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**SECOND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
THE VINEYARDS OF SARATOGA**

March 16, 2017

**SECOND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF
THE VINEYARDS OF SARATOGA**

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**SECOND RESTATED DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
THE VINEYARDS OF SARATOGA**

The Restated Declaration of Covenants, Conditions and Restrictions of The Vineyards of Saratoga, ("Declaration") a California non-profit mutual benefit corporation ("Declarant"), recorded November 1, 2000, Instrument No. 15443339, of the Official Records of Santa Clara County, California (the "Restated Declaration"), which Declaration affects all of the Properties described and commonly known as The Vineyards of Saratoga, is hereby amended and restated in its entirety to read as follows:

RECITALS:

1. The Properties are a common interest development consisting of a residential Condominium project within the meaning of California Civil Code Section 4125.
2. Declarant and Declarant's Members are the Owners of the fee interest in certain real property in the County of Santa Clara, State of California, which is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (the "Properties"). Declarant's Members consented to the creation and imposition of the plan of beneficial restrictions contemplated herein.
3. Declarant and Declarant's Members desired to subject the Properties to certain easements, protective covenants, conditions, restrictions, reservations, liens and charges as set forth in the Restated Declaration referred to above, all of which are for the benefit of all portions of the Properties and for the purpose of enhancing and protecting the value,

desirability, and attractiveness of the Properties and all of which shall run with the Properties and shall be binding on all parties having or acquiring any right, title or interest in the Properties, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

4. It was the further intention of the Declarant's Members to own and sell the Condominiums within the Properties subject to the protective covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges and equitable servitudes set forth in the Restated Declaration which were in furtherance of a general plan for the subdivision, development, sale and use of the Properties as a residential Condominium project. It was the intention of the Members of Declarant that the Common Area and Common Facilities within the Properties be owned and maintained by the Association, and reserved exclusively for the use and enjoyment of the Members of the Association, their Tenants, lessees, Guests and invitees all subject to the terms and conditions of this Declaration, the Articles and the Bylaws.

5. On the date specified in the Officers' Certification of Amendment attached hereto, not less than a majority of the total Voting Power of the Members of The Vineyards of Saratoga (the successors in interest to the Declarant) voted by written ballot to amend and restate the Restated Declaration, all in accordance with the procedures for amendment set forth in Article XVI, Section 16.01(a) of the Restated Declaration. As so amended and restated, these easements, covenants, restrictions, and conditions shall run with the Properties and shall be binding on all parties having or acquiring any right, title or interest in the Properties or any portion thereof, and shall inure to the benefit of each Owner thereof.

ARTICLE I

Definitions

Section 1.01. *Annual Budget Report* shall mean the report described in Civil Code Section 5300 and Section 12.11 of the Bylaws.

Section 1.02. *Annual Policy Statement* shall mean the statement described in Civil Code Section 5310 and Section 12.16 of the Bylaws.

Section 1.03. *Architectural Standards* shall mean written specifications, details, plans and/or drawings adopted by the Board pursuant to Article IX, Section 9.01 of this Declaration.

Section 1.04. *Articles* shall mean the Articles of Incorporation of The Vineyards of Saratoga, which are filed in the Office of the Secretary of State of the State of California.

Section 1.05. *Assessment* shall mean an Assessment made or assessed against an Owner and the Owner's Condominium in accordance with the provisions of Article VI of this Declaration.

Section 1.06. *Association* shall mean and refer to The Vineyards of Saratoga, a California non-profit mutual benefit corporation, its successors and assigns.

Section 1.07. *Association Manager* shall mean the Person, Persons or firm retained by the Association under contract to perform administrative, financial, managerial and/or other services for the Association.

Section 1.08. *Board of Directors* or Board shall mean the Board of Directors of the Association.

Section 1.09. *Bylaws* shall mean the Bylaws of the Association, as such Bylaws may, from time to time, be amended.

Section 1.10. *Capital Improvement* shall mean an improvement constructed on or added to the Common Area which improvement did not previously exist in any form.

Section 1.11. *Common Area* shall mean all that property described in Article II, Section 2.02(b).

Section 1.12. *Common Expense* shall mean any use of Common Funds authorized by Article VI and/or described in Exhibit "B" attached hereto and includes (a) all expenses or charges for the management, Maintenance, administration, insurance, operation, Repairs, additions, alterations or reconstruction of the Common Facilities as incurred or as may be estimated from time to time by the Association and/or its Board of Directors, (b) any amounts reasonably necessary for reserves for Maintenance and for nonpayment of any Assessments, (c) the costs and expenses of the Association in the performance of its functions as provided for in its Articles of Incorporation, the Bylaws, or this Declaration, and (d) an adequate reserve fund for Repair and Replacement of Common Facilities, which shall be established by the Association and funded by Regular Assessments and Special Assessments, when required.

Section 1.13. *Common Facilities* shall mean the Vineyards clubhouse, swimming pools, pool apron areas, pool storage and pump houses, pool furniture, spa, koi pond, barbeques, other community facilities, and the trees, hedges, plantings, lawns, shrubs, landscaping, fences, utilities, pipes, lines, streets, sidewalks, lighting fixtures, buildings, structures and other facilities constructed or installed, or to be constructed or installed, or currently located on the Common Area.

Section 1.14. *Common Funds* shall mean all funds collected or received by the Association (a) for use in the Maintenance, management, administration, insurance, operation, Replacement, Repair, addition to, alteration or reconstruction of, all or any portion of the Common Area and Common Facilities and (b) for use in discharging any and all of its functions as provided for in its Articles of Incorporation, the Bylaws and this Declaration.

Section 1.15. *Condominium* shall mean an estate in real property as defined in California Civil Code Section 783, consisting of title to a Unit and an undivided interest in a portion of the Common Area and exclusive use easements as provided in Article II, Section 2.02(c). The ownership of each Condominium shall include the ownership of a Unit, the respective undivided interest in the Common Area, and membership in the Association. Each Unit shall be a separate freehold estate consisting of the space described and defined in Section 4125(b) of the California Civil Code. Each Unit includes the portions of the structure so described and the airspace so encompassed.

Section 1.16. *Condominium Building* shall mean a residential structure containing Condominium Units.

Section 1.17. *Condominium Plan* shall mean and refer to the recorded diagrammatic floor plan of the Units built or to be built on the property which identifies each Unit and shows its dimensions pursuant to California Civil Code Sections 4120 and 4285.

Section 1.18. *County* shall mean the County of Santa Clara, State of California.

Section 1.19. *Declarant* shall mean and refer to The Vineyards of Saratoga, a California non-profit mutual benefit corporation, its successors and assigns.

Section 1.20. *Declaration* shall mean this Second Restated Declaration of Covenants, Conditions and Restrictions as such Declaration may, from time to time, be amended. The "Restated Declaration" shall mean the document referenced in the preamble to this Declaration.

Section 1.21. *Director* shall mean a member of the Board of Directors of the Association.

Section 1.22. *Eligible Mortgage Holder* shall mean a first lender who has requested notice of certain matters from the Association in accordance with Section 17.03.

Section 1.23. *Eligible Insurer or Guarantor* shall mean an insurer or governmental guarantor of a First Mortgage who has requested notice of certain matters from the Association in accordance with Section 17.03.

Section 1.24. *Exclusive Use Common Area* shall mean that portion of the Common Area that is reserved for the exclusive use of the Owners. Each such Exclusive Use Common Area shall be appurtenant to the Owner's Unit and may not be conveyed or transferred apart from the Unit. The boundaries or location of and limitations on the Exclusive Use Common Area are described in Article II, Section 2.02(c) of this Declaration.

Section 1.25. *First Mortgage, or First Mortgagee* shall mean one having priority as to all other Mortgages or holders of Mortgages encumbering the same Condominium or other portions of the Properties.

Section 1.26. *General Notice.*

(a) If a provision of the Governing Documents requires "general delivery" or "General Notice," the document shall be provided by one or more of the following methods:

- (1) Any method provided for delivery of an Individual Notice pursuant to Civil Code Section 4040.
- (2) Inclusion in a billing statement, newsletter, or other document that is delivered by one of the methods provided in this Section.
- (3) Posting the printed document in a prominent location that is accessible to all Members, if the location has been designated for the posting of General Notices by the Association in the Annual Policy Statement, prepared pursuant to Civil Code Section 5310.
- (4) If the Association broadcasts television programming for the purpose of distributing information on Association business to its Members, by inclusion in the programming.

(b) Notwithstanding Subsection (a), if a Member requests to receive General Notices by individual delivery, all General Notices to that Member, given under this Section, shall be delivered pursuant to Civil Code Section 4040. The option provided in this Subsection (b) shall be described in the Annual Policy Statement, prepared pursuant to Civil Code Section 5310.

Section 1.27. *Good Standing* shall mean that the membership rights of a Member have not been suspended pursuant to Article XV, Section 15.06 of this Declaration, that all Assessments are paid current, and no disciplinary fines are unpaid.

Section 1.28. *Governing Documents* shall mean the Articles of Incorporation, the Bylaws, this Declaration, Operating Rules and the Architectural Standards.

Section 1.29. *Guest* shall mean a Person who temporarily resides in a Unit or visits the Unit without residing there. The Operating Rules may define the term “Guest” with more particularity. The term “Guest” includes a visitor.

Section 1.30. *Household* shall mean the Persons residing in a Unit as their place of residence.

Section 1.31. *Individual Notice.* If a provision of the Governing Documents requires that the Association deliver a document by “individual delivery” or “Individual Notice,” the document shall be delivered by one of the following methods:

(a) First-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service carrier. The document shall be addressed to the recipient at the address last shown on the books of the Association.

(b) E-mail, facsimile, or other electronic means, if the recipient has consented, in writing, to that method of delivery. The consent may be revoked, in writing, by the recipient.

(c) Upon receipt of a request by a Member, pursuant to Civil Code Section 5260, identifying a secondary address for delivery of notices of the following types, the Association shall deliver an additional copy of those notices to the secondary address identified in the request:

(i) The documents to be delivered to the Member pursuant to Article 7 (commencing with Section 5300) of Chapter 6 of the Civil Code pertaining to the Annual Budget Report.

(ii) The documents to be delivered to the Member pursuant to Article 2 (commencing with Section 5650) of Chapter 8, and Section 5710 of the Civil Code pertaining to Assessments.

(d) An unrecorded provision of the Governing Documents providing for a particular method of delivery does not constitute agreement by a Member to that method of delivery.

(e) If the Association or a Member has consented to receive information by electronic delivery, and a provision of this Declaration requires that the information be in writing, that requirement is satisfied if the information is provided in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

Section 1.32. *Institutional Mortgagee* shall mean a Mortgagee that is a bank or savings and loan association or mortgage company or other entity chartered or licensed under federal or state laws whose principal business is lending money on the security of real property or investing in such loans, or any insurance company or any federal or state agency or instrumentality, including, without limitation, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

Section 1.33. *Lease* shall mean any agreement (written or verbal) under which a Person is permitted to occupy a Unit for compensation of any kind including, without limitation, any fee, service, gratuity or other consideration while the Owner is not in residence. The verb “leasing” shall include renting, licensing, or otherwise permitting a Person other than an Owner to occupy a Unit for compensation of any kind including any fee, service, gratuity or other consideration while the Owner is not in residence.

Section 1.34. *License* shall mean a revocable right to use a Condominium.

Section 1.35. *Maintenance* or *Maintain* shall mean the act of caring for property and keeping it in its existing state, preserving it from failure or deterioration, including painting, caulking, cleaning, and non-structural upkeep.

Section 1.36. *Map* shall mean and refer to that Map entitled Tract No. 4892, filed for record on October 23, 1970 in Book 274, Pages 31 and 32 as Instrument No. 3893608 in the records of Santa Clara County, State of California and Tract No. 5343, filed for record on April 13, 1973 in Book 321 as Page 4, Instrument No. 4494466 in the records of Santa Clara County, State of California.

Section 1.37. *Member* shall mean and refer to every Person or entity who holds a membership in the Association and whose rights as a Member are not suspended pursuant to Article XV, Section 15.06 hereof.

Section 1.38. *Mortgage* shall mean a Mortgage or deed of trust encumbering a Condominium or other portion of the Properties. A "Mortgagee" shall include the beneficiary under a deed of trust and any guarantor or insurer of a Mortgage.

Section 1.39. *Office of Recorder* shall mean the Office of the Recorder, County of Santa Clara, State of California.

Section 1.40. *Operating Rules* (formerly known as Rules and Regulations) shall mean the Rules adopted by the Board of Directors of the Association, to the management and operation of the Properties or the conduct of the business and affairs of the Association as the same may be in effect from time to time pursuant to Article V, Section 5.08 of this Declaration.

Section 1.41. *Operating Rule Change* shall mean the adoption, amendment, or repeal of a Rule by the Board.

