or quantity of the improvements in the Association Property, or the acceptance of maintenance responsibilities therefor, the Association shall be obligated to accept, assume and undertake maintenance responsibilities

pending resolution of the dispute, in accordance with the provisions set forth in the Article herein entitled "Dispute Mechanism."

Section 6.2. Powers of Board. The Board shall have all the rights and powers of the Association as they are delineated in Article 5 of this Declaration and as are further provided in the Bylaws of the Association.

Section 6.3. Manager. The Board may delegate its responsibility for the everyday management of the Project to a manager or management company, if it so chooses. Notwithstanding any of the foregoing, if a manager or management company is chosen to manage the Project, it will be responsive to the dictates of the Board.

Section 6.4. Extent of Declarant's Management and Control. Declarant will manage and control the Project until such time that the Board has its first meeting.

## ARTICLE 7 ASSESSMENTS

Section 7.1. Creation of Lien and Personal Obligation of Assessments. The Declarant, for each Condominium owned within the Project, hereby covenants, and each Owner of any Condominium by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as so directed by the Board of Directors. The annual and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the Condominium and shall be a continuing lien upon the Condominium against which each such assessment is made, the lien to be effective upon recordation of a Notice of Delinquent Assessment. Each such assessment, 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 when the assessment fell due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them.

Section 7.2. Purpose of Assessments. The annual assessments levied by the Association through the Board shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Project and for the maintenance of the Association Property and the recreational facilities thereon. The Association shall maintain an adequate reserve fund for maintenance, repairs and replacement of those common elements that must be replaced on a periodic basis, and such reserve shall be funded by annual assessments.

Section 7.3. Unequal Rate of Assessment. Both annual and special assessments, except as may otherwise be provided in Sections 7.5 and 15.3 of this Declaration, shall be levied at a variable rate for all Condominiums, based upon the square footage of floor area of the respective Units, as provided in the Association Budgets, and shall be collected on a monthly basis, or as otherwise determined by the Board of Directors.

Section 7.4. Maximum Annual Assessment. The Board of Directors shall abide by the hereinafter provisions for establishing the maximum annual assessments.

7.4.1 Until the first day of the fiscal year immediately following the conveyance of the first Condominium in a Phase to an Owner, or until the first day of the month following an earlier sale of the first Condominium in a new Phase of the Project, the maximum annual assessment for each Condominium in the Project shall be as provided for in the budget approved by the California Department of Real Estate and disclosed in the Final Subdivision Public Report, for the particular Phase of the Project in which such sale occurred, and any amendments thereto. Thus, notwithstanding the limitation on increases in the maximum annual assessments and related time periods contained in this Article, whenever a new Phase is annexed to the Properties, upon the first closing of a sale in such new Phase the amount of the maximum annual assessment for all Condominiums in the Properties will increase or decrease to the amount stated in the budget approved by the California Department of Real Estate for such new Phase.

7.4.2 From and after the first day of the fiscal year immediately following the conveyance of the first Condominium to an Owner, the maximum annual assessment may be increased effective the first day of each fiscal year by the Board of the Association without a vote of the membership, provided that (i) any such increase shall not be more than twenty percent (20%) of the previous year's most recent assessment level (including any increase in such assessment resulting from new Phases being annexed to the Properties during such year), and (ii) the Board of Directors has complied with Section 17.2 below with respect to that fiscal year, including, but not limited to, the preparation and distribution of a pro forma operating budget to all members of the Association as provided in Section 17.2 below, 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. For the purposes of this section "quorum" means more than fifty percent (50%) of the Owners of the Association. Such annual assessment shall continue in effect for the following twelve (12) calendar months, which period shall be deemed to be the assessment period.

7.4.3 From and after the first day of the fiscal year immediately following the conveyance of the first Condominium to an Owner, the maximum annual assessment may be increased by the Board in an amount greater than that provided for in Section 7.4.2 hereof for the next succeeding twelve (12) months and at the end of each such period for each succeeding period of twelve (12) months, provided that (i) any such change shall be approved by the vote or written consent of at least a majority of the voting power of the Members constituting a quorum, and (ii) provided that the Board of Directors has prepared and distributed a pro forma operating budget to all members of the Association as provided in Section 17.2 below. For the purposes of this Article 7, quorum means more than fifty percent (50%) of the Owners of the Association. The Association shall provide notice by first-class mail to each Owner 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.

7.4.4 Said maximum assessment may be reduced by maintenance or subsidy agreements approved by the California Department of Real Estate and reflected in the Final Subdivision Public Report.

7.4.5 After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessment at a lesser amount than provided for above.

Section 7.5. Special Assessments. In any fiscal year, the Board of Directors may not, without the vote or written consent of a majority of the voting power of the Members constituting a quorum, levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Association Property, including fixtures and personal property related thereto, or otherwise, which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. The above provisions with respect to special assessments do not apply in the case where a monetary penalty is imposed against a Member as a disciplinary measure imposed by the Association for the following reasons: (1) for failure of an Owner to comply with this Declaration, or the Bylaws or Rules and Regulations of the Association, or (2) as a means of reimbursing the Association for costs incurred by the Association in the mitigation, remediation and/or repair of damages to Association Property and facilities for which the Owner is allegedly responsible, or (3) to bring an Owner or its Condominium into compliance with provisions of this Declaration or the Bylaws or Rules and Regulations of the Association. The Association shall provide notice by first-class mail to each Owner 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 7.6. Notice and Quorum for Actions Regarding Assessments. Any action authorized under Sections 7.4.3 and 7.5 shall be taken at a meeting duly called for that purpose, written notice of which shall be sent to all Members not less than ten (10) days nor more than ninety (90) days in advance of the meeting. If the proposed action is favored by a majority of the votes cast at such meeting, but such vote is less than the requisite percent for passage, Members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by the Board of Directors not later than thirty (30) days from the date of such meeting.

Section 7.7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Condominiums in a Phase covered by this Declaration on the first day of the month following the conveyance of the first Condominium in such Phase by Declarant to an individual Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Condominium at least thirty (30) days in advance of each annual assessment period, and such amount is subject to change upon closing of the sale of the first Condominium within any newly annexed Phase in accordance with the approved budget for such Phase. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. 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.

Notwithstanding any other provision of this Declaration, conveyance of a Unit which is being used by Declarant for model home, sales office, design center, construction office or similar purposes (any of which uses are referred to herein as "Model Home") shall not commence the annual assessments against such Unit or the other Units within the same Phase of development until discontinuance of such use of such Unit as a Model Home, or conveyance of any other Unit in such Phase not being used as a Model Home to a member of the general public, whichever occurs first. During the period of time commencing on the first day of the calendar month following the sale of a Unit being used by Declarant as a Model Home, and ending on the date annual assessments commence against such Unit, Declarant shall be responsible for the maintenance of all portions of such Phase of development in which such Model Home Unit is located.

Section 7.8. Assessment Limitation Not Applicable. The limitation on percentage increases of annual assessments shall not limit assessment increases by the Board for the following emergency situations:

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

(b) An extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible where a threat to personal safety on the property is discovered.

(c) An extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro-forma operating budget pursuant to Article 17 hereof. However, prior to the imposition or collection of an assessment under this subparagraph (c), 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 resolutions shall be distributed to the members with the notice of assessment.

Section 7.9. Association Statement at Transfer of Title. At the request of any Owner transferring title to such Owner's Condominium, the Association shall provide (i) a true statement in writing from an authorized representative of the Association as to the amount of the Association's current regular and special assessments and fees, as well as any assessments levied upon the Owner's Condominium which are unpaid on the date of the statement, and (ii) any change in the Association's current regular and special assessments and fees which have been approved by the Association's Board of Directors, but have not become due and payable as of the date disclosure is provided pursuant to this Section.



**ARTICLE 8**  
**EFFECT OF NON-PAYMENT OF ASSESSMENTS**  
**REMEDIES OF THE ASSOCIATION**

Section 8.1. Assessment As Debt; Late Charges. Any assessment made in accordance with this Declaration shall be a debt of the Owner of a Condominium from the time the assessment is levied. With respect to each assessment not received by the Association within fifteen (15) days after its due date, the Board may, at its election, require the Owner to pay a late charge in a sum to be determined by the Board, but not to exceed ten percent (10%) or Ten Dollars (\$10.00), whichever is greater. A late charge may not be imposed more than once on any delinquent assessment, but it shall not eliminate or supersede any charges imposed on prior delinquent assessments. If any such assessment is not paid within thirty (30) days after the date said assessment is due, the assessment shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay same, and in addition thereto or in lieu thereof, after the expiration of thirty (30) days following recordation thereof, may foreclose the lien provided herein below against the Condominium.

Section 8.2. Delinquent Assessments. Any assessment not received by the Association within fifteen (15) days after the due date shall be delinquent. Before the Association may place a lien upon the Condominium of an Owner as provided herein, the Association shall notify such Owner in writing by certified mail of the fee and penalty procedures of the Association, provide an itemized statement which indicates the principal amount owed, any late charges and the method of calculation, any attorney's fees, and the collection practices used by the Association, including the right of the Association to the reasonable costs of collection. The amount of any such delinquent assessment or installment, together with any accompanying late charges, interest, costs (including reasonable attorneys' fees), and penalties, as provided for in this Declaration, shall be and become a lien on the Condominium against which the assessment is levied when the Association causes to be recorded a Notice of Delinquent Assessment ("Notice") in the office of the County Recorder of the County in which the Condominium is located. The Notice shall describe the amount of such delinquent assessment or installment and such other charges thereon as may be authorized by this Declaration, a legal description of the Condominium against which the same has been assessed, the name of the Owner, and, if the lien is to be enforced by the power of sale under nonjudicial foreclosure proceedings, the name and address of the trustee authorized by the Association to enforce the lien by sale. Such Notice shall be signed by the president or vice president, and the secretary or assistant secretary of the Association or any employee or agent of the Association authorized to do so by the Board and shall be mailed in the manner set forth in Civil Code Section 2924b to all record owners of the Owner's interest in the Condominium no later than ten (10) calendar days after recordation. Unless the Board considers the immediate recording of the Notice to be in the best interests of the Association, the Notice shall not be recorded until fifteen (15) calendar days after the Association has delivered the above-described required written notice of default. Any payments received by the Association on account of such a debt shall first be applied to the principal amount owed, and only after the principal amount owed is paid in full shall such payments be applied to interest or collection expenses. If the delinquent assessment or installment and related charges are paid or otherwise satisfied, the Association shall record a notice of satisfaction and release of lien.

Section 8.3. Enforcement of Assessment Lien. The Board may, after the expiration of thirty (30) days following recordation thereof, enforce any assessment lien provided for in Section 8.2 by filing an action for judicial foreclosure or, if the Notice contained the name and address of the trustee authorized by the Association to enforce the lien by nonjudicial foreclosure, by recording a notice of default in the form described in California Civil Code Section 2924c(b)(1) to commence a nonjudicial foreclosure. Any nonjudicial foreclosure shall be conducted in accordance with the requirements of California Civil Code Sections 2924, 2924b, 2924c, 2924f, 2924g and 2924h that apply to nonjudicial foreclosures of Mortgages or deeds of trust. The sale shall be conducted by the trustee named in the Notice of Delinquent Assessment or by a trustee substituted in accordance with the provisions of the California Civil Code. The Association may bid on the Condominium at the sale, and may hold, lease, mortgage, and convey the acquired Condominium. If the default is cured before the sale, or before completing a judicial foreclosure, including payment of all costs and expenses incurred by the Association, the Association shall record a Notice of Satisfaction and Release of Lien, and on receipt of a written request by the Owner, a Notice of Rescission of the Declaration of Default and Demand for Sale. Suit to recover a money judgment for unpaid assessments, rent and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same.