Section 1.42. *Owner* shall mean any Person, firm, corporation or other entity which owns a fee simple interest in any Condominium (including contract sellers, but excluding those having such interest merely as security for the payment of a debt or the performance of an obligation).

Section 1.43. *Owner of Record* and Member of the Association include an Owner and shall mean any Person, firm, trust, corporation or other entity in which title to a Unit is vested as shown by the official records of the Office of the County Recorder.

Section 1.44. *Person* shall mean and include a natural Person of any age, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, limited liability company, association, or other entity.

Section 1.45. *Properties* shall mean and refer to that certain real property described in the first Recital to this Declaration and such additions thereto as may thereafter be brought within the jurisdiction of the Association. The Properties currently consist of Tract No. 4892, filed for record on October 23, 1970 in Book 274, Pages 31 and 32 as Instrument No. 3893608 in the records of Santa Clara County, State of California and Tract No. 5343, filed for record on April 13, 1973 in Book 321 as Page 4, Instrument No. 4494466 in the records of Santa Clara County, State of California.

Section 1.46. *Regular Assessment* shall mean an Assessment levied against an Owner and the Owner's Condominium in accordance with Article VI, Section 6.02 hereof.

Section 1.47. *Repair* shall mean the minor restoration of property that is torn, broken, or otherwise damaged, or has sustained wear, tear, or deterioration such that minor restoration is necessary.

Section 1.48. *Replace or Replacement* shall mean substantial reconstruction, restoration or substitution of the whole or a substantial part of property that has been damaged or destroyed through usage or through hazard or catastrophe such that it is no longer useable or serviceable in its current condition.

Section 1.49. *Residential Use* shall mean occupation and use of a Unit for residential dwelling purposes in conformity with this Declaration and the requirements imposed by applicable zoning laws or other state or municipal rules and regulations.

Section 1.50. *Special Assessment* shall mean an Assessment levied on an Owner and the Owner's Condominium in accordance with Article VI, Section 6.03 hereof.

Section 1.51. *Special Individual Assessment* shall mean an Assessment made against an Owner in accordance with Article VI, Section 6.04 hereof.

Section 1.52. *Telecommunications* shall mean equipment for communication of data such as telephonic, cable and satellite facilities.

Section 1.53. *Tenant* shall mean and include any lessee or renter of a Unit, whether under a Lease or a rental agreement. A lessee is a Tenant.

Section 1.54. *Unit* shall mean all that property described in Article II, Section 2.02(a)(1).

Section 1.55. *Voting Power* shall mean the total membership of the Association eligible to vote, that is, all memberships, except those suspended for default in payment of Assessments or otherwise.

ARTICLE II

Description of Project, Division of Properties and Creation of Property Rights

Section 2.01. Description of Project. The project consists of the underlying real property with Condominium Units and all other improvements located thereon. The Properties consist of one hundred sixty-five (165) residential Condominium Units. The Properties include the Common Facilities, open space, appurtenances, and easements, all as more particularly set forth on the Condominium Plan. The common interest subdivision referred to herein is a Condominium project within the meaning of California Civil Code Section 4125. The Properties are benefited by an ingress and egress easement recorded on October 2, 1972, in Book 0046, at Pages 613 and 614, as Instrument No. 4359982, in the Official Records of Santa Clara County, State of California.

Section 2.02. Division of Properties. The Properties are hereby divided into the following separate freehold estates:

(a) Units.

(1) Each of the Units as separately shown, numbered and designated in the Condominium Plan consists of the space bounded by and contained within the interior unfinished surfaces of the perimeter walls, floors, ceilings, windows, window frames, doors, door frames and trim of each Unit, each of such spaces being defined and referred to herein as a "Unit". Bearing walls located within the interior of the Unit are Common Area, not part of the Unit, except for the finished surfaces thereof. Fireplaces (fireboxes) are included within the Units. Chimneys and flues are Common Area. Soffits and exposed beams in ceilings shall be part of the Unit. Each Unit includes the utility installations located within its boundaries that the Owner has exclusive use of, including, without limitation, gas and electric heating, water heaters, space heaters, air conditioning units (if any), lighting fixtures and cabinetry, which are located

entirely within the Unit they serve. Each Unit includes both the portions of the building so described and the airspace so encompassed.

The Unit does not include those areas and those things which are defined as "Common Area" in Article II, Section 2.02(b). Each Unit is subject to such encroachments as are contained in the building, whether the same now exist or may be later caused or created in any manner referred to in Article XI, Section 11.01. In interpreting deeds and the Condominium Plan, the then existing physical boundaries of a Unit whether in its original state or reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown on the plan or deed, and those of the building.

- (2) The title of each Owner to a Unit is subject to the following:
 - (A) Any portion of the Common Area lying within said Unit.
 - (B) An easement appurtenant to the Common Area for encroachment upon the airspace of the Unit by any portions of the Common Area located within the Unit.
 - (C) An easement through said Unit appurtenant to the Common Area and all other Units for support, Maintenance and Repair of the Common Area and all other Units.
- (3) The ownership of each Unit shall include appurtenant easements to and for the benefit of the Unit as follows:
 - (A) Non-exclusive easements for ingress and egress to and from the Unit and for support of a Unit through the Common Area and for Maintenance and Repair of the Unit through all other Units and the Common Area.
 - (B) An exclusive easement for use of the Exclusive Use Common Area referred to in Section 2.02(c) of this Article II.

- (C) A non-exclusive easement for the use and enjoyment of the Common Area as provided herein.

(b) Common Area. The remaining portion of the Properties, referred to herein as “Common Area” or “Common Areas”, shall include, without limitation: land; parking and driveway areas; trash enclosures; garage areas; swimming pool, pool equipment; recreation building; storage areas; bearing walls, columns, vertical supports, girders, subfloors, unfinished floors, roofs, and foundations; water heaters, reservoirs, tanks, pumps, motors, ducts, flues, chutes, conduits, pipes, plumbing, wires, utility enclosures, and other utility installations (except the outlets thereof when located within the Unit), required to provide power, light, telephone, gas, water, sewage, drainage and heat; landscaping and landscape irrigation systems; and central television antenna or cable television system; balconies, patios, patio walls, fences and garages.

Each Unit Owner shall have, as appurtenant to the Owner’s Unit, an undivided one-hundred sixty-fifth (1/165th) interest in the Common Area. The ownership of each Condominium shall include a Unit and such undivided interest in the Common Area. The common interest appurtenant to each Unit is permanent in character and the fractional interest shown on the deed cannot be altered without the consent of all the Unit Owners affected, and the First Mortgagees of such Unit Owners, as expressed in an amended Declaration. Such undivided common interest cannot be separated from the Unit to which it is appurtenant. Each Unit Owner may use the Common Area in accordance with the purposes for which they are intended without hindering the exercise of or encroaching upon the rights of any other Unit Owners.

The undivided interest of each Unit Owner in the Common Area as more particularly provided herein is subject to the following exceptions and reservations:

- (1) Non-exclusive easements appurtenant to all Units for ingress and egress to and from all Units for support, Maintenance and Repair of all Units.
- (2) Exclusive easements for garages, patios, and balconies as shown on the Condominium Plan.
- (3) Easements for the installation and Maintenance of utilities.
- (4) Non-exclusive easements for the benefit of Unit Owners for the use and enjoyment of the Common Area as provided herein.

(c) **Exclusive Use Common Area.** The following described portions of the Common Area, referred to as "Exclusive Use Common Area", are hereby set aside and allocated for the exclusive use of the Owner of the Unit to which they are attached or assigned by Unit number, on the Condominium Plan: garages, patios, balconies, and utility closets/private storage spaces.

Except as set forth in this Declaration, no other portion of the Common Area shall be Exclusive Use Common Area.

(d) **No Separate Conveyance of Undivided Interests.** The foregoing undivided interests are hereby established and are to be conveyed with the respective Units as indicated above, cannot be changed, except as herein set forth, and the Members, their successors, assigns and grantees covenant and agree that the undivided interest conveyed therewith, shall not be separated or separately conveyed, and such undivided interest shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the Unit.

Section 2.03. Partition Prohibited. Except as expressly provided in this clause and in Article III of this Declaration, an Owner shall have no right to partition or divide the Owner's ownership of the Common Area. Partition of the Common Area can be had on a showing that the conditions to such partition as stated in Article XIII (relating to damage or destruction) or in Article XIV (relating to condemnation) or in California Civil Code Section 4610(b) have been met. Nothing in this Declaration shall prevent partition of a cotenancy in a Condominium.

Section 2.04. Distribution of Proceeds. Proceeds or property resulting from a partition shall be distributed to and among the respective Owners and their Mortgagees as their interests appear in proportion to the ratio that the fair market value of each Owner's Condominium bears to the fair market value of all Owners' Condominiums determined as provided in Article XIII and Article XIV but as of a date immediately prior to the event giving rise to the right of Owners to partition the Common Area.

ARTICLE III

Circumstances Warranting Partition of Common Area

Section 3.01. Power of Attorney. Each of the Owners irrevocably appoints the Association as attorney-in-fact and irrevocably grants to the Association full power in the name and stead of such Owner to sell the Properties, and to execute deeds and conveyances to it, in one or more transactions, for the benefit of all Owners when partition of the Properties may be had under Civil Code Section 4610 and under the circumstances authorizing partition under this Declaration. The power of attorney shall (a) be binding on all Owners, whether they assume the obligations under this Declaration or not; (b) be exercisable by a majority of the Board acting on behalf of the Association, subject to obtaining the prior approval by vote or written consent of two-thirds (2/3rds) of the Owners and two-thirds (2/3rds) of all institutional First Mortgagees; and (c) be exercisable only after recordation with the County Recorder of a certificate executed by those who have power to exercise the power of attorney that the power of attorney is properly exercisable under the authority of this Declaration. This certificate shall be conclusive evidence of proper exercise in favor of any Person relying on it in good faith.

Section 3.02. Provision to Prohibit Severance. An Owner shall not be entitled to sever the Owner's Unit in any Condominium from the Owner's membership in the Association, and shall not be entitled to sever the Owner's Unit and the Owner's membership from the Owner's undivided interest in the Common Area for any purpose. None of the component interests in a Condominium can be severally sold, conveyed, encumbered, hypothecated, or otherwise dealt with, and any violation or attempted violation of this provision shall be void. Similarly, no Owner can sever any exclusive easement appurtenant to the Owner's Unit over the Common Area from the Owner's Condominium, and any attempt to do so shall be void. The suspension of such right of severability will not extend beyond the period set forth in Article II, Section 2.03 respecting the suspension of partition. It is intended by this provision to restrict severability under California Civil Code Section 4630.

Section 3.03. Provision To Limit Interests Conveyed. Any conveyance of a Unit or any portion of it by an Owner shall be presumed to convey the entire Condominium. However, nothing contained in this Section shall preclude the Owner of any Condominium from limiting the duration of the enjoyment of the Owner's Condominium estate, such as by creating an estate for life or an estate for years, or from creating a cotenancy or joint tenancy in the ownership of the Condominium with any other Person or Persons.

ARTICLE IV

Property Rights

Section 4.01. Owners' Non-Exclusive Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area, including ingress and egress to and from the Owner's Unit, which shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area.

(b) The right of the Association to suspend the voting rights and right to use of the Common Area by an Owner for any period during which any Regular, Special or Special Individual Assessment against the Owner, individually, remains unpaid, or for any period during which the Owner is not in Good Standing.

(c) The right of the Association to adopt Operating Rules as provided in Article V, Section 5.08 hereof, and, after prior notice of at least fifteen (15) days, and a hearing before the Board, if requested by the Owner, to temporarily suspend the voting rights and right to the use of the Common Area and/or recreational facilities of any Owner, the Owner's Tenants and Guests in accordance with Article XV, Section 15.06 for a breach of the Governing Documents.

(d) The right of the Association, to the extent reasonably necessary to protect the rights, privileges, benefits, uses and enjoyment of the Members in common, to limit the number of Guests of Members who may use the Common Area and/or recreation facilities and to adopt uniform Operating Rules pursuant to Section 5.08 of Article V hereof regulating use and enjoyment of the Properties.

(e) The right of the Association, or its agents, when necessary, to enter any Unit or Exclusive Use Common Area to perform its obligations under this Declaration, including the enforcement of this Declaration; any obligations with respect to construction, Maintenance and Repair as necessary for the benefit of the Common Area or the Owners in common; or to make necessary Repairs that an Owner has failed to perform which, if left undone, will pose a threat to, or cause an unreasonable interference with any portion of the Properties. Without limitation, such entry may be had for the purpose of conducting an inspection to determine compliance with this Declaration. The Association's right of entry for such purposes shall be immediate in case of an emergency originating in or threatening

such Unit, and the Association's work may be performed under such circumstances whether or not the Owner is present. In all non-emergency situations the Association, or its agents, shall furnish the Owner with at least twenty-four (24) hours' written notice of its intent to enter the Unit, specifying the purpose of such entry. The Association shall have no liability whatsoever to an Owner for damages of any nature which result from interference by the Owner, his Tenants, Guests or agents with the right of entry of the Association under this Section 4.01(e).