Section 8.4. Monetary Penalty. A monetary penalty imposed by the Association as a disciplinary measure for (a) failure of an Owner to comply with this Declaration, and the Articles, Bylaws or Rules and Regulations of the Association, or (b) as a means of reimbursing the Association for costs incurred by the Association in the mitigation, remediation and/or repair of damages to the Association Property and facilities for which the Owner is allegedly responsible, or (c) to bring an Owner or its Condominium into compliance with this Declaration, and the Articles, Bylaws or Rules and Regulations of the Association shall not be treated as an assessment which may become a lien against the Owner's Condominium enforceable as provided in Section 1356 of the California Civil Code. This paragraph shall not apply to charges imposed against an Owner which are reasonable late payment penalties for delinquent assessments nor charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent assessments.

Section 8.5. Power to Bring Actions; Arbitration. In addition to the lien power described hereinabove, each Owner vests in the Association or its assigns, the right and power to bring all actions at law against such Owner or other Owners for the collection of delinquent assessments. In lieu of bringing an action at law to collect delinquent assessments, the Association may submit the matter to arbitration pursuant to the Rules of the American Arbitration Association. The decision of the arbitrator on such delinquent assessment shall be binding on both the Association and the delinquent Owner and may be enforced in any court of competent jurisdiction. The fee to initiate such arbitration shall be paid by the Association and shall be recoverable as part of the arbitration award, in addition to the late charges and interest on the delinquent assessment as provided above.

## ARTICLE 9 PARTY WALLS

Section 9.1. Rights and Duties. The rights and duties of the Owners of Condominiums with respect to party walls shall be governed by the following:

9.1.1 Each wall which is constructed as a part of the original construction and located between separate Condominiums, shall constitute a party wall, and with respect to such wall, each of the adjoining Owners shall jointly assume the burdens and share the cost of reasonable maintenance and repair in proportion to such use. Each Condominium shall be subject to an easement for that portion of the party wall which is necessary for support, and each such Owner shall be liable for all property damage due to negligence or willful acts or omissions in connection with such wall.

9.1.2 If any such party wall is damaged or destroyed through the act of one of the adjoining Owners, any member of such adjoining Owner's family, a guest, agent (whether or not such act is negligent or otherwise culpable) so as to deprive the other adjoining Owner of the full use and enjoyment of such wall, the Owner responsible for the damage or destruction thereon shall be required to make any and all necessary repairs thereto, without cost to the adjoining Owner.

9.1.3 If any such party wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, such Owner's agents, or family (including, but not limited to, earthquake damage), each adjoining Owner shall be required to make any and all necessary repairs thereto at their joint and equal expense.

9.1.4 Any Owner proposing to modify, make additions to, or rebuild such Owner's Unit in any manner which requires the extension or alteration of any party wall, shall be required to first obtain the written consent of the adjoining Owner. Such Owner must also comply with all dictates of this Declaration which may be relevant.

9.1.5 The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

9.1.6 In the event of a dispute between Owners with respect to the repair of a party wall or with respect to the sharing of the cost thereof, the matter shall be submitted to the Board of Directors for resolution upon the written request of either Owner. Any decision of the Board of Directors shall be final and conclusive upon the parties.

## ARTICLE 10 ARCHITECTURAL CONTROL COMMITTEE

Section 10.1. Submissions and Approvals Required. No building, fence, wall, landscaping or other structure (collectively "Improvement") shall be commenced, erected or maintained upon the Project, nor shall any exterior addition, change or alteration therein, be made until full,

complete and legible plans and specifications, in form acceptable to the Board or the Architectural Control Committee, showing the nature, kind, shape, height, materials and location of the same shall have been submitted either by personal delivery or by certified mail, return receipt requested, to and approved in writing by the architectural committee ("Committee"). The Committee may designate an agent (i.e. an architect) for the purpose of assisting in the review of such location, plans and specifications, or other requests and may charge the Owner making a submission its reasonable costs of such agent's review. Approval shall be by majority vote of the Committee. In making its decisions hereunder, the Architectural Control Committee shall, among other matters, consider the following: (a) whether the proposed improvements will impair the structural integrity of the Project, or (b) whether the proposed improvements will adversely impact or increase the costs of operating the heating, ventilating and/or air conditioning system or the plumbing, electrical or mechanical systems in the Project, or increase the cost of insurance for the Project, or (c) whether the proposed improvements are in compliance with the City's current acoustical requirements for residential condominium projects, or will adversely impact the sound insulation or sound transmissions within the Project. All questions of interpretation or construction of any of the terms or conditions herein or in the Architectural Guidelines shall be resolved by the Architectural Control Committee, and its decision shall be final, binding and conclusive on all of the parties affected. In the event said Committee or its designated representatives, fails to approve or disapprove such design and location within ninety (90) days after said complete plans and specifications with all required documents in acceptable form have been submitted to it, approval will not be required, and this Article will be deemed to have been fully complied with. Each Owner shall be responsible for obtaining all necessary approvals or permits from applicable governmental entities of agencies and shall comply with all laws, codes and regulations concerning the construction of any such Improvement.

Section 10.2. Appointment of Committee. The Committee shall be established to control structural and landscaping architecture and design within the Project and shall consist of not less than three (3) members nor more than five (5) members. Declarant may appoint all of the original members of the Committee and all replacements until the first anniversary of the original issuance of the Final Subdivision Public Report for the Project. Thereafter, Declarant may appoint a majority of the members of the Committee until ninety percent (90%) of the Units in the Project have been sold or until the fifth anniversary of the original issuance of the Final Subdivision Public Report for the Project, whichever first occurs. After one year from the date of the original issuance of the Final Subdivision Public Report for the Project, the Board of Directors of the Association shall have the power to appoint one member to the Committee until ninety percent (90%) of the Units in the Project have been sold or until the fifth (5th) anniversary of the original issuance of the Final Subdivision Public Report for the Project, whichever first occurs. Thereafter, the Board of Directors of the Association shall have the power to appoint all of the members of the Committee. Members appointed to the Committee need not be Members of the Association.

Section 10.3. Sound Transmission Control. Each Owner must ensure that any changes to the Unit (especially plumbing and flooring) shall not have the effect of increasing the level of noise or sounds that can be heard outside of the Unit above a sound level (impact and airborne sounds) of 55 dB(A).

10.3.1 Floors. All changes to floors separating Units (tile, hardwood, stone, carpet, etc.) must provide code-compliant sound control properties for airborne and impact sound insulation. In addition, the floor/ceiling assemblies must satisfy the higher sound control requirements established for the Project as set forth herein. The impact sound insulation rating of the floor ceiling assemblies after installation must be Field Impact Insulation Class (FIIC) 50 or higher. Airborne sound isolation rating thereof must be Noise Isolation Class (NIC) 52 or higher.

10.3.2 Walls. Walls must provide an airborne sound insulation sufficient to meet a Noise Isolation Class (NIC) rating of 52.

10.3.3 Plumbing. All plumbing must be properly insulated for sound and isolated from studs, joints, and penetrations.

10.3.4 Penetrations. Penetrations or openings for piping, electrical devices, recessed cabinets, bathtubs, soffits or heating, ventilating or exhaust ducts shall be sealed, lined, insulated, or otherwise treated to maintain the required sound insulation ratings.

10.3.5 Required Testing. All alterations to walls and floors must be field tested under the supervision of a person experienced in the field of acoustical testing to determine compliance with the minimum sound control standards set forth herein. Non-compliant systems must be promptly brought into conformance or removed and replaced with approved materials/assemblies.

Section 10.4. Initial Construction By Declarant. The provisions of this Article shall not apply to the initial construction by Declarant and neither the Board nor any committee appointed by the Board shall have any right to approve or disapprove such initial construction by Declarant.

Section 10.5. Non-Liability of Committee Members. Neither Declarant, the Association, the Board or the Committee, or the members or designated representatives thereof, shall be liable for damages to any Owner submitting plans or specifications to them for approval, or to any Owner in the Project affected by this Declaration by reason of mistake in judgment, negligence or nonfeasance, unless due to willful misconduct or bad faith of the Committee. The Committee's approval or disapproval of a submission shall be based solely on the considerations set forth in this Article, and in such rules and regulations as may be promulgated by the Committee, and the 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 and conformance with building or other codes.

## ARTICLE 11 RESPONSIBILITIES OF THE ASSOCIATION WITH SPECIFIC REFERENCE TO THE ASSOCIATION PROPERTY

Section 11.1. Association Maintenance. The Association shall be responsible for the maintenance and preservation of the exterior appearance of the Project.

**Section 11.2. Owner Maintenance.** Notwithstanding anything to the contrary, the Association shall not be responsible for the exterior maintenance or preservation of the following items: glass surfaces, repairs or replacements arising out of or caused by the willful or negligent act of an Owner, such Owner's family, guests, or invitees, damage caused by flood, earthquake or other Acts of God. Such excluded items shall be the responsibility of each Owner. If an Owner should fail to maintain or make the necessary repairs or replacements which are the responsibility of such Owner, the Association shall have the right, but not the obligation, upon a vote of a majority of the Board of Directors, after not less than thirty (30) days' notice to the Owner, to enter the Condominium and provide such maintenance or make such repairs or replacements as are necessary, the cost thereof to be added to the assessments chargeable to that Condominium.

**Section 11.3. Right to Enter.** The agents or employees of the Association shall have the right to enter upon any Unit or Exclusive Use Association Property where necessary in connection with construction, maintenance or repair for the benefit of the Common Property or the Owners in common.

## ARTICLE 12 USE RESTRICTIONS

**Section 12.1. Use Restrictions.** In addition to all other covenants contained herein, the use and enjoyment of the Project and each Condominium therein shall be subject to the following:

12.1.1 No Condominium shall be occupied and used except for residential purposes by the Owners, their tenants, and social guests, and no trade or business shall be conducted therein, except that Declarant, its successors or assigns, may use any Unit or Units in the Project owned by Declarant for a model home site or sites and display and sales office until the last Unit is sold by Declarant. No tent, shack, trailer, garage, outbuilding or structure of a temporary character shall be used at any time as a residence, either temporarily or permanently.

12.1.2 No part of the Project shall ever be used or caused to be used directly, or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other such non-residential purposes, except as is so provided in Section 20.2. However, the provisions of this Section shall not preclude professional and administrative occupations within the Project, or other reasonable business activity, which have no signs or other external evidence thereof, for so long as such occupations are in conformance with all applicable governmental ordinances, are merely incidental to the use of the Unit as a residential home, and do not in any manner disturb other occupants or generate pedestrian traffic, deliveries or other nuisance.

12.1.3 No sign or billboard of any kind shall be displayed by any Owner on any portion of the Project or Condominium, except one sign of reasonable size, posted in the window of a Condominium Unit, advertising that the particular Condominium is for sale or rent, or except by Declarant as so provided in Section 20.2.

12.1.4 No noxious or offensive activity shall be carried on in any Condominium or any part of the Project, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners of such Owner's respective dwelling Unit, or which shall in any way increase the rate of insurance.

12.1.5 No trailer, camper, recreational vehicle, van, boat or similar equipment shall be permitted to remain upon the Project unless placed or maintained within an assigned parking space. No inoperative or unsightly vehicles shall be allowed in the Project. Moving vans, delivery trucks and other similar vehicles shall be permitted upon the Association Property in the course of their normal business operations.

12.1.6 An Owner may keep and maintain in such Owner's Unit domesticated pets such as dogs, cats or other usual and ordinary household pets, not to exceed two (2) in number and provided that such pets shall not be allowed in the Association Property except as may be permitted by the Rules and Regulations which may be promulgated from time to time by the Board. Except as hereinabove provided, no animals, livestock, birds or poultry shall be brought within the Project or kept in any Unit thereof. Owners keeping pets shall be accountable to the other Owners for the acts of such pets, and should any Owner be unable to control barking or other noise or acts of such Owner's pets which disturb such Owner's neighbors, such Owner shall be required to remove such pet from the Project. Each owner of a pet shall forthwith clean up and remove any animal waste such pet may deposit on the Association Property or the property of another Owner. No dog will be allowed on the Association Property without being supervised and on a leash. Any Owner (including such Owner's family, guests and invitees) who maintains any pet, animal, reptile, livestock or other living creature of any kind, within the Project, whether in compliance with this Declaration and the Rules and Regulations 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 its property, to the Association Property, or to the Members, their family, guests or invitees, or their property.

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

12.1.8 All rubbish, trash and garbage shall be regularly removed from the Project, and shall not be allowed to accumulate thereon. All clotheslines, refuse containers, wood-piles, storage areas, machinery and equipment shall be prohibited unless obscured from view of adjoining Condominiums and streets.

12.1.9 No alteration to or modification of the radio and/or television antenna system, as developed by Declarant, shall be permitted and no Owner may be permitted to construct and/or use and operate such Owner's own external radio and/or television antenna or satellite dish.

Owners are prohibited from installing any antenna on the exterior of a residence for any purpose, except for an "Authorized Antenna" which may be installed so long as the proposed location for such installation is reviewed and approved by the Architectural Control Committee prior to its installation in order to ensure that the visibility of the Authorized Antenna is minimized with respect to other Owners. The Architectural Control Committee may require that the location of the Authorized Antenna be moved, and the Board may impose additional restrictions on installation or use of an Authorized Antenna, so long as such review by the Architectural Control Committee, or such additional restrictions, do not (a) unreasonably delay or prevent installation, maintenance or use of an Authorized Antenna, (b) unreasonably increase the cost of installation, maintenance or use of an Authorized Antenna, or (c) preclude reception of an acceptable quality signal. The Board 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 Board. The Board may also prohibit the installation of an Authorized Antenna on property to which an Owner does not hold fee title or is not entitled to exclusively use under this Declaration, or may allow an Owner to install an antenna other than an Authorized Antenna subject to the Architectural Guidelines and review and approval by the Architectural Control Committee. An "Authorized Antenna" means an antenna that is (a) designed to receive direct broadcast satellite service, including direct-to-home satellite service and that is one meter or less in diameter, and, (b) that is designed to receive video programming service, including multichannel multipoint distribution service, instructional television fixed service, and local multipoint distribution service, and that is one meter or less in diameter, or (c) an antenna that is designed to receive television broadcast signals. Each Owner may maintain individual radio or television antennae systems if located entirely within such Owner's residence and if such system is not visible from other Condominiums or the Association Property, and provided that such system does not interfere with radio and television reception of other Owners within the Project.

12.1.10 Hard Surface Flooring. No Owner shall install any hard surface flooring (including without limitation linoleum, tile, stone, slate or hardwood floors) or replace any flooring with any hard surface flooring, in any Unit on the second (2<sup>nd</sup>) or third (3<sup>rd</sup>) floors without the prior written approval of the Architectural Control Committee. As a condition to approving the installation or replacement of any hard surface flooring, the Owner shall submit to the Architectural Control Committee a construction drawing, plans and specifications, clearly indicating the type of flooring material to be installed and the underlayment material to be provided to mitigate against impact noises such as footfalls and transmission of music and other sounds. The submission must clearly identify all materials, their composition and thickness, and include a report by an accredited acoustical testing laboratory showing that a test specimen essentially identical to the proposed assembly achieved a Sound Transmission Class (STC) rating of not less than STC-54 and an Impact Insulation Class (IIC) rating of not less than IIC-52. Following approval and installation of the new flooring assembly, a field test conducted under the supervision of a person experienced in the field of acoustical testing shall be performed in each room in which the flooring is installed to determine compliance with the Project requirements of Noise Isolation Class (NIC) 52 or higher and Field Impact Insulation Class (FIIC) 50 or higher. The required field test shall be completed within thirty (30) days after substantial completion of the work, subject to any extensions granted by the Architectural Control Committee or the Board. Non-



compliant systems must be promptly brought into conformance or removed and replaced with approved materials/assemblies.

12.1.11 Sound and Vibrations. No Owner shall attach to the walls or ceilings of any Unit any fixtures or equipment that will cause sounds, vibrations or noise or unreasonable annoyance to the Owners of the other Units or to the Association Property.

12.1.12 Conveyance of a substantial number of the Units is essential to the establishment and welfare of said Project as a residential community. In order that all work necessary to complete the Project and to establish a substantially occupied residential community proceed as rapidly as possible, nothing in this Declaration shall be understood or construed to:

(a) prevent Declarant, its contractor or subcontractors, from doing work on said Project or any part thereof whenever it determines to be reasonably necessary or advisable in connection with the completion of said work; or

(b) prevent Declarant, or its representatives from erecting, constructing and maintaining on any part or parts of said property owned or controlled by Declarant, its contractors, or subcontractors, such structures as may be reasonably necessary for the conduct of its business of completing said work and establishing said property as a residential community and disposing of the same by sale, lease, or otherwise.

12.1.13 Declarant, in exercising its rights hereunder shall not unreasonably interfere with the Members' use of the Association Property.

### ARTICLE 13 SCOPE OF ENFORCEMENT

Section 13.1. Enforcement. The Association or any Owner, shall have the right, but not the obligation, to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration or any amendment thereto; provided, however, that with respect to assessment liens, the Association shall have the exclusive right to the enforcement thereof. Failure, by the Association or any Owner, to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The limitations, restrictions, conditions and covenants set forth in this Declaration constitute a general scheme for (1) the maintenance, protection and enhancement of the value of the Project; and (2) the benefit of all Owners. Said limitations, restrictions, conditions and covenants are and shall be covenants running with the land or equitable servitudes, as the case may be. Each remedy provided for in this Declaration shall be cumulative and not exclusive. The result of or condition caused by any violation of any of the provisions of this Declaration is and shall be a nuisance, and every remedy in law or equity now or hereafter available against public or private nuisance may be exercised by any person affected thereby. Any of the foregoing to the contrary notwithstanding, no action to enforce this Declaration shall be instituted unless and until a written notice of such breach setting forth the facts of such breach has been delivered by certified mail to the Owner of

such interest. In the event the Association or any Owner or Owners, should commence litigation to enforce any of the provisions of this Declaration, that party, if such party should prevail, shall be entitled to have judgment against and recover from any defendant in such litigation, such attorneys' fees as the court may adjudge reasonable and proper.

## ARTICLE 14 INSURANCE

Section 14.1. Liability Insurance. A general public liability and property damage insurance policy covering all Association Property shall be purchased by the Board of Directors as promptly as possible following its election and shall be maintained in force at all times, the premium thereon to be paid out of the monies collected from the assessments. The minimum amount of coverage shall be Three Million Dollars (\$3,000,000) combined single limit liability for bodily injury to any one person, or property damage, for any one occurrence. The policy shall name all Owners as insureds, including Declarant, during such time as Declarant shall remain the Owner of one or more Condominiums. The manager, if any, shall also be a named insured on such policy, during such time as such manager's agency shall continue. The policy shall insure against injury or damage occurring in the Association Property and, if possible, within the individual Units. The insurance shall also contain a cross-liability endorsement to cover negligent injury by one Owner to another, if reasonably available.

The Association shall prepare and distribute to all Members a summary of the Association's property, general liability, and earthquake and flood insurance policies, if any, which shall be distributed within sixty (60) days preceding the beginning of the Association's fiscal year, that includes all of the following information about each policy: (a) the name of the insurer, (b) the type of insurance, (c) the policy limits of the insurance, and (d) the amount of deductibles, if any. The Association shall, as soon as reasonably practical, notify the Members by first-class mail if any of the policies described in this paragraph have lapsed, been canceled, and are not immediately renewed, restored or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible, for any of those policies. If the Association receives any notice of nonrenewal of a policy described in this paragraph, the Association shall immediately notify the Members if replacement coverage will not be in effect by the date the existing coverage will lapse. To the extent that any of the information required to be disclosed pursuant to this paragraph is specified in the insurance policy declaration page, the Association may meet its obligation to disclose that information by making copies of that page and distributing it to all Members. The summary distributed pursuant to this paragraph shall contain in at least 10-point boldface type, the statement required by Civil Code Section 1365(e)(4).

Section 14.2. Property Insurance. A "Special Form Causes of Loss" property insurance policy (commonly referred to as all-risk or special perils coverage shall also be purchased by the Board as promptly as possible following its election and shall, thereafter, be maintained in force at all times; the premium thereon to be paid out of the monies collected from the assessments. Said insurance shall insure the full insurable value of all improvements within the Project. Said policy shall contain an earthquake damage endorsement having the minimum deductible amount.

available at a cost deemed to be in the best interests of the Members. Such policy shall contain replacement cost endorsements and may also contain a stipulated amount clause and determinable cash adjustment clause or similar clause to permit cash settlement covering full value of the improvements in the event of partial destruction and decision not to rebuild. The policy shall be in such amounts as shall be determined from time to time by the Board of Directors. The policy shall name as insureds, all Owners and Declarant, so long as Declarant is the Owner of any Condominiums in the Project, and all Mortgagees of record, as their respective interests may appear.

14.2.1 Said policy shall cover all Units, including but not limited to, insurance for such property as wall and floor coverings, cupboards, cabinets, fixtures and built-in appliances installed by Declarant. Personal property of an Owner and additional fixtures added by an Owner should be insured separately by that Owner.

Section 14.3. Individual Coverage. If available, underlying coverage for individual Units shall be written as part of, or in conjunction with, said master policy where necessary to protect individual lenders. If such coverage is not available, each Owner shall purchase, at such Owner's own expense, and maintain fire and hazard insurance coverage as may be required by such Owner's individual lender. Any such underlying coverage shall contain a replacement cost endorsement, and to the extent available, such other endorsements as may be a part of the master policy. Such insurance shall also contain a loss-payable endorsement to the Mortgagees of individual Units, as their interests shall appear.

Section 14.4. Board as Trustee. All insurance proceeds payable under Sections 14.2 and 14.3 of this Article, and subject to the rights of Mortgagees under Section 14.8 hereof, shall be paid to the Board to be held and expended for the benefit of Owners, Mortgagees and others, as their respective interests shall appear, and be paid out in accordance with this Article. In the event repair or reconstruction is authorized, the Board shall have the duty to contract for such work, as provided in Article 15 hereof.

Section 14.5. Other Insurance. The Board may purchase and maintain in force at all times demolition insurance in adequate amounts to cover demolition in the event of destruction and a decision not to rebuild. The premium therefor shall be paid out of the monies collected from the assessments. Such policy, if purchased, shall contain a determinable demolition clause or similar clause, to allow for the coverage of the cost of demolition in the event of destruction and a decision not to rebuild. The Board of Directors shall also purchase and maintain worker's compensation insurance to the extent that the same shall be required by law for employees or Owners. The Board of Directors may also purchase and maintain insurance on commonly owned personal property and such other insurance as it deems necessary, the premium thereof to be paid out of the monies collected from the assessments, including, but not limited to, umbrella or excess liability coverage.