(f) The right of the Association, in accordance with its Articles, Bylaws and this Declaration (including, but not limited to, Section 7.02(h)), to borrow money for the purpose of improving and maintaining the Common Area and facilities and in aid thereof to Mortgage said property; provided, the rights of any such Mortgagee in said Properties shall be subordinate to the rights of the Owners hereunder.

(g) The right of the Association to dedicate, transfer or sell all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed by the Owners. No such dedication or transfer shall be effective unless an instrument is approved by at least two thirds (2/3rds) of the Voting Power of the Owners, except as provided in Article XIV.

(h) The right of the Association to adopt and enforce Operating Rules concerning the control and use of any private streets, roadways and paving areas located upon or across the Common Area, including but not limited to, the right to regulate the kind of vehicles and their speed and the parking of vehicles upon such private streets and roadways. The Association is authorized to delegate to a municipality or other governmental entity or to contract with any private security patrol company or towing service to exercise its authorized rights in connection with such private streets, roadways, and parking areas.

(i) The right of the Association to consent to or otherwise cause the construction of additional improvements on the Common Area and to consent to or otherwise cause the alteration or removal of any existing improvements on the Common Area, including the right to deny access to portions of the Common Area during periods of construction, alteration, or removal of improvements on the Common Area.

(j) The rights, easements, covenants, conditions, servitudes, and restrictions reserved to the Association and/or to other Owners in this Declaration or in any recorded instrument dedicated to any government entity or other interested party on the Map; or granted or reserved to any other Person in any recorded instrument or recorded agreement affecting the Properties and recorded prior to the date of recordation of this Declaration.

(k) The easements set forth in this Declaration whether or not created by a vote of the Members.

Section 4.02. Delegation of Use/Rights and Obligations of Landlords and Tenants.

(a) **Rental Restrictions.** The Members desire to protect the equity in the Condominiums of the Owners; to carry out the purposes for which the Association was formed by preserving the character of the Properties as a homogeneous residential community of Owner-occupied Condominiums; to prevent the Properties from assuming the character of a renter-occupied area; to ensure that Members of the Association are committed to the community purposes and government set forth in this Declaration and the Bylaws and the Association's effective operation and proper Maintenance of the Common Area; to retain the Properties' ability to comply with the eligibility requirements for financing in the secondary Mortgage market insofar as such criteria provide that the Properties be substantially Owner-occupied; and to improve the qualification of the Properties for favorable insurance underwriting. The covenants and restrictions of this Section 4.02(b) are adopted to further these goals.

(i) **Restriction on Right to Lease.** An Owner must occupy a Condominium for at least two (2) years before acquiring the right to Lease the property. No more than twenty-five percent (25%) of the Condominiums within the Properties shall, at any particular time, be leased or rented or occupied by anyone other than an Owner, members of the Owner's Household, or temporary Guests, except as provided in this Section 4.02(b). The restriction on the number of Condominiums that may be leased or rented as set forth in this Section 4.02(b) shall not apply to any Owner of Record on the date this Declaration is recorded, unless such Owner consents, but such restriction shall apply to any Condominium, and the Owner thereof, upon the voluntary or involuntary transfer of title to such Condominium subsequent to the date this Second Restated Declaration is recorded, except for a transfer by the Owner of all or part of the Condominium under at least one of the following conditions:

- (1) Pursuant to Section 62 or 480.3 of the Revenue and Taxation Code, the transfer is exempt, for purposes of reassessment by the County Tax Assessor.
- (2) Pursuant to subdivision (b) of, solely with respect to probate transfers, or subdivision (e), (f), or (g) of, Civil Code Section 1102.2, the transfer is exempt from the requirements to prepare and deliver a Real Estate Transfer Disclosure Statement, as set forth in Section 1102.6.

(ii) Implementation. Upon request from the Board after this Declaration is recorded, each Owner renting or leasing a Condominium shall provide such information as the Board may reasonably require to implement the provisions of this Section, including without limitation, the names of the Tenants and of the members of the Tenants' Household, and a copy of the signed Lease.

(iii) Written Application. Any Owner desiring to Lease or rent the Owner's Condominium shall submit an application in writing to the Board of Directors, which shall state: the name, mailing address, Condominium address, and record ownership date of the Owner; the proposed Lease term; the number of Tenants; and such other information which the Board of Directors may reasonably require from time to time. Each Owner of Record shall have the further right, upon written request delivered to the Association, to appear in Person before the Board of Directors and discuss the request to Lease or rent the Owner's Condominium.

(iv) Board Review of Application. Within forty-five (45) days after receipt of such application to Lease or rent, the Board of Directors shall review such application, and approve or disapprove it in a written notice transmitted to the requesting Owner. If the application is disapproved, the notice shall specify the reason(s) for disapproval. The Board shall approve the application, unless doing so will increase the number of Condominiums leased or rented within the Properties to more than twenty-five percent (25%) or will otherwise result in the violation of any provision of this Section 4.02(b).

(v) Rehearing. If the application is disapproved, the Owner shall have a right to a rehearing upon written request to the Board of Directors, at its next regular meeting, or as otherwise agreed between the Owner and the Board. The Owner shall have the right to appear at the rehearing and present the Owner's case. Within ten (10) days after the conclusion of such rehearing, the Board shall transmit its written determination to the requesting Owner and, if again disapproved, shall specify the reasons for such disapproval.

(vi) Board Decision Conclusive. The decision of the Board of Directors in approving or disapproving an application of an Owner to Lease or rent the Owner's Condominium shall be final and conclusive.

(vii) List of Rented Condominiums. The Board of Directors must prepare and maintain a list of all Owners currently leasing or renting a Condominium, which list shall include the Owner's name, mailing address, Condominium address, date of record ownership, and term of the Lease. Such list shall be made available to any Owner upon payment of a reasonable administrative charge to be set by the Board of Directors.

(viii) Priority of Applicants. The Board must establish and maintain a priority list, identifying the name, mailing address, address of the Condominium, record date of ownership, and date the written application of each Owner to Lease or rent the Owner's Condominium was submitted to the Board. When the number of Condominiums leased or rented in the Properties is less than the number allowed under Section 4.02(b)(i) the Board shall authorize the Owner who submitted the earliest application to Lease or rent the Owner's Condominium. Once an Owner obtains permission to Lease or rent, the Owner may Lease or rent to consecutive lessees or renters or for consecutive terms without interruption of more than sixty (60) days, or may reoccupy the Owner's Condominium for a period not to exceed thirty (30) days, without having to reapply to the Board for permission to Lease or rent.

(ix) Exceptions. The Board of Directors shall have the right, but not the duty, to waive some or all of the provisions of this Section 4.02 either: (i) in cases of deserving and unusual hardship or (ii) for a limited term, not to exceed one year, upon written request of an Owner representing that the Owner will retake possession and occupancy of the Condominium as a resident thereof after such limited period, and subject to such other conditions as the Board may determine. The Board shall have the right to review and approve the Owner's occupancy for such limited term. Exceptions as authorized by the Board under this Subsection (ix) shall take precedence over the order of priority established pursuant to Section 4.02(b)(viii), and shall not result in twenty-five percent (25%) or more of the Condominiums being leased or rented at any time.

(b) Leasing of Units. Any Owner who Leases a Condominium must comply with each of the following restrictions, and each Lease will be subject to these restrictions, whether they are expressly included within the Lease or not.

- (1) Each Lease must be in writing and for an initial term of not less than three hundred sixty-five (365) days. Subleasing and bed and breakfast rentals are prohibited. Overnight transient rentals are prohibited.
- (2) Leases shall provide that Tenants are subject in all respects to provisions of the Governing Documents. The Board may adopt a Lease addendum form which, if so adopted, shall be executed as part of each Lease or rental agreement, and shall obligate the Tenant to comply with the Governing Documents. A copy of the Lease addendum shall be provided to the Board within fourteen (14) days of the time the Owner enters into the Lease. The Lease addendum must provide that if the Owner defaults in payment of Assessments or other charges, the Association may collect rent directly from the Tenant as necessary to

cure the default. The Lease addendum shall be signed by the Owner and the Tenant. The Board may additionally require an Owner to provide the Board a true and correct copy of the Lease agreement within fourteen (14) days of written request. Owner shall provide Tenant with copies of the Governing Documents or a Board approved summary of the Governing Documents.

- (3) Owners shall provide the Secretary of the Association or the managing agent, in writing, within five (5) days of entering into a Lease, the following: (i) the names, telephone and e-mail of all Tenants and members of Tenants' Household occupying the Condominium; (ii) a description for each vehicle to be parked on the Properties by the Tenants of the Condominium, including vehicle license plate numbers; (iii) the address and telephone number where such Owner can be reached; (iv) a true statement that the Tenant has been given a copy of the Governing Documents or a Board approved summary of the same, and that the Tenant has been advised of any obligations he or she may have thereunder as a Tenant; (v) confirmation of the Lease and that it complies with this Declaration; and (vi) a receipt signed by the Tenant that the Tenant has received a complete copy of the Governing Documents or a Board approved summary of the Governing Documents.
- (4) Any failure of the Tenant to comply with the Governing Documents shall be a default under the Lease, regardless of whether the Lease so provides. The Owner shall at all times be responsible for compliance of Owner's Tenant with all of the provisions of the Governing Documents during the Tenant's occupancy and use of the Condominium.
- (5) In the event that any Tenant fails to honor the provisions of the Governing Documents, the Owner immediately shall take all action to cure the default including, if necessary, eviction of the Tenant. The Association may maintain an eviction action against the Tenant in the event that the Owner has not taken action to prevent and/or correct the actions of the Owner's Tenant giving rise to the Common Area or Common Facility damage or nuisance after receiving written notice from the Association, or an authorized committee of the Board, detailing the nature of the violation and having a reasonable

opportunity to either take appropriate corrective action on a voluntary basis or appear before the Board or committee to present arguments as to why such action is not necessary. The remedy provided by this subsection is not exclusive and is in addition to any other remedy or remedies of the Association.

(c) Use of Recreational Facilities by Landlords. Any non-resident Owner who Leases the Owner's Condominium is no longer eligible to use the Common Facilities that the Owner would otherwise be entitled to use by virtue of the ownership of the Unit.

Section 4.03. Owner Registration. The Board may require that each Owner shall notify the Secretary of the Association or the managing agent, if any, in writing, of the names of the Owner's Household members occupying such Condominium and of the address of the Owner, if not the property address, and the telephone numbers where the Owner can be reached, as well as the telephone number of the Condominium. Further, the Board may require that all Owners provide a description for each vehicle parked on the Properties by residents of the Condominium, including vehicle license plate numbers.

Section 4.04. Statutory Notification And Fees. As more particularly provided in Section 4525(a) of the California Civil Code, the Owner of the Unit, as soon as practicable before transfer of title or execution of a real property sales contract therefor, shall provide the following to the prospective purchaser:

- (a) A copy of all Governing Documents.
- (b) If there is a restriction in the Governing Documents limiting the occupancy, residency, or use of a separate interest on the basis of age in a manner different from that provided in Civil Code Section 51.3, a statement that the restriction is only enforceable to the extent permitted by Civil Code Section 51.3 and a statement specifying the applicable provisions of Civil Code Section 51.3.
- (c) A copy of the most recent documents distributed pursuant to Civil Code Sections 5300-5320; (financial disclosure information such as reserve funding and Annual Budget).
- (d) A true statement in writing obtained from an authorized representative of the Association as to the amount of the Association's current Regular and Special Assessments and fees, any Assessments levied upon the Owner's interest in the common interest development that are unpaid on the date of the statement, and

any monetary fines or penalties levied upon the Owner's interest and unpaid on the date of the statement. The statement obtained from an authorized representative shall also include true information on late charges, interest, and costs of collection which, as of the date of the statement, are or may be made a lien upon the Owner's interest in a common interest development pursuant to Article 2 (commencing with Civil Code Section 5650) of Chapter 8.

- (e) A copy or a summary of any notice previously sent to the Owner pursuant to Civil Code Section 5855 that sets forth any alleged violation of the Governing Documents that remains unresolved at the time of the request. The notice shall not be deemed a waiver of the Association's right to enforce the Governing Documents against the Owner or the prospective purchaser of the separate interest with respect to any violation. This paragraph shall not be construed to require an association to inspect an Owner's separate interest.
- (f) Any change in the Association's current Regular and Special Assessments and fees which have been approved by the Board, but have not become due and payable as of the date disclosure is provided pursuant to this subdivision.
- (g) If there is a provision in the Governing Documents that prohibits the rental or leasing of any of the separate interests in the common interest development to a renter, lessee, or Tenant, a statement describing the prohibition and its applicability.
- (h) If requested by the prospective purchaser, a copy of the minutes of Board meetings, excluding meetings held in executive session, conducted over the previous 12 months, that were approved by the Board.