Section 14.6. Fidelity Insurance. The Board of Directors shall maintain the fidelity bond or insurance specified in Section 5.2 hereof. The premium on such bond shall be paid by the Association.

Section 14.7. Owner's Other Insurance. An Owner may carry such additional personal liability and property damage insurance as such Owner may desire respecting such Owner's individual Unit and improvements installed by such Owner in such Owner's Unit or the Exclusive Use Association Property, if any.

Section 14.8. Right of Mortgagees. With respect to insurance coverage under Sections 14.2 and 14.3 hereof, any Mortgagee of record shall have the option to apply insurance proceeds payable to such Mortgagee to reduce the obligation secured by a Mortgage.

Section 14.9. Annual Review. The Board 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 Sections 14.1 and 14.2 above. The Board shall obtain a current appraisal of the full replacement value of the improvements in the Project except for foundations and footings, without deduction for depreciation, by a qualified independent insurance appraiser, prior to each such annual review.

## ARTICLE 15 DESTRUCTION OF IMPROVEMENTS

Section 15.1. Proceeds Greater Than Eighty-Five Percent (85%) of Cost to Repair. In the event of total or partial destruction of the improvements in the Project, and if the available proceeds of the insurance carried pursuant to Article 14, are sufficient to cover not less than eighty-five percent (85%) of the cost of repair or reconstruction thereof, the same shall be promptly repaired and rebuilt, unless, within ninety (90) days from the date of such destruction, seventy-five percent (75%) of each class of membership present and entitled to vote in person or by proxy, at a duly constituted meeting, determine that such reconstruction shall not take place. In the event such destruction affects one or more, but not all, of the residential buildings in the Project, the Owners entitled to vote on a separate proposition regarding reconstruction of such buildings shall be only those Owners owning the Units in such affected buildings. If the destruction affects the Association Property, all Owners shall be entitled to vote on the separate propositions regarding reconstruction and levy of special assessments with respect thereto. If reconstruction is to take place, the Board of Directors shall be required to execute, acknowledge, file and record, not later than one hundred twenty (120) days from the date of said destruction, a certificate declaring the intention of the Owners to rebuild.

Section 15.2. Proceeds Less Than Eighty-Five Percent (85%) of Cost to Repair. If the proceeds of such insurance are less than eighty-five percent (85%) of the cost of reconstruction, such reconstruction may, nevertheless, take place, if within ninety (90) days from the date of said destruction, sixty-six and two-thirds percent (66- 2/3%) of each class of membership elect to rebuild. As above, only the Owners of Units in the affected buildings shall be entitled to vote on such matter.

Section 15.3. Additional Contributions From Owners. If the Owners determine to rebuild, either pursuant to either of Sections 15.1 or 15.2, each Owner shall be obligated to contribute such funds as shall be necessary to pay such Owner's proportionate share of the cost of,

reconstruction over and above the insurance proceeds, and the proportionate share of each Owner shall be based upon the ratio of each Unit's "fair market value" to the "fair market value" of the entire Project, or, if applicable, the "fair market value" of the Units in the affected building(s). Only Owners of Units in the affected building(s) shall be subject to special assessment for such purposes. The "fair market value" in both instances, shall be determined by an independent appraiser. In the event of failure or refusal by any Owner to pay such Owner's proportionate share, after notice to such Owner, for a period of sixty (60) days from the due date thereof, the Board of Directors may levy a special assessment against such Owner, which may be enforced under the lien provisions contained in Article 8.

Section 15.4. Association To Contract For Rebuilding. If the Owners determine to rebuild, the Board of Directors shall obtain bids from at least two (2) reputable contractors and shall award construction work to the lowest bidder. The Board of Directors shall have the authority to enter into a written contract with said contractor for such reconstruction and the insurance proceeds held by the Board shall be disbursed to said contractor according to the terms of the agreement. It shall be the obligation of the Board to take all steps necessary to insure the commencement and completion of such reconstruction at the earliest possible date.

Section 15.5. Insufficient Vote to Rebuild. If the vote of the Owners shall be insufficient to authorize rebuilding, pursuant to either of Sections 15.1 or 15.2 above:

15.5.1 Subject to the rights of Mortgagees set forth in Section 14.8, any insurance proceeds available for such rebuilding shall be distributed among the Owners and their individual Mortgagees by the Board, as their respective interests may appear. The proportionate interests of each Owner in said proceeds in relation to other Owners shall be based upon a ratio of each Unit's "fair market value," just prior to destruction. "Fair market value" is to be determined by an independent appraiser.

15.5.2 The Board shall have the duty, within one hundred twenty (120) days of the date of such loss, to execute, acknowledge and record a certificate setting forth the determination of the Owners not to rebuild, and shall promptly cause to be prepared and filed such revised maps and other documents as may be necessary to show the conversion of the Project to the status of unimproved land or to show the elimination of one or more of the Units, as a result of such destruction.

Section 15.6. Revival of Right to Partition. Upon recordation of such certificate, referred to in Section 15.5.2 above, the right of any Owner to partition such Owner's Condominium through legal action shall forthwith revive.

Section 15.7. Arbitration. In the event of a dispute among the Owners, with respect to the provisions of this Article, any Owner may cause the same to be referred to arbitration in accordance with the then prevailing rules of the American Arbitration Association. In the event of arbitration, notice thereof shall be given to the members of the Board and all Owners as promptly as possible after referral to arbitration is made, giving all Owners an opportunity to appear in such arbitration proceedings. The decision of such arbitrator in this matter shall be

final and conclusive upon all Owners. The arbitrator may include in its decision an award for costs and/or attorneys' fees against any one or more of the parties to the arbitration.

## ARTICLE 16 CONDEMNATION

Section 16.1. Condemnation. In the event that an action for condemnation is proposed or commenced by any governmental body having the right of eminent domain, the following provisions shall apply:

16.1.1 If such action or proposed action is for the condemnation of the entire Project, upon the consent of seventy-five percent (75%) of the Owners, the Project may be sold to such governmental body prior to judgment and the proceeds of such sale shall be distributed to the Owners and their Mortgagees as their respective interests may appear, based upon a ratio of each Unit's "fair market value" to the fair market value of the Project as a whole. ("Fair market value," to be determined by an independent appraiser.) Lacking such consent, the compensation for the taking shall be distributed in like manner, unless said judgment shall, by its terms, apportion such compensation among the individual Owners.

16.1.2 If such action or proposed action is for the condemnation of only a portion of the Common Property, the compensation for the taking shall be distributed to the Owners, as provided in Section 16.1.1 above.

## ARTICLE 17 ACCOUNTINGS

Section 17.1. Books, Records and Minutes. The Association shall maintain books of account of all its receipts and expenditures and minutes of its proceedings. The Association shall maintain books of account of all its receipts and expenditures and minutes of its proceedings. The Association shall make the accounting books and records and the minutes of proceedings of the Association available for inspection and copying by a Member, or the Member's designated representative, at the Association's business office within the Project or a place agreed upon by the Association and the Member. If the Association and the Member cannot agree upon a place for inspection, or if the Member so requests in writing, the Association may provide copies of the books, records, and minutes by first-class mail within ten (10) days of receiving the Member's request. The Association may bill the Member for the actual cost of copying and mailing, provided the Association notifies the Member of the costs before sending the copies. The Association may withhold or redact information from the books, records, and minutes for any of the following reasons:

(a) The release of the information is likely to lead to the unauthorized use of another person's personal identifying information to obtain credit, goods, services, money, or property; or

(b) The release of the information is likely to lead to fraud in connection with the Association; or

(c) The information is privileged under law.

Except as provided by attorney-client privilege, the Association may not withhold or redact information concerning the compensation paid to employees, vendors, or contractors. Compensation information for individual employees shall be set forth by job classification or title, not by any personal information of the employee. The accounting books, records, and minutes, and any information from them may not be sold, used for commercial purposes, or used for any other purpose not reasonably related to a Member's interest as a Member.

17.1.1 Commencing not later than ninety (90) days after the close of escrow for the sale of the first Unit, copies of the documents listed below, as soon as readily obtainable, shall be delivered by Declarant to the Board at the office of the Association, or at such other place as the Board shall prescribe. The obligation to deliver the listed documents shall apply to any documents obtained by Declarant no matter when obtained, provided, however, that such obligation shall terminate upon the earlier of (a) the conveyance of the last Unit covered by a subdivision public report or (b) three years after the expiration of the most recent public report, on the Project:

- (1) The recorded subdivision map or maps for the Project.
- (2) The recorded Condominium Plan, if any, and all amendments thereto.
- (3) The deeds and easements executed by Declarant conveying the Association Property or other interest to the Association, to the extent applicable.
- (4) The recorded Declaration, including all amendments and annexations thereto.
- (5) The Association's bylaws and all amendments thereto.
- (6) The Association's filed Articles of Incorporation, if any, and all amendments thereto.
- (7) All Architectural Guidelines and all other rules regulating the use of an Owner's interest in the Project or use of the Association Property which have been promulgated by the Association.
- (8) The plans approved by the local agency or county where the Project is located for the construction or improvement of facilities that the Association is obligated to maintain or repair; provided, however, that the plans need not be as-built plans and that the plans may bear appropriate restrictions on their commercial exploitation or use and may contain appropriate disclaimers regarding their accuracy.

(9) All notice of completion certificates issued for Association Property improvements (other than residential structures).

(10) Any bond or other security device in which the Association is the beneficiary.

(11) Any written warranty being transferred to the Association for Association Property equipment, fixtures or improvements.

(12) Any insurance policy procured for the benefit of the Association, the Board or the Association Property.

(13) Any lease or contract to which the Association is a party.

(14) The membership register, including mailing addresses and telephone numbers, books of account and minutes of meetings of the Members, of the Board, and of committees of the Board.

(15) Any instrument referred to in Business and Professions Code Section 11018.6(d) but not described above which establishes or defines common, mutual or reciprocal rights or responsibilities of Members.

17.1.2 Commencing not later than ninety (90) days after the annexation of additional Phases to the Project, copies of those documents listed above, which are applicable to that Phase, shall, as soon as readily obtainable, be delivered by Declarant to the Board at the office of the Association, or at such other place as the Board shall prescribe. The obligation to deliver the listed documents shall apply to any documents obtained by Declarant no matter when obtained, provided, however, that such obligation shall terminate upon the earlier of (a) the conveyance of the last Unit covered by a subdivision public report or (b) three years after the expiration of the most recent public report, on the Project.

#### Section 17.2. Budget.

17.2.1 Except as provided in Section 17.2.2, a pro forma operating statement ("Budget") for each fiscal year shall be distributed to each Owner not less than forty-five (45) days nor more than sixty (60) days before the beginning of the fiscal year. The Budget shall contain the following information:

(a) Estimated revenue and expenses of the Association for the upcoming fiscal year on an accrual basis.

(b) A summary of the Association's reserves based upon the most recent review or study conducted pursuant to Section 17.2.4 below, which shall be printed in bold type and include all of the following:



(i) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component within the Association Property;

(ii) As of the end of the fiscal year for which the study is prepared:

A. The current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain the major components within the Association Property;

B. The current amount of accumulated cash reserves actually set aside to repair, replace, restore or maintain major components within the Association Property;

(iii) The percentage that the amount determined for purposes of clause B. of subparagraph (ii) above is of the amount determined for purposes of clause A. of subparagraph (ii) above;

(c) A statement as to whether the Board of Directors of the Association has determined or anticipates that the levy of one or more special assessments will be required to repair, replace, or restore any major component within the Association Property or to provide adequate reserves therefor;

(d) A general statement setting forth the procedures used by the Board of Directors in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the Association Property and improvements thereon for which the Association is responsible.