Section 4.05. Easements to Accompany Conveyance of Condominium. Easements that benefit or burden any Condominium shall be appurtenant to that Condominium and shall automatically accompany the conveyance of the Condominium, even though the description in the instrument of conveyance may refer only to the fee title to the Condominium.

Section 4.06. Owners' Rights and Easements for Utilities. The rights and duties of the Owners of Units within the Properties with respect to sanitary sewer, drainage, water, electricity, gas, pipes, vents, television receiving, telephone equipment, cables and lines, exhaust flues, and heating and air conditioning facilities (if any) (hereinafter referred to, collectively, as "utility facilities") shall be as follows:

(a) Whenever utility facilities are installed within the Properties, which utility facilities or any portion thereof lie in or upon a Unit or Units owned by other than the Owner of a Unit served by said utility facilities, the Owners of any Units served by said utility facilities shall have the right of reasonable access for themselves or for utility companies or the City of Saratoga to Repair, to replace and generally Maintain said utility facilities as and when the same may be necessary.

(b) Whenever utility facilities are installed within the Properties which utility facilities serve more than one Unit, the Owner of each Unit served by the utility facilities shall be entitled to the full use and enjoyment of such portions of the utility facilities as service the Owner's Unit.

(c) In the event of a dispute between Owners with respect to the Repair or rebuilding of said utility facilities, or with respect to the sharing of the cost thereof, then, upon written request of one Owner addressed to the other Owner(s), the matter shall be submitted to alternative dispute resolution as provided in Article XV, Sections 15.08 and 15.09 of this Declaration.

(d) Easements exist over and under the Properties for the installation, Repair, and Maintenance of electric, telephone, data, water, gas, and sanitary sewer lines and facilities, heating and air conditioning facilities, cable or master television antenna lines, drainage facilities, walkways, and landscaping as shown on the Maps of the Properties, and as may be hereafter required or needed to service the Properties, shall be held by the Association, together with the right to grant and transfer the same.

(e) The Association shall Maintain all utility facilities located in the Common Area, except for those facilities maintained by utility companies, public, private, or municipal, and those maintained by the Owners as described in Article VIII of this Declaration. The Association shall pay all charges for utilities applied to the Properties, except those metered or charged separately to the Condominiums.

Section 4.07. Exclusive Use Grants. The affirmative vote of Members owning at least sixty-seven percent (67%) of the Condominiums shall be required before the Board of Directors may grant exclusive use of any portion of the Common Area to any Member, except any grant of exclusive use that is for any of the following reasons:

(a) To eliminate or correct engineering errors in documents recorded with the County Recorder or on file with a public agency or utility company.

(b) To eliminate or correct encroachments due to errors in construction of any improvements.

(c) To fulfill the requirement of a public agency.

(d) To transfer the burden of management and Maintenance of any portion of the Common Area that is generally inaccessible and is not of general use to the membership at large of the Association.

(e) To accommodate a disability.

Any measure placed before the Members requesting that the Board of Directors grant exclusive use of any portion of the Common Area shall specify whether the Association will receive any monetary consideration for the grant and whether the Association or the transferee will be responsible for providing any Maintenance and/or insurance coverage for exclusive use of the Common Area. All votes of the Members pursuant to this Section shall be conducted in accordance with Section 7.04(c) of the Bylaws.

Section 4.08. Below Market Price Unit. To the maximum extent permitted by law, under no circumstances shall a Unit be converted (voluntarily or involuntarily) to a below market price unit (hereafter "BMPU"). It is the desire of each and every Unit Owner of the Properties to retain the character, nature, and underlying property values in part by excluding BMPUs from the Properties. Any Owner who receives an offer to purchase a Condominium for BMPU purposes shall sell the Condominium to the Association, provided that the Association agrees to purchase the Condominium under the same price, terms and conditions contained in the purchase agreement, excluding the BMPU terms.

ARTICLE V

Homeowners Association

Section 5.01. Association Membership.

(a) Every Owner of a Unit shall be a Member of the Association which Association shall have the responsibility of managing and maintaining the Common Area and discharging the other duties and responsibilities described in the Governing Documents. Such membership is appurtenant to and may not be separated from ownership of any Unit within the Properties.

(b) In the case of a corporation, the rights of the Member shall be exercised by any designated officer or director of the corporation. In the case of a trust, the rights of the Member shall be exercised by the trustee(s). In the case of a limited liability corporation, the rights of the Member shall be exercised by the manager. In the case of a general partnership, the rights of the Member shall be exercised by a partner.

(c) Each Owner, Tenant, Guest or occupant of a Condominium shall comply with the provisions of this Declaration and (to the extent they are not in conflict with the Declaration) the Articles and Bylaws, and the decisions and resolutions of the Association or the Board, as lawfully amended from time to time. Failure to comply with any such decisions, or resolutions shall be grounds for an action (i) to recover sums due, (ii) for damages, (iii) for injunctive relief, or (iv) to enforce such provisions, decisions or resolutions. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in the Articles, or the Bylaws, or this Declaration, shall be deemed to be binding on all Owners of Condominiums, their successors and assigns.

Section 5.02. Single Class of Membership. As more particularly provided in the Bylaws, the Association shall have one class of membership. The rights, duties, obligations and privileges of the Members shall be as set forth in the Governing Documents.

Section 5.03. Voting Rights of Memberships. Each Member of the Association shall be entitled to one vote for each Unit owned by said Member. When more than one Person holds an interest in any Unit, all such Persons shall be Members, although in no event shall more than one vote be cast with respect to any Unit. Voting rights may be temporarily suspended under those circumstances described in Article XV, Section 15.06 hereof. The right of entity Members to vote shall be as follows: In the case of a corporation, the right shall be exercised by any designated officer or director of the corporation. In the case of a trust, the right of the Member shall be exercised by a trustee. In the case of a limited liability corporation, the right of the Member shall be exercised by the manager. In the case of a general partnership, the right of the Member shall be exercised by a partner.

Section 5.04. Assessments. Members of the Association shall be obligated to pay the Assessments imposed by Article VI of this Declaration with respect to each Unit owned by said Member. Any Assessments levied by the Association on its Members shall be levied in accordance with and pursuant to the provisions of this Declaration.

Section 5.05. Transfer of Membership. Membership in the Association shall not be transferred, encumbered, pledged or alienated in any way, except upon the sale or encumbrance of the Unit to which it is appurtenant.

Any attempt to make a prohibited transfer is void. In the event the Owner of any Unit should fail or refuse to transfer the membership registered in the Owner's name to the purchaser of the Owner's Unit, the Association shall have the right to record the transfer upon its books and thereupon any other membership outstanding in the name of the seller shall be null and void. In the case of a sale, membership passes automatically to the purchaser upon transfer of title to the Unit. In the case of an encumbrance of such Unit, a Mortgagee does not have membership rights until it becomes an Owner by foreclosure or deed in lieu thereof. Tenants who are delegated rights of use pursuant to Article IV, Section 4.02 hereof do not thereby become Members, although the Tenant and members of the Tenant's Household shall, at all times, be subject to the provisions of the Governing Documents.

Section 5.06. Rights and Duties of the Association Board of Directors. The rights, duties and obligations of the Board of Directors of the Association shall be as set forth in the Governing Documents.

Section 5.07. Powers and Authority of the Association. The Association shall have all of the powers of a non-profit mutual benefit corporation organized under the laws of the State of California in operating for the benefit of its Members, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, Bylaws and this Declaration. The Association and its Board of Directors shall have the power to do any and all lawful things which may be authorized, required or permitted to be done under and by virtue of the Bylaws, this Declaration and California law, and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association for the peace, health, comfort, safety or general welfare of the Owners. The specific powers of the Association and the limitations thereon shall be as set forth in Article IX of the Bylaws.

Section 5.08. Rule Making Process.

(a) **Rulemaking Power.** The Board may, from time to time, subject to the provisions of this Declaration, propose, enact and amend Operating Rules of general application to the Owners of Units within the Properties. Such Operating Rules may concern, but need not be limited to, matters pertaining to use of the Common Area and Common Facilities, collection and disposal of refuse, minimum standards of Maintenance

of landscaping or improvements in any Unit, parking, the elimination of improvements which obstruct the vision of motorists or which create a hazard for vehicular or pedestrian traffic, the keeping of household pets in Units, the number of Guests of an Owner who may use the recreational facilities, and any other subject or matter within the jurisdiction of the Association as provided in the Governing Documents. Notwithstanding the foregoing grant of authority, the Operating Rules shall not be inconsistent with or materially alter any provision of, or the rights, preferences and privileges of Members as set forth in, the Articles or Bylaws of the Association or this Declaration. In the event of any material conflict between any Operating Rule and any provision of the Articles, Bylaws or this Declaration, the provision contained in the Articles, Bylaws or Declaration (as the case may be) shall prevail.

(b) **Written Notice of Proposed Rule Change.** The Board shall provide written notice of a proposed Rule Change to the Members at least thirty (30) days before adopting the Rule Change. As used in this Section, the term "Operating Rule Change" means the adoption, amendment, or repeal of an Operating Rule by the Board, and the term "Rule" means a regulation adopted by the Board of Directors that applies generally to the management and operation of the Association or the conduct of its business and affairs. Without limitation, the term "Operating Rule" includes Rules that relate to one or more of the following subjects:

- (1) Use of the Common Area or of an Exclusive Use Common Area.
- (2) Use of a Condominium, including any aesthetic or Architectural Standards that govern alteration of a Condominium.
- (3) Member discipline, including any schedule of monetary penalties for violation of the Governing Documents and any procedure for the imposition of penalties.
- (4) Any standards for delinquent Assessment payment plans.
- (5) Any procedures adopted by the Association for resolution of Assessment disputes.
- (6) Any procedures for reviewing and approving or disapproving a proposed physical change to a Member's Condominium or to the Common Area.
- (7) Procedures for elections.

The notice shall include the text of the proposed Rule Change and a description of the purpose and effect of the proposed Rule Change. Such notice is not required if the Board determines that an immediate Rule Change is necessary to address an imminent threat to public health or safety, or an imminent risk of substantial economic loss to the Association. A decision on a proposed Rule Change shall be made at a meeting of the Board, after consideration of any comments made by Members.

(c) Distribution of Rules. As soon as possible after making a Rule Change, but not more than fifteen (15) days after making the Rule Change, the Board shall give General Notice of the Rule Change to every Member. If the Rule Change was an emergency Rule Change, the notice shall include the text of the Rule Change, a description of the purpose and effect of the Rule Change, and the date that the Rule Change expires. However, no notice is required if the Board determines that an immediate Rule Change is required to address an imminent threat to public health or safety, or an imminent risk of substantial economic loss to the Association, in which case an emergency Rule Change may be made which is effective for one hundred twenty (120) days unless the emergency Rule Change has a shorter effective period.

(d) Reversal of Rules by Members. Members of the Association owning five percent (5%) or more of the separate interests may call a special meeting of the Members to reverse a Rule Change. The meeting shall be called pursuant to Civil Code Section 4365 within thirty (30) days after the Members of the Association are given General Notice of the Rule Change. The Rule Change may be reversed by the affirmative vote of a majority of the votes represented and voting at a duly held meeting at which a quorum is present as provided in Article V, Section 5.05(a) of the Bylaws (which affirmative votes also constitute a majority of the required quorum), or if this Declaration or Bylaws require a greater proportion, by the affirmative vote or written ballot of the proportion required, or action may be taken by written ballot without a notice as provided in Civil Code Section 4365, or any successor statute. A Rule Change reversed under this Subsection may not be readopted for one year after the date of the meeting reversing the Rule Change. As soon as possible after the close of voting, but not more than fifteen (15) days after the close of the voting, the Board of Directors shall provide notice of the results of the Member vote to every Member of the Association.

(e) Mandatory Election Rules. The Association shall adopt Rules, in accordance with the procedures prescribed by this Section 5.08, that do all of the following:

(1) Ensure that if any candidate or Member advocating a point of view is provided access to Association media, newsletters, or Internet Web sites during a campaign,

for purposes that are reasonably related to that election, equal access shall be provided to all candidates and Members advocating a point of view, including those not endorsed by the Board, for purposes that are reasonably related to the election. The Association shall not edit or redact any content from these communications, but may include a statement specifying that the candidate or Member, and not the Association, is responsible for that content.

(2) Ensure access to the Common Area meeting space, if any exists, during a campaign, at no cost, to all candidates, including those who are not incumbents, and to all Members advocating a point of view, including those not endorsed by the Board, for purposes reasonably related to the election.