17.2.2 In its sole discretion and in lieu of the procedure set forth in Section 17.2, the Board of Directors may elect to distribute a written summary of the Budget ("Summary") to all Owners not less than forty-five (45) days nor more than sixty (60) days before the beginning of the fiscal year. In addition to the Summary, the Board of Directors shall include a written notice, in at least 10-point bold type on the front page of the Summary, stating that: a) the Budget is available for review at a location within the Project or at the office of the management company for the Association; and b) upon the written request of an Owner, the Association shall mail one copy of the Budget to an Owner. Such Budget shall be mailed at the Association's expense by pre-paid first class mail and shall be delivered within five (5) days from the date of the receipt of such Owner's written request.

17.2.3 The summary of the Association's reserves disclosed pursuant to paragraph 17.2.1 shall not be admissible in evidence to show improper financial management of the Association, provided that other relevant and competent evidence of the financial condition of the Association is not made inadmissible by this provision.

17.2.4 At least once every three (3) years the Board of Directors shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the major components which the Association is obligated to repair, replace, restore, or maintain as part of a study of the reserve account requirements of the Project if the current replacement value of the major components within the Association Property which the Association is obligated to repair, replace, restore or maintain is equal to or greater than one-half (½) of the gross Budget of the Association which excludes the Association's reserve account for that period. The Board shall review this study annually and shall consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review. The study required hereunder shall at a minimum include:

(a) Identification of the major components within the Association Property which the Association is obligated to repair, replace, restore, or maintain which, as of the date of the study, have a remaining useful life of less than thirty (30) years;

(b) Identification of the probable remaining useful life of the components identified in Section 17.2.4(a) as of the date of the study;

(c) An estimate of the cost of repair, replacement, restoration, or maintenance of each major component identified in Section 17.2.4(a) during and at the end of its useful life;

(d) An estimate of the total contribution necessary to defray the cost to repair, replace, restore, or maintain each major component during and at the end of its useful life, after subtracting total reserve funds as of the date of the study.

17.2.5 As used in this Article, "reserve accounts" means moneys that the Association's Board of Directors has identified for use to defray the future repair or replacement of, or additions to, those major components which the Association is obligated to maintain.

17.2.6 As used in this Article, "reserve account requirements" means the estimated funds which the Association's Board of Directors has determined are required to be available at a specified point in time to repair, replace, or restore those major components which the Association is obligated to maintain.

Section 17.3. Initial Financial Report. A balance sheet, as of the accounting date, which is the last day of the month closest in time to six (6) months from the date of the closing of the first sale of a Condominium in the Project, and an operating statement for the period from the date of the first closing to said accounting date, shall be distributed to each Owner within sixty (60) days after the accounting date. The operating statement shall include a summary of assessments received and receivable.

Section 17.4. Annual Report. An annual report consisting of the following shall be distributed to each Owner within one hundred twenty (120) days after the close of the fiscal year.

- (i) A balance sheet as of the end of the fiscal year.

- (ii) An operating (income) statement for the fiscal year.
- (iii) A statement of changes in financial position for the fiscal year.
- (iv) Any information required to be reported under Section 8322 of the California Corporations Code.
- (v) A review of the annual report for the Association prepared in accordance with generally accepted accounting principles by an independent licensee of the California State Board of Accountancy (hereinafter "Independent Accountant") for any fiscal year in which the gross income to the Association exceeds Seventy-Five Thousand Dollars (\$75,000.00).
- (vi) A statement of policies and procedures employed by the Board of Directors to enforce the collection of delinquent assessments.

Section 17.5. Independent Preparation. Ordinarily the annual report referred to in Section 17.4 above shall be prepared by an Independent Accountant for any fiscal year in which the gross income to the Association exceeds Seventy-Five Thousand Dollars (\$75,000).

Section 17.6. Copy of Financial Statement. Within ten (10) days of receipt of any written request therefor, the Board of Directors shall furnish any Owner or prospective Owner with a copy of this Declaration, and the Articles, Bylaws and Rules and Regulations of the Association, as amended to date, together with a copy of the Association's most recent annual financial report as described in Section 17.4 hereof, and a true statement of any delinquent assessments, penalties, late charges, attorneys' fees or other charges under this Declaration on such Owner's Condominium as of the date the statement is issued. The Board of Directors may charge a reasonable fee for providing such documents and reports not to exceed the reasonable cost to prepare and reproduce same.

Section 17.7. Association Statement. If the report referred to in Section 17.4 above is not prepared by an Independent Accountant, it must be accompanied by the certificate of an authorized officer of the Association stating that the statements were prepared without audit from the books and records of the Association.

Section 17.8. Association's Policies Statement. A statement describing the Association's policies and practices in enforcing lien rights or other legal remedies for default in payment of its assessments against its Members shall be annually delivered to the Members during the sixty (60) day period immediately preceding the beginning of the Association's fiscal year.

Section 17.9. Reconciliation of Accounts. The Board of Directors shall do the following not less frequently than quarterly:

(i) Cause a current reconciliation of the Association's operating accounts to be made and review the same;

(ii) Cause a current reconciliation of the Association's reserve accounts to be made and review the same.

(iii) Review the current year's actual reserve revenues and expenses compared to the current year's budget.

(iv) Review the most current account statements prepared by the financial institution where the Association has its operating and reserve accounts.

(v) Review an income and expense statement for the Association's operating and reserve accounts.

Section 17.10. Reserve Account.

17.10.1 Withdrawal of funds from the Association's reserve account shall require the signatures of either: (1) two members of the Board of Directors, or (2) one member of the Board of Directors and an officer of the Association who is not also a member of the Board of Directors.

17.10.2 The Board of Directors shall not expend funds designated as reserve funds for any purpose other than:

(a) the repair, restoration, replacement, or maintenance of major components which the Association is obligated to repair, restore, replace or maintain and for which the reserve fund was established, or

(b) litigation involving the purposes set forth in (a) above.

17.10.3 Notwithstanding Section 17.10.2 above, the Board:

(a) may authorize the temporary transfer of money from the reserve account to the Association's operating account to meet short term cash flow requirements or other expenses, provided that the Board has made a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed, and describing when and how the money will be repaid to the reserve account.

(b) shall cause the transferred funds to be restored to the reserve account within one (1) year of the date of initial transfer; however, the governing body may, upon making a documented finding that a temporary delay of restoration of the funds to the reserve account would be in the best interests of the development, temporarily delay the restoration until such time it reasonably determines to be necessary.

(c) shall exercise prudent fiscal management in maintaining the integrity of the reserve account, and shall, if necessary, levy a special assessment to recover the full amount of the expended funds within the time limits specified in (b) above. Any such special assessments shall be subject to the five percent (5%) limitation specified in Section 7.5 above. The Board may, at its discretion, extend the date the payment of the special assessment is due. Any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of an unpaid special assessment.

When the decision is made to use reserve funds or to temporarily transfer money from the reserve account to pay for litigation, the Board shall notify the Members of that decision in the next available mailing to all Members pursuant to Section 5016 of the Corporations Code, and of the availability of an accounting of the expenses related to litigation on at least a quarterly basis. The accounting shall be made available for inspection by Members at the Association's office.

Section 17.11. Transfer of Title. The Board of Directors shall not impose or collect any assessment, penalty or fee in connection with the transfer of title or any other interest except the Board of Directors' actual costs to change its records and the fee for providing documents pursuant to Section 17.6.

## ARTICLE 18 MORTGAGEE PROTECTION

Section 18.1. Mortgagee Protection. Notwithstanding any other provisions in this Declaration to the contrary, in order to induce lenders and investors to participate in the financing of the sale of Condominiums in the Project, the following provisions are added hereto (and to the extent these added provisions conflict with any other provisions in this Declaration, these added provisions shall control):

18.1.1 No breach of any of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provisions herein, shall defeat or render invalid the lien of any first Mortgage (meaning a Mortgage with first priority over any other Mortgage) on any Unit 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.

18.1.2 Each holder of a first Mortgage encumbering any Condominium is entitled upon request to timely written notification from the Association of any default by the Mortgagor of such Condominium in the performance of such Mortgagor's obligations under this Declaration, or the Bylaws of the Association which is not cured within sixty (60) days.

18.1.3 Each holder of a first Mortgage encumbering any Condominium which obtains title to such Condominium pursuant to: (1) remedies provided in such Mortgage, or (2) by accepting a deed (or assignment) in lieu of foreclosure in the event of default by a Mortgagor, shall be exempt from any "right of first refusal," if any, contained in this Declaration or the Bylaws of the Association. Further, any such "right of first refusal" shall not impair the rights of

a first Mortgagee or interfere with a subsequent sale or lease of a Condominium so acquired by the Mortgagee.

18.1.4 Each holder of a first Mortgage or third party foreclosure purchaser which obtains title to a Condominium pursuant to foreclosure of the first Mortgage, shall take the Condominium free of any claim for unpaid dues, assessments or charges against the mortgaged Condominium which accrue prior to the time such holder obtains title to such Condominium (except for claims for a share of such assessments or charges resulting from a reallocation of such dues, assessments or charges to all Condominiums, including the mortgaged Condominium). The assessment lien provided for herein shall be subordinate to the lien of any first Mortgage now or hereafter placed upon the Condominium subject to assessment; provided, however, that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such Condominium pursuant to a decree of foreclosure or trustee sale. Such sale or transfer shall not release such Condominium from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

18.1.5 Unless sixty-seven percent (67%) of the Institutional Lenders holding a first Mortgage on Units within this Project, based upon one vote for each first Mortgage owned and sixty-seven percent (67%) of the Owners, other than the Declarant, of Condominiums have given their prior written approval, the Association and its Members shall not be entitled to:

(a) By act or omission, seek to abandon or terminate the Project, except as otherwise provided herein in the event of substantial destruction by fire or other casualty or in the event of a taking by condemnation or eminent domain;

(b) Change the pro rata interest or obligations of any Condominium for purposes of: (1) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (2) determining the pro rata share in ownership of each Condominium in the Common Area, unless the change is due to the annexation of additional Phases as authorized in this Declaration;

(c) Partition or subdivide any Condominium;

(d) By act or omission, seek to abandon, subdivide, encumber, sell or transfer the Common Area or partition the Common Area except as provided for herein, unless due to annexation of additional Phases as authorized in this Declaration. The granting of easements for public utilities or for other public purposes consistent with the intended uses of the Common Property and the Project shall not be deemed a transfer within the meaning of this clause;

(e) Use hazard insurance proceeds from losses to any Condominium Property (whether to Condominium Units or to Common Area) for other than repair, replacement or reconstruction of such Condominium Property, except as provided by statute in case of substantial damage to the Units and/or Association Property of the Project;

(f) Effectuate any decision of the Association to terminate professional management, if any, and assume self management of the Project; and

(g) Amend any part of this Article.

18.1.6 First Mortgagees shall have the right to examine the books and records of the Association during normal business hours.

18.1.7 The Condominium assessments shall include an adequate reserve fund for maintenance, repairs and replacement of the Association Property and those portions thereof that must be replaced on a periodic basis, and shall be payable through annual assessments rather than by special assessments.

18.1.8 All taxes, assessments and charges which may become liens prior to the first Mortgage under local law shall relate only to individual Condominiums, and not to the Project as a whole.

18.1.9 In the event of substantial damage to or destruction of any Unit or any element of the Association Property or possible condemnation or eminent domain procedure, the Institutional Lender holding any first Mortgage on a Condominium is entitled to timely written notice of any such damage, destruction or proposed acquisition and no provision in the Bylaws, or in this Declaration shall be interpreted to entitle the Owner of the Condominium or any other party to priority over any first Mortgagee with respect to the distribution to such Owner of any insurance proceeds or condemnation awards for losses to or a taking of Units and/or Common Property.