(3) Specify the qualifications for candidates for the Board of Directors and any other elected position, and procedures for the nomination of candidates. A nomination or election procedure shall not be deemed reasonable if it disallows any Member of the Association from nominating himself or herself for election to the Board of Directors.

(4) Specify the qualifications for voting, the Voting Power of each membership, and the voting period for elections, including the times at which polls will open and close.

(5) Specify a method of selecting one or three independent third parties as inspector, or inspectors, of election utilizing one of the following methods:

(A) Appointment of the inspector or inspectors by the Board.

(B) Election of the inspector or inspectors by the Members of the Association.

(C) Any other method for selecting the inspector or inspectors.

Section 5.09. Breach of Rules or Restrictions. In the event of a breach of any Rule or of any of the restrictions contained in the Bylaws or this Declaration by an Owner, or the Owner's Household, Guests, employees, invitees, licensees, or Tenants, the Board, for and on behalf of all other Owners, shall enforce the obligations of each Owner to obey such Rules or restrictions in any manner provided by law or in equity, including but not limited to appropriate hiring of legal counsel, the pursuing of legal action, suspension of the Owner's right to use the Common Area and/or Common Facilities, suspension of the Owner's voting rights as a Member of the Association, or the imposition of fines, provided, however, that no such enforcement measures may be imposed after notice and a hearing as provided in Article

XV, Section 15.06, hereof. The provisions of this Section 5.09(a) shall not apply to the rights, remedies, legal action and/or suspension of an Owner's right to use the Common Area and/or Common Facilities or suspension of the Owner's voting rights as a Member of the Association resulting from the failure to pay Assessments as provided in Article VI of this Declaration. The remedies provided herein extend to Owners who are delinquent in payment of Regular, Special, or Special Individual Assessments, or any costs or fees related thereto, but without impairment of the Association's rights and remedies under Article VI of this Declaration.

ARTICLE VI

Assessments

Section 6.01. Assessments Generally.

(a) Each Owner of a Condominium by acceptance of a deed therefor (whether or not it shall be so expressed in such deed), covenants and agrees to pay to the Association the Regular Assessments, Special Assessments and Special Individual Assessments hereinafter provided for and to allow the Association to enforce any Assessment lien established hereunder by nonjudicial proceedings under a power of sale or by any other means authorized by law.

(b) Each installment payment of any Regular Assessment and each lump sum or installment payment of any Special Assessment or Special Individual Assessment, together with any interest charge provided for in Subsection (e) hereof, late charges, and reasonable costs of collection, as assessed in accordance with California Civil Code Section 5650, attributable thereto or incurred in the collection thereof, shall be a separate debt of the Owner against whom the same has been assessed at the time the Assessment or other sums are levied. Furthermore, each Regular Assessment and certain Special Assessments are hereby declared and agreed to be a lien upon and against the Unit so assessed in the nature of a Mortgage with a power of sale in accordance with California Civil Code Section 2924 (or a comparable superseding statute), all as more particularly described in Section 6.09 of this Article VI. Special Individual Assessments may be imposed as a lien against the Owner's Unit only in those instances specifically identified in Section 6.04 of this Article VI.

(c) Each Owner who acquires title to a Condominium (whether at a judicial sale, trustee's sale or otherwise) shall be personally liable only for Assessments attributable to the Condominium so purchased which become due and payable after the date of purchase by

such Owner; provided that any unpaid Assessment of a previous Owner shall remain the debt of such previous Owner against whom assessed and any lien created pursuant to the provisions of this Article VI by reason of such unpaid Assessment shall remain in force and effect as a lien on the Condominium sold and may be subject to foreclosure as provided in Section 6.09 hereof.

(d) If any installment payment of a Regular Assessment or lump sum or installment payment of any Special Assessment or Special Individual Assessment assessed to any Owner is not paid within fifteen (15) days after the same becomes due, such payment shall be delinquent and the amount thereof shall be subject to a late charge not exceeding ten percent (10%) of the delinquent Assessment or Ten and no/100 Dollars (\$10.00) whichever is greater, pursuant to California Civil Code, Section 5650(b) or such larger sum as may hereafter be allowed by such statute or any successor statute thereto.

(e) Interest on Regular and Special Assessments together with reasonable costs of collection and late charges shall accrue at an annual percentage rate of ten percent (10%) per annum commencing thirty (30) days after the Assessment becomes due, or at such higher interest rate as may hereafter be permitted by California Civil Code Section 5650(b) or any successor statute thereto.

(f) No Owner may exempt the Owner or the Owner's Condominium from liability or charge for the Owner's share of any Regular, Special or Special Individual Assessment rightfully made and assessed against the Owner and the Owner's Condominium by waiving or relinquishing, or offering to waive or relinquish, the Owner's right to use and enjoy all or any portion of the Common Area or Common Facilities or by the abandonment or nonuse of the Condominium.

Section 6.02. Regular Assessment.

(a) Determination of Assessment. Not less than thirty (30) nor more than ninety (90) days prior to the beginning of each fiscal year of the Association, the Board shall estimate the anticipated Common Expenses (including prudent contributions to the capital reserve fund for Repair and Replacement of Common Facilities) for the next succeeding fiscal year and shall deduct therefrom the amount of any estimated surplus which will remain from the current year's Assessment. In preparing its annual estimates of Common Expenses and the appropriate deductions therefrom on account of surplus, the Board shall consider the Common Expenses all as more particularly provided in Exhibit "B" attached hereto. The total expenses (less deductions) thus estimated shall be allocated among all the Condominiums within the Properties in the manner described in Subsection (b) of this

Section 6.02 as the Regular Assessment for such Condominium; notwithstanding any other provision in this Declaration to the contrary, the Board may not impose a Regular Assessment for any fiscal year more than twenty percent (20%) above the Regular Assessment for the Association's preceding fiscal year without the approval of a majority of the votes of the Members pursuant to Section 7.04 of the Bylaws. For purposes of this section, a quorum means more than fifty percent (50%) of the Owners of the Association, and the meeting or ballot procedure must be conducted in accordance with Civil Code Section 5100(a) and Section 7.04(c) of the Bylaws.

The foregoing restrictions on Assessment increases do not apply to increases necessary for emergency situations. For purposes of this Section 6.02, an emergency situation is any one of the following:

- (1) An extraordinary expense required by an order of a court.
- (2) An extraordinary expense necessary to Repair or Maintain the development or any part of it that the Association is responsible to Maintain when a threat to personal safety on the Properties is discovered.
- (3) An extraordinary expense necessary to Repair or Maintain the Properties or any part of it that the Association is responsible to Maintain that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget required under the Annual Budget Report, provided that before the imposition or collection of any Assessment under this Subsection, the Board must 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 shall distribute the resolution to the Members with the notice of Assessment.

However, the Board may not increase the Regular Assessment for a fiscal year as provided herein unless the Board has approved and distributed a budget in compliance with subdivision (a) of Section 5300 of the California Civil Code with respect to that fiscal year, or has obtained the approval of Owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association conducted in accordance with Section 7.04(c) of the Bylaws. "Quorum" for purposes of such a vote means more than fifty percent (50%) of the Owners of the Association.

This Section 6.02(a) incorporates the statutory requirements of California Civil Code Section 5610. If this Section of the California Civil Code is amended in any way, this

Section 6.02(a) automatically shall be amended in the same manner without the necessity of amending this Declaration.

(b) Allocation of Regular Assessments Among the Owners. The total estimated Common Expenses shall be divided equally among, assessed against and charged to all Condominiums within the Properties. However, the provisions of Article XIII shall control over this Section 6.02(b) in the event the Assessment is necessary due to partial or total destruction of any of the improvements in the Properties.

(c) Assessment Roll. That portion of the estimated Common Expenses assessed against and charged to each Owner shall be set forth and recorded upon an Assessment roll which shall be maintained and available with the records of the Association and shall be open for inspection by the Board at all reasonable times. The Assessment roll shall show for each Condominium the name and address of the Owner of Record thereof, all Assessments, whether Regular or Special, levied against each Owner and the Owner's Condominium, and the amount of such Assessments which have been paid or remain unpaid. A certificate executed and acknowledged by the Secretary, Treasurer or designated management representative of the Association stating the indebtedness secured by any lien created hereunder upon any such Condominium shall be conclusive upon the Association and the Owner of such Condominium as to the amount of such indebtedness as of the date of such certificate, in favor of all Persons who rely thereon in good faith, and such a certificate shall be furnished by the Association to any Owner or to any First Mortgagee under a Mortgage encumbering a Condominium upon written request therefor at a reasonable fee payable to the Association.

(d) Mailing. The Board of Directors shall serve each Owner by Individual Notice a statement of the amount of the Regular Assessment assessed against the Owner's Condominium for the next succeeding fiscal year within thirty (30) days after determination thereof in accordance with Section 6.02(a) hereof. The Association shall provide Individual Notice to the Owners of any increase in the Regular Assessments of the Association, not less than thirty (30) nor more than ninety (90) days prior to the increased Assessment becoming due.

(e) Failure to Make Estimate. If, for any fiscal year, the Board of Directors shall fail to make an estimate of the Common Expenses, the Regular Assessment made for the preceding fiscal year, together with any Special Assessment made pursuant to Section 6.03 hereof for that year, shall be assessed against each Owner and the Owner's Condominium on account of the then current fiscal year, and installment payments (as hereinafter provided)

based upon such automatic Assessment shall be payable on the regular payment dates established by the Association.

(f) **Installment Payment.** The Regular Assessment made against each Owner shall be due and payable in advance to the Association in equal monthly installments on the first day of each month or on such other date or dates as may be established from time to time by the Association. Monthly installments of Regular Assessments shall be delinquent if not paid by the fifteenth (15th) day of the month. In the event of default in the payment of any installment of the Regular Assessment, in addition to the remedies set forth in this Declaration, the Board may, in its discretion, accelerate and declare immediately due and payable any remaining installment payments of the Regular Assessment levied for the fiscal year.

(g) **Surplus Funds.** If, as of the end of any fiscal year, there is an excess of membership income over membership expenses as defined in Internal Revenue Code Section 277 for the year ended, such excess shall be applied against the subsequent tax year's Member Assessments as provided in Internal Revenue Service Revenue Ruling 70-604, unless some other lawful disposition of such excess income is determined by the vote of the Members.

Section 6.03. Special Assessments.

(a) **Special Assessments.** The Board, at any time, may levy a Special Assessment in order to raise funds for unexpected operating or other costs, insufficient operating or reserve funds, or such purposes as the Board in its discretion considers appropriate. Special Assessments hereunder may be imposed upon Board action alone except in those instances where membership approval is required pursuant to Subsection (c) of this Section 6.03.

(b) **Capital Improvements.** Subject to Subsection (c) of this Section 6.03 and Article IX, Section 9.02(c) of this Declaration, the Association may also levy Special Assessments for Capital Improvements to the Common Area or Common Facilities unrelated to Repairs for damage or normal wear and tear to or destruction of the Common Facilities.

(c) **Assessment Increases Requiring Membership Approval.** As more particularly provided in California Civil Code Section 5605(b), no Special Assessment described in Subsections (a) or (b) hereof shall be made by the Board of Directors whereby the Special Assessments in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for the fiscal year without the approval of Owners constituting a quorum, casting the majority of the votes at a meeting or election of the Association conducted in accordance

with Civil Code Section 5100 and Section 7.04(c) of the Bylaws. For purposes of this Section 6.03(c) the term "quorum" means more than fifty percent (50%) of the Members. All votes of the Members pursuant to this Section shall be conducted in accordance with Section 7.04(c) of the Bylaws.

The provisions of this subdivision do not limit Assessment increases for emergency situations. Emergency situations are any one of the following:

- (1) An extraordinary expense required by an order of a court.
- (2) An extraordinary expense necessary to Repair or Maintain the development or any part of it that the Association is responsible to Maintain when a threat to personal safety on the Properties is discovered.
- (3) An extraordinary expense necessary to Repair or Maintain the Properties or any part of it that the Association is responsible to Maintain that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget required under California Civil Code Section 5300(b), provided that before the imposition or collection of any Assessment under this Subsection the Board must 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 shall distribute the resolution to the Members with the notice of Assessment.

This Section 6.03(c) incorporates the statutory requirements of California Civil Code Section 5610. If this Section of the California Civil Code is amended in any way, this Section 6.03(c) automatically shall be amended in the same manner without the necessity of amending this Declaration.

(d) Allocation and Payment of Special Assessments. When levied by the Board or approved by the Members as provided above, a Special Assessment levied under Section 6.03(a) shall be allocated among the Members and their Condominiums as provided in Section 6.02(b) hereof, and a Special Assessment levied under Section 6.03(b) shall be equally divided among, assessed against and charged to, such Members and their Condominiums and shall be recorded on the Association's Assessment Roll in accordance with Article VI, Section 6.02(c) of this Declaration and notice thereof shall be mailed to each Owner subject thereto.