18.1.10 Any agreement for professional management of the Project, or any other contract providing for services of the Declarant shall provide for termination by either party without cause or payment of a termination fee upon thirty (30) days written notice, and that the term of any such contract shall not exceed one (1) year, renewable by agreement of the parties for successive one (1) year periods. However, lease agreements for laundry room fixtures and equipment, if any, may have terms of up to five (5) years, provided the Declarant is not the lessor thereunder.

18.1.11 The Association shall, upon the request of any Institutional Lender of a first Mortgage on a Condominium: (1) give written notice of all meetings of the Association and permit the Institutional Lender to designate a representative to attend all such meetings; (2) transmit to such Institutional Lender an annual audited financial statement of the Project within ninety (90) days following the end of any fiscal year of the Project; (3) give written notice of any condemnation or casualty loss that affects either a material portion of the Project or the Unit securing its Mortgage; (4) give written notice of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and (5) give written notice of any proposed action that requires the consent of a specified percentage of Institutional Lenders.

18.1.12 No breach of any of the foregoing covenants shall cause any forfeiture of title or reversion or bestow any right of re-entry whatsoever, but in the event that any one or more of these covenants shall be violated, the Declarant, its successors and assigns, the Association, or any Owner of a Condominium in the Project, may commence a legal action in any court of competent jurisdiction to enjoin or abate said violation, and/or to recover damages; provided, that any such violation shall not defeat or render invalid the lien of any Mortgage made in good faith and for value as to said Condominium or any part thereof. Said covenants shall be binding upon and effective against any Owner of said Condominium, or a portion thereof, whose title thereto is acquired by foreclosure, trustee sale or otherwise.

18.1.13 First Mortgagees of Units may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Association Property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Association Property and First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. This provisions shall constitute an Agreement by the Association for the express benefit of all First Mortgagees and upon request of any First Mortgagee the Association shall execute and deliver to such First Mortgagee a separate written Agreement embodying this provision.

#### ARTICLE 19 AMENDMENT

Section 19.1. Amendments. This Declaration may be amended only by an affirmative vote of not less than seventy-five percent (75%) of each class of Members, and further; this amendment provision shall not be amended to allow amendments by vote of less than seventy-five percent (75%) of each class of Members. At such time when the Class B membership shall cease and be converted to Class A membership, any and all amendments to this Declaration shall be enacted by requiring the vote or written assent of Members representing both: (1) at least seventy-five percent (75%) of the total voting power of the Association; and (2) at least seventy-five percent (75%) of the votes of Members other than the Declarant, provided, however, that the percentage of the voting power necessary to amend a specific provision shall not be less than the percentage of affirmative votes prescribed for action to be taken under said provision. An Amendment hereto shall be effective after (a) the approval of the percentage of Owners required in this Section has been given, (b) that fact has been certified in a writing executed and acknowledged by the officer designated by the Association for that purpose, or if no one is designated, by the president of the Association and (c) that writing has been recorded in the county in which the Project is located.

No amendment material to a Mortgagee may be made to this Declaration without the prior written consent of Eligible Mortgage Holders whose Mortgages encumber fifty-one percent (51%) or more of the Condominiums within the Properties which are subject to Eligible Mortgage Holder Mortgages. For these purposes, any amendments to provisions of this Declaration governing any of the following subjects, shall be deemed "material to a Mortgagee":

(a) Voting;



- (b) Assessments, assessment liens or subordination of such liens;
- (c) Reserves for maintenance, repair and replacement for the Association Property;
- (d) Casualty insurance, liability insurance or fidelity bonds;
- (e) Rights to use of the Association Property;
- (f) Responsibility for maintenance and repair of the several portions of the Project;
- (g) Expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project;
- (h) Boundaries of any Unit;
- (i) The interests in Exclusive Use Association Property and other portions of the Association Property;
- (j) Convertibility of Living Units into Association Property or of Association Property into Living Units;
- (k) Leasing of Condominiums;
- (l) Imposition of any right of first refusal or similar restriction, or other restriction, on the right of an Owner to sell, transfer, or otherwise convey his or her Condominium;
- (m) Any provisions which are for the express benefit of Mortgage holders, Mortgage Holders, Eligible Insurers or Guarantors.

An addition or amendment to the Declaration or Bylaws shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. An Eligible Mortgage Holder who receives a written request to approve additions or amendments who does not deliver or mail to the requesting party a negative response within thirty (30) days shall be deemed to have approved request, provided that the request was delivered by certified mail or registered mail, with a "return receipt" requested.

Notwithstanding any other provision of this Section, for so long as Declarant owns any portion of the Properties or the Annexable Property, Declarant may unilaterally amend this Declaration by recording an instrument in writing, signed by Declarant, without the consent of the Association or any other Owner, provided that such amendment is made in order to conform this Declaration to the requirements of the DRE, the United States Department of Veterans Affairs, FHA, FNMA, GNMA, FHLMC, or any other governmental entity.

Section 19.2. Effective Date of Amendment. Each amendment made pursuant to the preceding paragraph shall, from and after its effective date, be as effective as this instrument as to all of the Project and the Owners/Members and their successors in interest.

Section 19.3. Petition to Superior Court. Nothing in this Declaration shall restrict the ability of any Owner at any time to petition the Superior Court in the County in which the Project is located to amend this Declaration as provided for under California Civil Code Section 1356.

## ARTICLE 20 GENERAL PROVISIONS

Section 20.1. Term of Declaration. The provisions of this Declaration shall run with the land and bind the Project, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any interest subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of forty (40) years from the date this Declaration is recorded, after which time the provisions of this Declaration shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed by at least sixty-six and two-thirds percent (66-2/3%) of the then Owners of the Condominiums, has been recorded within six (6) months of the anticipated termination date. The contents of such instrument shall contain the agreement to terminate this Declaration as it may be supplemented in whole or in part.

Section 20.2. Reservation of Rights. The right of Declarant (and its sales agents and representatives) to the nonexclusive use of the Association Property and the recreational facilities, if any, owned by the Association for display and exhibit purposes in connection with the sale of Condominiums, which right Declarant hereby reserves; provided, however, that such use shall not be for a period of more than three (3) years after the conveyance of the first Condominium; and, provided, further, that no such use by Declarant or its sales agents or representatives shall otherwise restrict the Members in their use and enjoyment of the Association Property or facilities thereon.

Section 20.3. Transfer of Ownership Interest. An ownership interest in a Condominium may pass under the estate of a deceased person to more than one person; provided, however, that only one individual living shall be entitled to have membership privileges in the Association derived from such ownership.

Section 20.4. Severability. In the event any limitation, restriction, condition, covenant or provision contained in this Declaration is to be held invalid, void or unenforceable by any court of competent jurisdiction, the remaining portions of this Declaration shall, nevertheless, be and remain in full force and effect.

Section 20.5. Invalidation. Invalidation of any one of these covenants, conditions or restrictions, by judgment or court order, shall in no way affect other provisions hereof which shall remain in full force and effect.

Section 20.6. Liberal Construction. 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 community and for the maintenance of community recreational facilities.

Section 20.7. Encroachment Easement. In the event any portion of the Association Property encroaches upon any Condominium or any Condominium encroaches upon the Association Property, each Condominium within the Project is hereby declared to have an easement for the purpose of accommodating any such encroachment due to engineering errors, errors in original construction, repair, reconstruction, settlement or shifting of the building, or any other cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners.

Section 20.8. Termination of Declarant's Obligations. In the event Declarant shall convey all of its right, title and interest in and to the Project to any partnership, individual or individuals, corporation or corporations, then and in such event, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership, individual or individuals, corporation or corporations, shall be obligated to perform all such duties and obligations of the Declarant.

Section 20.9. Number, Gender. The singular shall include the plural and the plural the singular unless the context requires to the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine or neuter, as the context requires.

Section 20.10. Non-Liability of Declarant. Each Owner, by acceptance of a deed shall be deemed to have agreed that Declarant shall have no liability whatsoever resulting from any term or provision thereof having been held to be unenforceable in whole or in part.

Section 20.11. Grantees Subject to This Declaration. Each grantee of a conveyance or purchaser under a contract or agreement of sale, by accepting the deed or contract of sale or agreement of purchase, accepts the same subject to all of the limitations, restrictions, conditions and covenants, and agreements set forth in this Declaration, and agrees to be bound by the same.

Section 20.12. Annexation of Property. Upon approval in writing of the Association, pursuant to two-thirds (2/3) of the voting power of each class of Members of the Association, the Owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file of record a Notice of Annexation which shall extend the scheme of this Declaration to such property. After conversion of the Class B membership to Class A membership, this action shall require the vote or written consent of (i) two-thirds (2/3) of the voting power of Members of the Association, and (ii) two-thirds (2/3) or more of the voting power of Members of the Association other than Declarant.

Section 20.13. Annexation Without Approval.

20.13.1 If Declarant choose to develop additional lands within any of the Annexable Property, such additional lands or any portion thereof may be added to the Condominium Project, subjected to this Declaration, and included within the jurisdiction of the Association by action of Declarant without the assent of Members of the Association; provided, however, that the development of the Annexable Property shall be in accordance with the plan of development submitted to the Department of Real Estate prior to the time a Final Subdivision Public Report is issued in connection with the Project. Said annexation may be accomplished by the recording of a Notice of Annexation which requires Owners of Condominiums therein to be Members of the Association. The obligation of Owners to pay dues to the Association and the right of such Owners to exercise voting rights in the Association in such annexed property shall not commence until the first day of the month following close of the first sale of a Condominium by Declarant in that particular phase of development.

20.13.2 Subject to annexation of additional property as set forth in Section 20.13.1:

(a) Declarant hereby reserves, for the benefit of and appurtenant to the Condominiums hereinafter annexed and their respective Owners, nonexclusive easements to use the Association Property (other than any buildings or Exclusive Use Association Property) in the Project pursuant to and in the manner set forth in this Declaration, to the same extent and with the same effect as if each of the Owners of a Condominium in the annexed property owned an undivided interest in the Association Property in the Project.

(b) Declarant hereby grants, for the benefit of and appurtenant to each Condominium in the Project, and their Owners, a nonexclusive easement to use the Association Property (other than any buildings or Exclusive Use Association Property) in the annexed property, pursuant to the provisions of and in the manner prescribed by this Declaration, to the same extent and with the same effect as if each of the Owners of Condominium in the Project owned an undivided interest in the Association Property of the property so annexed.

(c) These reciprocal cross-easements shall be effective as to each annexed property, and as to the Project, only at such time as each annexed property has been annexed by the recordation of a Notice of Annexation or a separate Declaration of Conditions, Covenants and Restrictions by Declarant. Prior to such action neither the Project nor any annexable property shall be affected by these reciprocal cross-easements nor shall the Owners in any annexable property have such rights in the Association Property within the Property. Notwithstanding the foregoing, the private streets and recreation facilities in the Project are subject to rights of use by all the tenants in the existing residences in the Annexable Property, pursuant to the terms of the Joint Use Agreement.

(d) Declarant hereby reserves the right to modify, amend or change the plan of development hereinbefore described. Such right shall include, without limitation, the right to delete any and all subsequent Phases, to divide the subject Phases into additional Phases and to annex the Phases in a different order. There is no guarantee by, or obligation of, Declarant to complete the proposed seven (7) Phases of development or to annex same into the .