Section 6.04. Special Individual Assessments and Liens.

(a) In addition to the Special Assessments provided for in Section 6.03 hereof, the Association may also impose Special Individual Assessments against an Owner in any of the circumstances described in Subsections (1) through (4) below. A lien may be imposed only for Special Individual Assessments described in Subsection (a)(2) of this Section 6.04.

- (1) Special Individual Assessments for Particular Recreation or Other Privileges - Rental Assessment. Owners who wish to rent the Clubhouse (exclusive of any recreational facilities) may do so at such rental rates as are set from time to time by the Board. Any rental charges thus incurred shall be payable as a Special Individual Assessment.
- (2) Damage to Common Area. In the event the Association incurs costs in the Repair of damage to the Common Area or Common Facilities, for which an Owner, any member of the Owner's Household, or any of the Owner's Tenants, Guests or agents were responsible, the Association may impose a Special Individual Assessment against the Owner for such costs. Such costs shall be assessed and charged solely to and against such Owner and the Owner's Condominium as a Special Individual Assessment. Nothing in this Subsection (2) shall require the Board to make a claim on any insurance carrier issuing a policy relating to the Common Area in the event of any such damage or destruction. A Special Assessment levied under this Section 6.04(a)(2) may become a lien as set forth in Section 6.04(b).
- (3) Act Increasing Insurance Premiums. In the event any act or omission of any Owner, any member of the Owner's Household, or any of the Owner's Tenants, Guests or agents shall in any way cause or be responsible for any increase in the premiums for any insurance purchased or obtained by the Association in accordance with the provisions of Article XII hereof, the amount of such increase may, in the discretion of the Board, be assessed and charged solely to and against such Owner as a Special Individual Assessment, but without right to record a lien as provided in Civil Code Section 5725.
- (4) Expenses Incurred in Gaining Member Compliance. In the event that the Association incurs any costs or expenses, including reasonable title

company, accounting, legal fees, or fees or costs of experts or consultants, to accomplish (i) any Maintenance, Repair or Replacement, under the Bylaws, this Declaration or the Operating Rules, (ii) to prevent the continued Maintenance of a nuisance or (iii) otherwise bring the Owner and/or the Owner's Condominium into compliance with the provisions of the Bylaws, this Declaration or the Operating Rules, the amount incurred by the Association or any monetary penalties and interest thereon duly imposed hereunder shall be assessed and charged solely to and against such Owner and the Owner's Condominium as a Special Individual Assessment, but without right to record a lien; provided that Special Individual Assessments of the kind described in this Subsection (a)(4) may only be imposed after the Owner has been afforded notice and the opportunity for a meeting with the Board pursuant to Article XV, Section 15.06 hereof, and has been given a reasonable opportunity to comply voluntarily with the Association's Governing Documents before the Assessment is imposed.

(b) Levy of Special Individual Assessment and Payment. Once a Special Individual Assessment has been levied against an Owner for any reason described, and subject to the conditions imposed in Subsection (a) of this Section 6.04, such Special Individual Assessments shall be entered on the Association Assessment roll, notice thereof shall be mailed to the affected Owner and the Special Individual Assessment shall thereafter be due as a separate debt of the Owner.

Special Individual Assessments imposed pursuant to Section 6.04(a)(2) may become a lien against the Owner's Condominium as provided in Section 6.09 of this Article VI. Special Individual Assessments imposed pursuant to Section 6.04(a)(1), (3) or (4) hereof may not be characterized or treated as an Assessment which may become a lien against the Owner's Condominium. However this Section 6.04(b) shall not apply to charges imposed against an Owner consisting of reasonable late payment penalties for delinquent Assessments and/or 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.

Special Individual Assessments imposed pursuant to either Section 6.04(a)(1), 6.04(a)(2) or 6.04(a)(4) shall be payable in full to the Association within thirty (30) days after the mailing of notice of the Assessment, and Special Individual Assessments imposed pursuant to Section 6.04(a)(3) shall be payable in full to the Association at least ten (10) days in advance of the date or dates for the payment of the increased insurance premium giving rise to the Assessment.

Section 6.05. Purpose and Reasonableness of Assessments. Each Assessment, whether it be a Regular, Special or Special Individual Assessment, made in accordance with the provisions of this Declaration, is hereby declared and agreed (a) to be for use exclusively to promote the benefit of the residents of the Properties by the Owners and their Households, Tenants, invitees, licensees, Guests and employees, or for the Repair, Maintenance, Replacement and protection of the Common Area or Common Facilities within the Properties and other portions of the Properties that the Association is obligated to Maintain and Repair under Article VIII of this Declaration, (b) to be a reasonable Assessment, and (c) to constitute a separate, distinct and personal obligation (with respect to which a separate lien may be created to the extent provided in this Article VI) of the Owner of the Condominium against which the Assessment is made and shall bind the Owner's heirs, successors and assigns; provided that the personal obligation for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

Section 6.06. Exemption of Certain of the Properties from Assessments. The following real property subject to this Declaration, unless devoted to use as a residential dwelling, shall be exempt from the Assessments and the lien thereof provided herein:

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

Section 6.07. Notice and Procedure for any Action Authorized Under Sections 6.02 and 6.03. Any action authorized under Sections 6.02 and 6.03 of this Article VI requiring the vote of the Association Members shall be taken either by written ballot or at a meeting of the Members called for that purpose, written notice of which shall be sent to all Members not less than fifteen (15) days nor more than sixty (60) days in advance of the meeting or mailing of the written ballots.

Section 6.08. Maintenance of Assessment Funds.

(a) **Deposit; Bank Account.** All sums received or collected by the Association from Assessments, whether Regular or Special, together with any interest charge thereon, shall be promptly deposited in a checking and/or savings account in a federally insured depository selected by the Board of Directors. In addition, the Board shall be entitled to make prudent investment of reserve funds in insured certificates of deposit, money market

funds or similar investments consistent with the investment standards normally observed by trustees. The Board and such officers or agents of the Association as the Board shall designate shall have exclusive control of said account(s) and shall be responsible to the Owners for the maintenance at all times of accurate records thereof. The withdrawal of funds from Association accounts shall be subject to the minimum signature requirements imposed by California Civil Code Section 5510(a) and Article XII, Sections 12.09 and 12.13 of the Bylaws.

To preclude a multiplicity of bank accounts, the proceeds of all Assessments may be commingled in one or more accounts and need not be deposited in separate accounts so long as the separate accounting records described herein are maintained. Any interest received on such deposits shall be credited proportionately to the balances of the various Assessment fund accounts maintained on the books of the Association as provided in Subsection (b) below, or may be allocated exclusively to reserve funds. However, reserve funds shall be segregated and placed in a separately designated bank account, together with all interest generated therefrom.

(b) Separate Accounts; Commingling of Funds. Except as provided below, the proceeds of each Assessment shall be used only for the purpose for which such Assessment was made, and such funds shall be received and held in trust by the Association for such purpose. Notwithstanding the foregoing, the Board, in its discretion, may make appropriate adjustments among the various line items in the Board's approved general operating budget if the Board determines that it is prudent and in the best interest of the Association and its Members to make such adjustments. If the proceeds of any Special Assessment exceed the requirement of which such Assessment was levied, such surplus may, in the Board's discretion, be (1) returned proportionately to the contributors thereof; (2) reallocated among the Association's reserve accounts if any such account is, in the Board's opinion, underfunded; or (3) credited proportionately on account of the Owner's future Regular Assessment obligations.

The Association shall account for all funds received by it in payment of each Assessment, and of all disbursements made therefrom. Receipts and disbursements of Special Assessments made pursuant to Section 6.03(a) of this Article VI shall be combined with the receipts and disbursements of the Regular Assessments. All reserve funds and the interest thereon shall be deposited in separately designated accounts. The use of reserve funds is restricted as provided in Sections 12.14 and 12.15 of the Second Restated Bylaws.

Section 6.09. Effect of Non-Payment of Assessments; Enforcement of Liens.

(a) A Regular or Special Assessment and any late charges, reasonable fees and costs of collection, reasonable attorney's fees, if any, and interest, if any, as determined in accordance with Civil Code Section 5560(b)(3), shall be a debt of the Owner of the Condominium at the time the Assessment or other sums are levied. Any payments made by the Owner toward a debt described in this Article shall first be applied to the Assessments owed, and, only after the Assessments owed are paid in full shall the payments be applied to the fees and costs of collection, attorney's fees, late charges, or interest. When an Owner makes a payment, the Owner may request a receipt and the Association shall provide it. The receipt shall indicate the date of payment and the Person who received it. The Association shall provide a mailing address for overnight payment of Assessments. The address shall be provided in the Annual Policy Statement.

At least thirty (30) days prior to recording a lien upon the separate interest of an Owner to collect a debt which is past due under this Article VI, the Association shall notify the Owner in writing, by certified mail of the following:

(1) A general description of the collection and lien enforcement procedures of the association and the method of calculation of the amount, a statement that the owner of the separate interest has the right to inspect the association records, pursuant to Section 8333 of the Corporations Code, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed:

"IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION."

(2) An itemized statement of the charges owed by the owner, including items on the statement which indicate the amount of any delinquent assessments, the fees and reasonable costs of collection, reasonable attorney's fees, any late charges, and interest, if any.

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

(4) The right to request a meeting with the board as provided by Subsection (d) of this Section 6.09.

(5) The right to dispute the assessment debt by submitting a written request for dispute resolution to the association pursuant to the association's "meet and confer" program required in Article 5 (commencing with Civil Code Section 5900) of Chapter 4 of the California Civil Code.

(6) The right to request alternative dispute resolution with a neutral third party pursuant to Article 2 (commencing with Civil Code Section 5925) of Chapter 7 of the California Civil Code before the association may initiate foreclosure against the owner's separate interest, except that binding arbitration shall not be available if the association intends to initiate a judicial foreclosure.

(b) Prior to initiating a foreclosure for delinquent Assessments on behalf of the Association against the Condominium, the Association shall offer the Owner and, if so requested by the Owner, shall participate in dispute resolution pursuant to the Association's "meet and confer" program required by Civil Code Section 5900, *et seq.* or alternative dispute resolution with a neutral third party pursuant to Civil Code Section 5925, *et seq.* The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

(c) The decision to record a lien for delinquent Assessments shall be made only by the Board of Directors of the Association and may not be delegated to an agent of the Association. The Board shall approve the decision by a majority vote of the Board members in an open meeting. The Board shall record the vote in the minutes of that meeting.

(d) Owners have the following rights in connection with Association Assessment collections:

(1) **Payment Plans.** An Owner may submit a written request to meet with the Board to discuss a payment plan for the debt noticed pursuant to subdivision (a). The Association shall provide the Owner the standards for payment plans, if any exist. The Board shall meet with the Owner in executive session within forty-five (45) days of the postmark of the request, if the request is mailed within fifteen (15) days of the date of the postmark of the notice, unless there is no regularly scheduled Board meeting within that period, in which case the Board may designate a committee of one or more members of the Board to meet with the Owner. Payment plans may incorporate any Assessments that accrue during the

payment plan period. Payment plans shall not impede the Association's ability to record a lien on the Owner's separate interest to secure payment of delinquent Assessments. Additional late fees shall not accrue during the payment plan period if the Owner is in compliance with the terms of the payment plan. In the event of a default on any payment plan, the Association may resume its efforts to collect the delinquent Assessments from the time prior to entering into the payment plan.

(2) **Right of Owner to go to Small Claims Court.** If a dispute exists between a Member and the Association regarding any disputed charge or sum levied by the Association, (including, but not limited to, an Assessment, fine, penalty, late fee, collection cost, or monetary penalty imposed as a disciplinary measure), and the amount in dispute does not exceed the jurisdictional limits of the small claims court (stated in Sections 116.220 and 116.221 of the Code of Civil Procedure), the Member may, in addition to pursuing dispute resolution pursuant to Section 6.09, pay under protest the disputed amount and all other amounts levied, including any fees and reasonable costs of collection, reasonable attorney's fees, late charges, and interest, if any, pursuant to Article VI, and commence an action in small claims court pursuant to Chapter 5.5 (commencing with Section 116.110) of Title 1 of the Code of Civil Procedure. Nothing in this section shall impede an association's ability to collect delinquent Assessments as provided herein.

(e) The amount of the Assessment, plus any costs of collection, late charges, and interest shall be a lien on the Owner's Condominium from and after the time the Association causes to be recorded with the County Recorder a notice of delinquent Assessment, which shall state the amount of the Assessment and other sums imposed in accordance with Civil Code Section 5650(b), a legal description of the Owner's separate interest against which the Assessment and other sums are levied, and the name of the record Owner of the Condominium against which the lien is imposed. The itemized statement of the charges owed by the Owner described in paragraph (2) of Subsection (a) shall be recorded together with the notice of delinquent Assessment.