Properties. Any change or modification of the general plan of development shall, however, require the prior approval of the Department of Real Estate.

Section 20.14. De-Annexation. Declarant hereby reserves the right to de-annex any portion or all of any Phase or Phases within the Project and to delete said Phase or Phases from the scheme of this Declaration and from the jurisdiction of the Association, provided and on condition that the de-annexation shall be made prior to the closing date of the sale of the first Unit in the Phase, or portion thereof, to be de-annexed.

Section 20.15. Non-Completion of Improvements. In the event that improvements to the Project have not been completed prior to the issuance of the Final Subdivision Public Report for the Project, and the Association is obligee under a bond or other security ("Bond") to secure performance of the commitment of the Declarant to complete such improvements, the following provisions shall apply:

20.15.1 The Board of Directors shall consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any improvements for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for such improvements in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any improvement, 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.

20.15.2 In the event that the Board of Directors determines not to initiate action to enforce the obligations under the Bond or in the event the Board fails to consider and vote on such question as provided above, 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%) of the total voting power of the Association.

20.15.3 The only Members entitled to a vote at such meeting of Members shall be the Owners other than Declarant. A vote at such meeting of a majority of the voting power of such Members other than Declarant to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

20.15.4 The Association shall act in a reasonably prompt manner to exonerate Declarant and its surety under any Bond in favor of the Association upon completion of the improvements.

Section 20.16. Affordable Housing Agreement. Pursuant to the requirements of the City of Los Angeles, the Declarant has entered into that certain "AGREEMENT BETWEEN THE CITY OF LOS ANGELES AND WARNER CENTER CONDOMINIUMS, LLC, RELATING TO A HOUSING PURCHASE COVENANT AND AGREEMENT FOR MODERATE INCOME FAMILIES", with the City of Los Angeles acting by and through the Los Angeles Housing.

Department ("Housing Agreement"), recorded or to be recorded in the Official Records of Los Angeles County, California. The Housing Agreement requires that Declarant develop at least one-hundred five (105) of the Units in the Project and the Annexable Property at a cost which would allow them to be rented or sold as moderate-income dwelling units at a fair market value, all as defined in the Housing Agreement, and that such Units be subject to resale and rental restrictions in accordance with the Housing Agreement. The term of the Housing Agreement is fifteen (15) years and it is enforceable by the City of Los Angeles. ALL THE TERMS AND PROVISIONS OF THE HOUSING AGREEMENT ARE HEREBY INCORPORATED HEREIN BY THIS REFERENCE.

## ARTICLE 21 DISPUTE MECHANISM

Section 21.1. Notice to Members Prior to Filing Civil Action. Not later than thirty (30) days prior to the filing of any civil action by the Association against the Declarant or other developer of the Project for alleged damage to the Common Area, alleged damage to the Units that the Association is obligated to maintain or repair, or alleged damage to the Units that arises out of, or is integrally related, to damage to the Common Area or Units that the Association is obligated to maintain or repair, the Board shall provide written notice to each Member who appears on the records of the Association at the time notice is given, specifying (a) that a meeting of Members will be held to discuss problems that may lead to the filing of a civil action, (b) the options, including civil actions, that are available to address the problems, and (c) the time and place of the meeting. If the Association has reason to believe that the applicable statute of limitations will expire before the association files the civil action, the Association may give the foregoing notice not later than thirty (30) days after the filing of the action.

Section 21.2. Dispute Resolution. Any disputes between all or any of the Association, Owner(s), the Declarant, or any director, officer, partner, employer, contractor, design professional, consultant, subcontractor or agent of the Declarant (collectively "Declarant Parties"), arising under this Declaration or relating to the Properties, shall be subject to the following provisions of this Section 21.2 and the following Sections 21.3, 21.4 and 21.5.

### Section 21.3. Construction Defect Disputes.

21.3.1 Owners' Construction Defect Claims. Prior to the commencement of any legal proceeding by any Owner against Declarant or any Declarant Party based upon a claim for defects in any rehabilitation or improvement work performed by Declarant with respect to any Unit, residence, Common Property, or any improvements thereon, the Owner must first comply with the provisions of this paragraph. If at any time during the ten (10) year period following the substantial completion of any such rehabilitation or improvement work performed by Declarant, such Owner believes Declarant has violated any of the standards set forth in applicable California law with respect to such work ("Claimed Defect"), which such Owner feels may be the responsibility of Declarant, such Owner shall promptly notify Declarant at: Mr. Charles Macbeth, c/o Macbeth Apartment Systems, Inc., 2310 Faraday Avenue, Carlsbad, CA 92008, with a copy to Declarant at Declarant's address as an Owner listed in the records of the

Association. Such notice shall be deemed a notice of intention to commence a legal proceeding and shall include: (a) a detailed description of the Claimed Defect, (b) the date upon which the Claimed Defect was first discovered, and (c) dates and times when Owner or Owner's agent will be available during ordinary business hours, so that service calls or inspections by Declarant can be scheduled. Declarant shall, in its sole discretion, be entitled to inspect the applicable property regarding the reported Claimed Defect and, within its sole discretion, shall be entitled to cure such Claimed Defect. Nothing contained in this Article shall obligate Declarant to perform any such inspection or repair, nor shall this Section be deemed to increase Declarant's legal obligations to Owner. Owner's written notice delivered to Declarant shall be a condition precedent to Owner's right to institute any legal proceeding and to proceed to judicial reference or binding arbitration as set forth Section 21.5 below, and Owner shall not pursue any other remedies available to it, at law or otherwise, including without limitation the filing of any legal proceeding or action, until Declarant has had the reasonable opportunity to inspect and cure the Claimed Defect. During the term of any written Limited Warranty provided to the original Owner of the Unit by Declarant, any conflict between the provisions of this Section and the Limited Warranty shall be resolved in favor of the Limited Warranty. Declarant shall not be liable for any general, special or consequential damage, cost, diminution in value or other loss which Owner may suffer as a result of any Claimed Defect in the Unit, which reasonably might have been avoided had Owner given Declarant the notice and opportunity to cure as described above within a reasonable time of discovering the Claimed Defect. Except as otherwise provided in the written Limited Warranty, if any, provided to Owner, nothing contained herein shall establish any contractual duty or obligation on the part of Declarant to repair, replace or cure any Claimed Defect. If an Owner sells or otherwise transfers ownership of such Owner's Unit to any other person during such ten (10) year period, as such period may be extended by any applicable tolling statute or provision, Owner covenants and agrees to give such other person written notice of these procedures by personal delivery. Owner's continuing obligation under this covenant shall be binding upon Owner and Owner's successors and assigns.

21.3.2 Obligation to Follow Maintenance Recommendations and Schedules. All Owners and the Association are obligated to follow Declarant's maintenance recommendations and schedules, including the maintenance recommendations and schedules for manufactured products and appliances provided with such Owner's Unit or the Common Property, or any improvements thereon, as well as all commonly accepted maintenance practices (collectively, "Maintenance Recommendations"). Failure to follow the Maintenance Recommendations may reduce or preclude Owner's and the Association's right to recover damages relating to such Unit or Common Property, which could have been prevented or mitigated had the Maintenance Recommendations been followed.

21.3.3 Obligation to Retain Documents and Provide Copies to Successors. All Owners, who originally purchased a Unit from Declarant were provided copies of certain documents in conjunction with the purchase of their Unit, including copies of this Declaration, maintenance recommendations from Declarant, maintenance recommendations for manufactured products or appliances included with the Unit, and other documentation relating to the Unit. All Owners are required to retain these documents and provide copies of such documents to their successors in interest upon the sale or transfer of such Owner's Unit.

21.3.4 Association's Construction Defect Claims. Prior to the commencement of any legal proceeding by the Association against Declarant or any Declarant Party based upon a claim for defects in the design, construction, rehabilitation or repair of the Common Property, or any improvements thereon, or any other area within the Project which the Association has standing to make a claim for defects therein, the Association must first comply with all of the applicable requirements of Civil Code Section 1375, as the same may be amended from time to time, or any successor statute thereto. For purposes of claims under this Section, notice to "builder" under California Civil Code Section 1375 shall mean notice to Declarant as provided above. In addition to the requirements of said Section 1375, Declarant shall have an absolute right, but not an obligation, to repair any alleged defect or condition claimed by the Association within a reasonable period of time after completion of the inspection and testing provided for in such Section and prior to submission of builder's settlement offer under such Section. If the parties to such dispute are unable to resolve their dispute in accordance with the procedures established under Civil Code Section 1375, as the same may be amended from time to time, or any successor statute, the dispute shall be resolved in accordance with the judicial reference or binding arbitration provisions of Section 21.5 below and the parties to the dispute shall each be responsible for their own attorneys' fees.

Section 21.4 Other Disputes. Any other disputes arising under this Declaration, or otherwise, between the Association or any Owner and Declarant or any Declarant Party (except for any action taken by the Association against Declarant for delinquent assessments, and any action involving enforcement of any completion bonds) shall be resolved in accordance with the alternate dispute resolution provisions of Section 21.5 below. The dispute resolution procedure in Section 21.5, as it applies solely to disputes under this Section 21.4, shall be deemed to satisfy the alternative dispute requirements of Civil Code Section 1354, or any successor statute, as applicable.

Section 21.5 Alternate Dispute Resolution Procedures. The following procedures provide for resolution of disputes through general judicial reference or, in the alternative, binding arbitration. In either event, Declarant, the Association and each Owner of a Unit within the Project, expressly acknowledge and accept that they are waiving their respective rights to a jury trial.

21.5.1 Judicial Reference. Subject to compliance with the provisions of Sections 21.2 through 21.4, to the extent applicable, it is the intention of Declarant that, except as otherwise expressly provided herein, any and all disputes, based upon which litigation is filed, shall be resolved by judicial reference under California law. Accordingly, except as otherwise expressly provided in this Declaration (such as the collection of delinquent assessments), any dispute, between the Association or any Owner(s) and the Declarant, or other developer of the Project, or between the Association and any Owner with respect to the interpretation of any of the provisions of this Declaration, or with respect to any alleged breach hereof, or with respect to any other claim related to a Unit or the Common Area, including, without limitation, any alleged latent or patent construction or design defect in the Project, any Unit or any part thereof, any judicial determination to be made under California Civil Code Section 1375(h), or for alleged damage to the Common Area, alleged damage to the Units that the Association is obligated to maintain or repair, or any alleged damage to Units that arises out of, or is integrally related to the Common Area or Units that the Association is obligated to maintain or repair, shall be heard by a



referee pursuant to the provisions of California Code of Civil Procedure Sections 638 through 645.1. Notwithstanding any other provision of this Declaration, this Article shall not be amended without the written consent of Declarant. In the event litigation is filed based upon any such dispute, the following shall apply:

21.5.1.1 The proceeding shall be brought and held in the County in which the Project is located, unless the parties agree to an alternative venue.

21.5.1.2 The parties shall use the procedures adopted by Judicial Arbitration and Mediation Services, Inc. ("JAMS") for judicial reference and selection of a referee (or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the parties).

21.5.1.3 The referee must be a retired judge or a licensed attorney with substantial experience in relevant real estate matters.

21.5.1.4 The parties to the litigation shall agree upon a single referee who shall have the power to try any and all of the issues raised, whether of fact or of law, which may be pertinent to the matters in dispute, and to issue a statement of decision thereon to the court. Any dispute regarding the selection of the referee shall be resolved by JAMS or the entity providing the reference services, or, if no entity is involved, by the court with appropriate jurisdiction in accordance with California Code of Civil Procedure Sections 638 and 640.

21.5.1.5 The referee shall be authorized to provide all remedies available in law or equity appropriate under the circumstances of the controversy.