In order for the lien to be enforced by nonjudicial foreclosure as provided in Subsection (d), the notice of delinquent Assessment shall state the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice of delinquent Assessment shall be signed by the Person designated in this Declaration or by the Association for that purpose, or if no one is designated, by the President of the Association.

A copy of the recorded notice of delinquent Assessment shall be mailed by certified mail to every Person whose name is shown as an Owner of the Condominium in the

Association's records, and the notice shall be mailed no later than ten (10) calendar days after recordation.

Within twenty-one (21) days of the payment of the sums specified in the notice of delinquent Assessment, the Association shall record or cause to be recorded in the Office of the County Recorder a lien release or notice of rescission and provide the Owner of the Condominium a copy of the lien release or notice that the delinquent Assessment has been satisfied. A monetary charge imposed by the Association as a means of reimbursing the Association for costs incurred by the Association in the Repair of damage to the Common Area and the Common Facilities for which the Member or the Member's Guests or Tenants were responsible may become a lien against the Member's separate interest enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c of the Civil Code.

(f) The Association may not voluntarily assign or pledge the Association's right to collect payments or Assessments, or to enforce or foreclose a lien to a third party, except when the assignment or pledge is made to a financial institution or lender chartered or licensed under federal or state law, when acting within the scope of that charter or license, as security for a loan obtained by the Association; however, the foregoing provision does not restrict the right or ability of the Association to assign any unpaid obligations of a former Member to a third party for purposes of collection. Subject to the limitations of this Subsection, after the expiration of thirty (30) days following the recording of a lien created pursuant to Subsection (e), the lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent Assessment, or sale by a trustee substituted pursuant to Civil Code Section 2934a. Any sale by the trustee shall be conducted in accordance with Civil Code Sections 2924, 2924b, and 2924c applicable to the exercise of powers of sale in Mortgages and deeds of trust. The fees of a trustee may not exceed the amounts prescribed in Civil Code Sections 2924c and 2924d.

(g) The decision to initiate foreclosure of a lien for delinquent Assessments that has been validly recorded shall be made only by the Board of Directors of the Association and may not be delegated to an agent of the Association. The Board shall approve the decision by a majority vote of the Board members in an executive session. The Board shall record the vote in the minutes of the next meeting of the Board open to all Members. The Board shall maintain the confidentiality of the Owner or Owners of the Condominium by identifying the matter in the minutes by the parcel number of the property, rather than the name of the Owner or Owners. A Board vote to approve foreclosure of a lien shall take place at least thirty (30) days prior to any public sale.

(h) The Board shall provide notice by personal service to an Owner of a Condominium who occupies the Condominium or to the Owner's legal representative, if the Board votes to foreclose upon the Condominium. The Board shall provide written notice to an Owner of a separate interest who does not occupy the separate interest by first-class mail, postage prepaid, at the most current address shown on the books of the Association. In the absence of written notification by the Owner to the Association, the address of the Owner's separate interest may be treated as the Owner's mailing address.

(i) A nonjudicial foreclosure by the Association to collect upon a debt for delinquent Assessments shall be subject to a right of redemption. The redemption period within which the separate interest may be redeemed from a foreclosure sale under this Subsection ends ninety (90) days after the sale.

(j) Within twenty-one (21) days of the payment of the sum specified in the notice of delinquent Assessment, the Association shall record or cause to be recorded in the Office of the County Recorder a lien release or notice of rescission and provide the Owner of the Condominium a copy of the lien release or notice that the delinquent Assessment has been satisfied.

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

(l) The Association may bring an action at law against the Owner personally obligated to pay the delinquent Assessment, or foreclose its lien against the Owner's Condominium. Provided, however, that lien enforcement proceedings shall not be undertaken until the expiration of thirty (30) days following the recording of the Notice of Delinquent Assessment pursuant to Section 6.09(e). Furthermore, the right of foreclosure in the case of Special Individual Assessments described in 6.04(a)(1), (3) and (4) hereof shall only exist to the extent specifically provided in Section 6.04(b) of this Article VI. To the extent permitted hereunder, foreclosure by the Association of its lien may be by judicial foreclosure or by nonjudicial foreclosure, in the same manner as the foreclosure of a Mortgage or deed of trust upon real property under the laws of the State of California. Nonjudicial foreclosure shall be commenced by the Association or its duly authorized agent by recording in the Office of the County Recorder a notice of default, which notice shall state all amounts which have become delinquent with respect thereto and the costs (including attorneys' fees), penalties and interest which have accrued thereon, the amount of any

Assessment which is due and payable although not delinquent, a description of the property in respect to which the delinquent Assessment is owed, the name and address of the trustee authorized by the Association to enforce the lien by sale and the name of the record or reputed Owner thereof. The Association shall have the rights conferred by Section 2934a of the Civil Code to assign its rights and obligations as Trustee in any non-judicial foreclosure proceeding to the same extent as a Trustee designated under a deed of trust, and for purposes of said Section 2934a, the Association shall be entitled to employ the services of a title insurance company or responsible company engaged in the business of acting as a trustee in foreclosure to act as an agent on behalf of the Association in commencing and prosecuting the foreclosure process.

The notice of default shall state the election of the Association to sell the Condominium or other property to which the amounts relate and shall otherwise conform with the requirements for a notice of default under Section 2924c of the California Civil Code. The Association or its assignee shall mail a copy of the notice to the Owner or reputed Owner at the last address appearing on the books or records of the Association, and to any Person to whom the giving of notice is required by applicable provisions of Section 2924b of the California Civil Code. In the event such notice is given by the Association or its assignee, the Owner and junior encumbrancers shall have reinstatement rights identical to those provided by law for trustors or mortgagors, which rights must be exercised during the period specified by law for reinstatement of obligations secured by deeds of trust. In addition to the requirements of Section 2924, a notice of default shall be served by the Association on the Owner's legal representative in accordance with the manner of service of summons in Sections 415.10 and following of the Code of Civil Procedure. Upon receipt of a written request by an Owner identifying a secondary address for purposes of collection notices, the Association shall send additional copies of any notices required by this Section to the secondary address provided.

After the lapse of such time as may then be required by law following the recordation of a notice of default under a deed of trust, the Association or its assignee may give notice of sale in the manner and for the period required in the case of deeds of trust. After the giving of the notice of sale, the Association, or its assignee, without demand on the Owner, may sell the Condominium or other property at the time and place fixed in the notice of sale, at public auction to the highest bidder for cash in lawful money of the United States, payable at the time of sale. The Association or its assignee may postpone sale by public announcement at the time fixed by the preceding postponement. The Association shall deliver to the purchaser at such foreclosure sale the Association's deed conveying the Condominium or other property so sold, but without covenant or warranty, express or implied. The recitals in

such deeds shall be conclusive proof of the truthfulness thereof. Any Person, including the Association, may bid on the property and purchase the same at such sale.

After deducting all costs, fees, and expenses of the Association from the sale proceeds, the Association or its assignee shall apply the balance of the proceeds of sale to payment of all sums secured by its lien at the time of sale, including principal, interest, late charges, costs and attorneys' fees, and the remainder, if any, shall be disbursed to the Person or Persons legally entitled thereto. Sales pursuant to this Section 6.09 are not subject to Section 9.03(c) of the Bylaws.

During the period a Condominium is owned by the Association following foreclosure: (1) no right to vote shall be exercised on behalf of the Condominium; (2) no Assessment shall be assessed or levied on the Condominium; and (3) each other Condominium shall be charged, in addition to its usual Assessment, its share of the Assessment that would have been charged to such Condominium had it not been acquired by the Association as a result of foreclosure. After acquiring title to the Condominium at foreclosure sale following notice and publication, the Association may execute, acknowledge and record a deed conveying title to the Condominium, which deed shall be binding upon the Owners, successors, and all other parties.

Suit to recover a money judgment for unpaid Common Expenses, rent and attorneys' fees shall be maintainable without foreclosure or waiving the lien securing the same. Furthermore, the Board may take such additional action, consistent with this Declaration, as is necessary or appropriate to enforce its Assessment rights hereunder.

(m) Offsets. All Assessments levied by the Board shall be payable in the full amount specified, including any Special Individual Assessments imposed as provided by the terms of this Declaration, and no offsets against any such amounts shall be permitted for any reason whatsoever, including without limitation a claim that the Association has failed to properly exercise its duties of Maintenance or enforcement.

Section 6.10. Limitation on Foreclosure. If the Association seeks to collect delinquent Regular or Special Assessments of an amount less than One Thousand Eight Hundred Dollars (\$1,800), not including any accelerated Assessments, late charges, fees and costs of collection, attorney's fees, or interest, it may not collect such debts through judicial or nonjudicial foreclosure, but may attempt to collect or secure that debt in any of the following ways:

(a) By a civil action in small claims court, pursuant to Section 116.110 and following of the Code of Civil Procedure. If the Association chooses to proceed by an action in small claims court, and prevails, it may enforce the judgment as permitted under Article 8 (commencing with Section 116.810) of Title 1 of the Code of Civil Procedure. The amount that may be recovered in small claims court to collect upon a debt for delinquent Assessments may not exceed the jurisdictional limits of the small claims court and shall be the sum of the following:

(1) The amount owed as of the date of filing the complaint in the small claims court proceeding.

(2) In the discretion of the court, an additional amount to that described in Subsection (A) equal to the amount owed for the period from the date the complaint is filed until satisfaction of the judgment, which total amount may include accruing unpaid Assessments and any reasonable late charges, fees and costs of collection, attorney's fees, and interest, up to the jurisdictional limits of the small claims court.

(b) By recording a lien on the Owner's separate interest upon which the Association may not foreclose until the amount of the delinquent Assessments secured by the lien, exclusive of any accelerated Assessments, late charges, fees and costs of collection, attorney's fees, or interest, equals or exceeds one thousand eight hundred dollars (\$1,800) or the Assessments are more than 12 months delinquent. If the Association chooses to record a lien under these provisions, prior to recording the lien, it shall offer the Owner and, if so requested by the Owner, participate in dispute resolution as set forth in Article 5 (commencing with Section 5900) of Chapter 4 of the Civil Code.

(c) Any other manner provided by law, except for judicial or nonjudicial foreclosure.

Section 6.11. Transfer of Condominium by Sale or Foreclosure. Sale or transfer of any Condominium shall not affect the Assessment lien. However, the sale or transfer of any Condominium pursuant to foreclosure of a First Mortgage shall extinguish the lien of such Assessments as to payments which become due prior to such sale or transfer (except for Assessment liens recorded prior to the Mortgage). No sale or transfer shall relieve such Condominium from liability for any Assessments thereafter becoming due or from the lien thereof. "First Mortgage" as used in this Section 6.11 and in Section 6.12 means any recorded Mortgage or deed of trust encumbering the Condominium having priority over all other Mortgages or deeds of trust and made in good faith and for value.

Where the Mortgagee of the First Mortgage of record or other purchaser of a Condominium obtains title to the same as the result of foreclosure of any such First Mortgage, the Person acquiring title, and such Person's successors and assigns, shall not be solely liable for the share of the Common Expenses or Assessments by the Association chargeable to such Condominium which became due prior to the acquisition of title to such Condominium by such acquirer. Such unpaid share of Common Expenses or Assessments shall be deemed to be Common Expenses collectible from Owners of all of the Condominiums including such acquirer, and the acquirer's successors and assigns.

In any transfer of a Condominium, the grantor shall remain liable to the Association for all unpaid Assessments against the Condominium up to the date of the transfer. The grantor shall be entitled to a statement from the Association dated as of the date of transfer, setting forth the amount of the unpaid Assessments against the grantor due the Association, and the Condominium so transferred shall not be subject to a lien for unpaid Assessments in excess of the amount set forth in the statement, provided, however, the grantee shall be liable for any such Assessments that become due after the date of the transfer.

Section 6.12. Priorities. When a notice of delinquent Assessment has been recorded, such Assessment shall constitute a lien on each respective Condominium prior and superior to all other liens except (a) all taxes, bonds, Assessments and other levies which, by law, would be superior thereto, and (b) the lien or charge of any First Mortgage of record made in good faith and for value; provided, however, that such subordination shall apply only to the Assessment installments which have become due and payable prior to the sale of such property pursuant to a decree of foreclosure of any such Mortgage or deed of trust or pursuant to the power of sale in such Mortgage or deed of trust. Such foreclosure shall not relieve such property from liability for any Assessment installments thereafter becoming due or from the lien of any such subsequent Assessment.