21.5.1.6 The referee may require one or more pre-hearing conferences.

21.5.1.7 The parties shall be entitled to discovery, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

21.5.1.8 A stenographic record of the trial shall be made.

21.5.1.9 The referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable.

21.5.1.10 The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.

21.5.1.11 The parties shall promptly and diligently cooperate with each other and the referee and perform such acts, as may be necessary for an expeditions resolution of the dispute.

21.5.1.12 Except as otherwise agreed by the parties or as required by applicable law, neither the Association nor any Owner shall be required to pay any fee of the judicial reference proceeding except to the extent of the cost that would be imposed upon the Association or Owner.

if the dispute had been resolved as a dispute in court. The referee may not award against the Association or any Owner any expenses in excess of those that would be recoverable as costs if the dispute had been litigated to final judgment in court. Each party to the judicial reference proceeding shall bear its own attorney fees and costs in connection with such proceeding.

21.5.1.13 The statement of decision of the referee upon all of the issues considered by the referee shall be binding upon the parties, and upon filing of the statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon. The decision of the referee shall be appealable as if rendered by the court. This provision shall in no way be construed to limit any valid cause of action that may be brought by any of the parties.

21.5.2 Binding Arbitration. If for any reason the judicial reference procedures in Section 21.5.1 are legally unavailable or unenforceable at the time a dispute would otherwise be referred to judicial reference, then such dispute shall be submitted to binding arbitration under the rules and procedures in this Section 21.5.2. Any dispute submitted to binding arbitration shall be administered by the American Arbitration Association ("AAA") in accordance with the AAA's Construction Industry Arbitration Rules and AAA's Supplementary Procedures for Residential Construction Disputes in effect on the date of the submission. If such entity is not then in existence, then the dispute shall be submitted to JAMS, and administered in accordance with either the Streamlined Arbitration Rules and Procedures, or (if applicable) the Comprehensive Arbitration Rules of JAMS. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such dispute. If the claimed amount exceeds \$250,000.00 or includes a demand for punitive damages, the dispute shall be heard and determined by three arbitrators. Otherwise, unless mutually agreed to by the parties, there shall be one arbitrator. Arbitrators shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved. All decisions concerning the arbitrability of any dispute shall be decided by the arbitrator(s). At the request of any party, the award of the arbitrator(s) shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither party nor the arbitrator(s) may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

21.5.3 Applicability of Federal Arbitration Act. The binding arbitration procedures contained in Sections 21.5.2 are implemented for the Project in accordance with the philosophy and intent of the Federal Arbitration Act (9 U.S.C. Section 1 et seq.) ("FAA"), which is designed to encourage the use of alternative methods of dispute resolution and avoid costly and potentially lengthy traditional court proceedings. The binding arbitration procedures in said Section are to be interpreted and enforced as authorized by the FAA. Parties interpreting this Section shall follow the federal court rulings, which provide among other things that: (1) the FAA is a congressional declaration of liberal federal policy favoring alternate dispute resolution notwithstanding substantive or procedural state policies or laws to the contrary, (2) alternate dispute resolution agreements are to be rigorously enforced by state courts; and (3) the scope of issues subject to alternate dispute resolution are to be interpreted in favor of alternate dispute resolution.

Section 21.6 Use of Damage Award Amounts. Any and all amounts awarded to a claimant on account of a claimed construction or design defect in the Project, or damage suffered as a result thereof, shall be expended by such claimant for the attorney fees and costs of the proceeding and the repair, rehabilitation, or remediation of the claimed defect or damage.

Section 21.7 Civil Codes Sections 1368.4, 1375, 1375.05 and 1375.1. Nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code Sections 1368.4, 1375, 1375.05, or 1375.1.

Section 21.8. Disputes Relating To Enforcement Of Governing Documents. In the event of a dispute between the Association and an Owner, or between an Owner and another Owner, relating to the enforcement of the governing documents of the Association, the parties shall comply with the provisions of California Civil Code Section 1354(b) through (j), prior to filing of any civil action.

Section 21.9. Miscellaneous. Nothing in the Article shall constitute a waiver of any of the benefits of statute of limitations or equitable defense of any party. Furthermore, notwithstanding any other provision of this Declaration, this Article may not be amended without the prior written consent of the Declarant.

## ARTICLE 22

### ACCESS EASEMENT AREA; PERMITTED USES AND RESTRICTIONS

Section 22.1. Conveyance of Access Easement Area and Easement. Declarant and the Association have entered into an Easement Grant Deed recorded in the Los Angeles County Recorder's Office, which Deed provides in part that (i) Declarant shall convey the Access Easement Area to the Association free and clear of any lien or encumbrance, upon the earlier of October, 2008, or the date on which the first Condominium Unit within Phase seven (7) of the Community has been conveyed to an Owner; (ii) until such conveyance of the Access Easement Area to the Association, Declarant reserves unto itself and grants to all Owners a nonexclusive easement for use and enjoyment of the Access Easement Area, including ingress, egress and access on, over and across the Access Easement Area; and (iii) Declarant shall maintain the Access Easement Area until conveyance thereof to the Association at which time the Association shall be responsible therefore and the Access Easement Area shall be deemed part of the Association Property. However, if Declarant fails to maintain the Access Easement Area prior to conveyance thereof to the Association, the Association shall have the right to maintain the Access Easement Area and seek reimbursement therefore from Declarant.

Section 22.2. Purpose and Use. Except as otherwise provided in this Declaration, Module "F" shown and described on the Condominium Plan (the "Access Easement Area") consists of the entry gate area, the internal private streets in the Project, and guest parking areas, and shall be solely and exclusively used for such purposes by and for the residents of the Project and their guests, but subject to the terms and provisions of the Joint Use Agreement. To accomplish these objectives, the Access Easement Area and Project are hereby declared to be subject to the following limitations and restrictions:

22.2.1 Subject to the restrictions contained in this Declaration, all Owners shall have the right to enter upon or into the Access Easement Area.

22.2.2 Except as expressly allowed by this Declaration or the Rules and Regulations, no signs of any kind shall be erected or maintained on or in the Access Easement Area without the prior written approval of the Architectural Control Committee established under Article 10 hereof. Furthermore, no structure or improvement of any kind shall be constructed or maintained on or in the Access Easement Area without the prior written consent of said Architectural Control Committee.

22.2.3 All Owners shall maintain and keep their patio and balcony areas facing the Access Easement Area, or observable from the Association Property private streets or the recreation area, in a clean, neat and presentable condition at all times. Patios and balconies shall not be used for storage purposes, and only attractive outdoor furniture, potted plants, and the like, may be placed therein.

22.2.4 Should any Owner maintain such Owner's Unit or portion thereof, including the patio or balcony area, for which such Owner is responsible, in violation of this Section, the Association shall have the right to enter upon such Unit and patio area and correct the conditions which violate this Section and shall not be liable to any Owner in trespass or otherwise for such entry. Further, the reasonable cost of such corrective measure shall forthwith upon demand be reimbursed to the Association by the Owner whose property is involved.

22.2.5 In order that the integrity, beauty and aesthetic qualities of the Access Easement Area may be preserved, said Access Easement Area must be maintained in a clean and sightly condition. Upon conveyance of the Access Easement Area to the Association, the Association shall undertake, by virtue of this Declaration, on behalf of itself, and its successors and assigns, to reasonably maintain the Access Easement Area for the benefit of all Owners within the Project. Until conveyance of the Access Easement Area to the Association, Declarant shall be obligated to fulfill the Association duties and be entitled to the Association's rights created under this Article 22.

Section 22.3. Reserves for Access Easement Area Improvements. Notwithstanding any other provision in this Declaration, the Association shall not levy or collect that portion of assessments attributable to the accumulation of reserves for the repair or replacement of any improvements within the Access Easement Areas until such improvements or rehabilitation thereof have actually been completed. In the event that any portion of the Access Easement Area is conveyed in fee to the Association with uncompleted improvements, for the completion of which improvements the Association is the beneficiary under a performance bond or other security, the maintenance responsibility shall continue to be that of the obligor under such bond or security until the filing of a Notice of Completion for such improvements.

IN WITNESS WHEREOF, Declarant has executed this Declaration this March 16 day of 2005.

**"DECLARANT"**

WARNER CENTER CONDOMINIUMS, LLC,  
a Delaware limited liability company.

By: Warner Center Mezzanine, LLC  
a Delaware limited liability company  
Its Sole Member

By: Warner Center Ventures, LLC  
a Delaware limited liability company  
Its Sole Member

By: Troxler Residential Ventures 35, LLC  
a Delaware limited liability company  
Its Operating Member

By: Troxler Residential Partners III, LLC  
a California limited liability company  
Its Managing Member

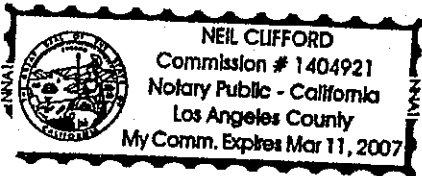
By: [Signature]  
Bryan P. Troxler  
Its Manager

**ACKNOWLEDGMENT**

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF Los Angeles )

On March 16<sup>th</sup> 2005, before me, Neil Clifford, Notary, personally appeared BRYAN P. TROXLER, personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument, and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized capacity(~~ies~~), and that by his/~~her~~/~~their~~ signatures 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]  
NOTARY PUBLIC

EXHIBIT "A"

ANNEXABLE PROPERTY

Lots 1, 2 and 3 of Tract No: 44600, in the City of Los Angeles, County of Los Angeles, State of California, as per Map recorded in Book 1089, Pages 13 through 18, of Maps, in the Office of the County Recorder of said County;

Excepting therefrom, Modules "A", "B", "C" and "D", and Association Property Module "E", as shown on the Condominium Plan for Modules "A" through "G" of Lots 1, 2 and 3 of Tract No. 44600, in the City of Los Angeles, County of Los Angeles, State of California, as per Map recorded in Book 1089, Pages 13 through 18, of Maps, which Condominium Plan was recorded as stated on the first page hereof, all in the Office of the County Recorder of said County.

SUBORDINATION AGREEMENT

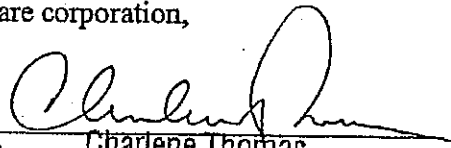
The undersigned, LEHMAN ALI INC., a Delaware corporation, beneficiary under that certain Deed of Trust recorded September 30, 2005, as Instrument No. 04-2514694, Official Records, Los Angeles County, California, does hereby consent to each and all of the provisions contained in the within instrument, the Declaration of Establishment of Conditions, Covenants and Restrictions for Warner Center Condominiums, and all amendments and annexations thereto and does hereby agree that the lien and charge of said Deed of Trust shall be, and is hereby made, subordinate to, junior to and subject to said within instrument and all amendments and annexations thereto and the entire effect thereof.

Date: March 28, 2005

BENEFICIARY:

LEHMAN ALI INC.,  
a Delaware corporation,

By:

  
Its: Charlene Thomas  
Authorized Signatory

ACKNOWLEDGMENT

New York  
STATE OF ~~CALIFORNIA~~ )  
 )ss.  
COUNTY OF New York )

On March 28, 2005, before me, EDNA LANAHAN, personally appeared Charlene Thomas personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures 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.

EDNA LANAHAN  
NOTARY PUBLIC, State of New York  
No. 01LA6070349  
Qualified in New York County  
Commission Expires March 4, 2006

  
NOTARY PUBLIC