Section 6.13. Unallocated Taxes. In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than being assessed to the Condominium Units, such taxes shall be included in the Assessments made under the provisions of Section 6.02 of this Article VI and, if necessary, a Special Assessment under Section 6.03 may be levied against the Condominium in an amount equal to such taxes to be paid in two installments, thirty (30) days prior to the due date of each tax installment. Such Assessment is subject to the voting requirements in Sections 6.02 and 6.03.

Section 6.14. Waiver of Exemptions. Each Owner, to the extent permitted by law, waives, to the extent of any liens created pursuant to this Article VI, the benefit of any

homestead or exemption law of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed.

Section 6.15. Disclosure of Defaults. Within ten (10) days of the mailing or delivery of a written request by any Owner, the Board shall provide the Owner with a written statement containing the following information: (a) whether to the knowledge of the Association the Owner or the Owner's Condominium is in violation of any of the provisions of the Articles, Bylaws, this Declaration or Operating Rules; (b) the amount of Regular and Special Assessments, including installment payments, paid by the Owner during the fiscal year the request is received; and (c) the amount of any Assessments levied against the Owner's Condominium that are unpaid as of the date of the statement, including any late charges, interest, or costs of collection that as of the date of the statement are or may be made a lien against the Owner's Condominium as provided in the Articles, Bylaws and this Declaration.

ARTICLE VII

Duties and Powers of the Association

Section 7.01. Duties. In addition to the duties enumerated in its Bylaws, or elsewhere provided for in this Declaration, and without limiting the generality thereof, the Association shall perform the following duties:

(a) **Maintenance.** The Association shall Maintain, Repair, Replace, restore, operate and manage all of the Common Area as more particularly set forth in Article VIII, Section 8.01 of this Declaration.

(b) **Insurance.** The Association shall maintain such policy or policies of insurance as are required by Article XII of this Declaration.

(c) **Discharge of Liens.** The Association shall discharge by payment, if necessary, any lien against the Common Area, and assess the cost thereof to the Member or Members responsible for the existence of said lien.

(d) **Assessments.** The Association shall fix, levy, collect and enforce Assessments as set forth in Article VI hereof.

(e) **Payment of Expenses.** The Association shall pay all expenses and obligations incurred by the Association in the conduct of its business including, without limitation, all Licenses, taxes or governmental charges levied or imposed against the property of the Association.

(f) **Enforcement.** The Association shall enforce this Declaration. The Association shall Maintain and operate the Common Area of the Properties in accordance with all applicable municipal, state, and federal laws, statutes and ordinances, as the case may be. The Association shall also, as a separate and distinct responsibility, ensure that third parties (including Owners and their Guests) utilize the Common Area in accordance with the aforementioned regulations. The Association shall, when it becomes aware of any violation of the aforementioned regulations, expeditiously correct such violations.

Section 7.02. Powers. In addition to the powers of the Board as provided in Section 5.07 of this Declaration and enumerated in its Articles of Incorporation and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall have the following powers:

(a) **Utility Service.** The Association shall have the authority to obtain, for the benefit of all of the Condominiums, all water, gas and electric service, refuse collection, and janitorial service. Cable television, satellite television, and Internet service may be obtained with the consent of a majority of the Voting Power of the Members, and with such authority the Association may grant or convey to any third Person permits, licenses, rights of way and easements to facilitate the delivery of such cable television, satellite television and Internet service.

(b) **Manager.** The Association shall have the authority to employ a manager or other Persons and to contract with independent contractors, who must be duly licensed when required by law, to perform all or any part of the duties and responsibilities of the Association, except for the responsibility to levy fines, impose discipline, hold hearings, file suit, or make capital expenditures.

(c) **Adoption of Rules.** Subject to Section 5.08 of this Declaration, the Board of Directors may adopt reasonable Rules not inconsistent with this Declaration relating to the use of the Properties including the Common Area and all facilities thereon, and the conduct of Owners, their Tenants, Guests and others residing in or visiting the Unit with respect to the Properties and other Owners. Written copies of such Rules and any schedule of fines and penalties adopted by the Board shall be furnished to Owners.

(d) Access. For the purpose of performing the Maintenance, Repair and/or Replacement authorized herein or for any other purpose reasonably related to the performance by the Association or the Board of Directors of their respective responsibilities, the Association's agents or employees shall have the right, after reasonable written notice (not less than twenty-four (24) hours except in emergencies) to enter a Unit or the Common Area at reasonable hours. Such entry shall be made with as little inconvenience to the Owner as practicable and any damage caused thereby shall be repaired by the Board at the expense of the Association.

(e) Assessments, Liens and Fines. The Association shall have the power to levy and collect Assessments in accordance with the provisions of Article VI hereof. The Association may impose fines or take disciplinary action against any Owner for failure to pay Assessments or for violation of any provision of the Governing Documents. Penalties may include but are not limited to: fines, temporary suspension of voting rights, rights to the use of recreational facilities, the refusal to approve an architectural application as more particularly provided in Section 9.01(c) or other appropriate discipline, provided that the accused Member is given notice and the opportunity to be heard with respect to the alleged violations before a decision to impose discipline is made.

(f) Enforcement. The Association shall have the authority to enforce this Declaration as per Article XV hereof.

(g) Acquisition and Disposition of Property. The Association shall have the power to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, Maintain, convey, sell, Lease, transfer, or otherwise dispose of real or personal property in connection with the affairs of the Association. Except for a Condominium acquired by the Association through foreclosure of a lien as provided in Section 6.09 of this Declaration, any transfer of real property shall be by document signed or approved by two-thirds (2/3) of the Members. Sales of property are subject to Section 9.03(c) of the Bylaws.

(h) Loans. The Association shall have the power to borrow money, and only with the assent (by vote or written consent) of a majority of the total Voting Power of the Association, to Mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred. Borrowing of money by the Association shall require the assent (by vote or written consent) of a majority of the total Voting Power of the Association except as authorized by Article IX, Section 9.03(e) of the Bylaws under which the Board may borrow on behalf of the Association up to twenty percent (20%) of the budgeted gross receipts for the current fiscal year without a vote of the

Members. If the Association borrows from reserves, it shall give General Notice to the Members.

(i) Contracts. The Association shall have the power to contract for goods and/or services for the Common Area, facilities and interests or for the Association, subject to limitations elsewhere set forth in the Governing Documents. The Association shall not enter into any contract with an independent contractor until the independent contractor submits proof to the Association that it has procured workers' compensation insurance as required by law and the Association receives adequate proof of licensure if required by law, and such liability insurance as the Board deems appropriate.

(j) Delegation. The Association, the Board, and the officers of the Association shall have the power to delegate their authority and powers to committees, officers or employees of the Association, or to a manager employed by the Association, provided that the Board shall not delegate its responsibility:

(1) To make expenditures for capital additions or improvements chargeable against the reserve funds;

(2) To conduct hearings concerning compliance by an Owner or his Tenant, Guest or invitee with the Declaration, Bylaws or Operating Rules promulgated by the Board;

(3) To make a decision to levy monetary fines, impose Special Assessments against individual Condominiums, temporarily suspend an Owner's rights as a Member of the Association or otherwise impose discipline;

(4) To make a decision to levy Regular or Special Assessments; or

(5) To make a decision to bring suit, record a claim of lien or institute foreclosure proceedings for default in payment of Assessments.

(k) Use of Recreational Facilities. The Board shall have the power to limit the number of an Owner's Tenants or Guests who may use the recreational facilities, provided that all limitations apply equally to all Owners, unless imposed for disciplinary reasons, after notice and an opportunity for a hearing, as provided in the Bylaws.

(l) Security. The Association shall have the power to contract for security service for the Common Area.

(m) Appointment of Trustee. The Association, or the Board acting on behalf of the Association, has the power to appoint or designate a trustee to enforce Assessment liens by sale as provided in Section 6.09(e) and California Civil Code Section 5675(c).

(n) Other Powers. In addition to the powers contained herein, the Board may exercise the powers granted to a nonprofit mutual benefit corporation under California Corporations Code Section 7140.

ARTICLE VIII

Maintenance

Section 8.01. Association Maintenance and Repair.

(a) Maintenance. Except as otherwise provided in this Declaration, the Association shall Maintain, Repair, Replace, restore, operate and manage all of the Common Area and Common Facilities as more particularly provided in Exhibit "C" which is attached hereto and incorporated herein by reference.

(b) Owner Damage. The financial responsibility of the Association for Maintenance and Repair shall not extend to Repairs or Replacements arising out of or caused by the willful or negligent act or neglect of an Owner, or the Owner's Guests, Tenants or agents. The cost of such Repair or Replacement shall be the responsibility of such Owner. The cost thereof shall constitute a Special Assessment chargeable to such Condominium and shall be payable to the Association by the Owner of such Condominium as a Special Individual Assessment, as provided in Article VI, Section 6.04(a)(2) or (4) of this Declaration.

Section 8.02. Owner Maintenance and Repair

(a) Interior Unit Maintenance and Improvements. Each Unit Owner shall, at the Owner's sole cost and expense, Maintain and Repair the Owner's Unit and certain other components, as provided in Exhibit "C" which is attached hereto and incorporated herein by reference.

- (1) In the event an Owner fails to Maintain the interior of the Owners' Unit or the Owner's Exclusive Use Common Area in a manner which the Board deems necessary to preserve the appearance and value of the

Property, the Board may notify Owner of the work required and request it be done within thirty (30) days from the giving of such notice. In the event Owner fails to carry out such Maintenance within said period, the Board may cause such work to be done, and, if necessary, impose a Special Individual Assessment against the Owner's Condominium for the amount thereof.

- (2) No Condominium Owner shall undertake any action or work that will impair the structural soundness or integrity of the Owner's or another Unit or impair any easement or estate, or do any act or allow any condition to exist which will adversely affect the other Condominiums or their Owners.
- (3) Each Owner has an affirmative duty to notify the Association of water intrusion into the Owner's Unit within seventy-two (72) hours of the time that the Owner knew or reasonably should have known of such damage. Within such seventy-two (72) hour period, each Owner shall also notify the Association of any damage to the Owner's Unit which the Owner contends is the responsibility of the Association. The Association shall not be liable for any personal injury, property damage or economic loss of any kind resulting from the failure of the Owner to so notify the Association.

(b) Exclusive Use Common Area. Each Owner, at the Owner's sole cost and expense, shall Maintain, Repair and Replace the Exclusive Use Common Area as provided in Exhibit "C", which is attached hereto and incorporated herein by reference.

- (1) Each Unit Owner shall keep those portions of the Exclusive Use Common Area to which the Owner has exclusive easement rights, including the garage, clean, free of debris and in a neat and orderly condition.
- (2) Each Owner is entitled to reasonable access to the Common Areas for the purpose of maintaining the internal and external telephone wiring designed to serve that Owner's Unit, subject to the consent of the Association, which may include the imposition of reasonable conditions, which consent shall not be unreasonably withheld.

- (3) No Owner shall build or place or cause to be built or placed any shed, awning, doghouse, fence or other structure or enclosures within or upon his patio or balcony without prior written consent of the Board.
- (4) Planters on balconies shall have an airspace below and plants on balconies shall be watered so as to prevent damage to the balcony surface. Patios shall be kept clear of trash, weeds and invasive plants.

(c) Alterations for the Disabled. A Unit may be modified by an Owner, at the Owner's sole expense, to facilitate access for Persons who are blind, visually handicapped, deaf, or physically disabled, or to alter conditions which may be hazardous to such Persons, subject to the limitations and requirements set forth in Section 4760(a)(2) of the California Civil Code as that statute may be amended, revised or altered and by the Governing Documents.

(d) Limitation on Liability. The Association shall not be liable for damage to any Condominium in the Properties resulting from water which may leak or flow from within or outside of any Condominium or from any part of the Properties, unless caused by the gross negligence of the Association, its Board, officers, or the Association Manager, if any. In no event shall the Association be liable for any loss or damage to an Owner in excess of the current cost of Replacement of the original construction grade materials.

(e) Mitigation. Each Owner has an affirmative duty to mitigate damages which may occur to the Owner's Condominium. The Association shall not be liable for any personal injury, property damage or economic loss of any kind resulting from the failure of the Owner to reasonably mitigate such damages.

(f) Mold. In order to reduce the presence of molds, fungi, spores, pollens, other botanical substances, or other allergens within the Unit (collectively "Mold"), Owners shall perform each of the following steps: (i) inspect the Unit, and the adjacent Common Area, not less frequently than once each calendar quarter to check for water leaks or other breaches of the watertight integrity of the Unit and for the presence of Mold; (ii) if any water leaks and/or Mold are detected, immediately take appropriate corrective steps to Repair the leak and/or remove the Mold; (iii) immediately notify the Association in the event of any known or suspected water intrusion from the Common Area, including roofs and walls; (iv) Maintain proper ventilation (particularly in bathrooms) and humidity levels to reduce the risk of Mold growth; (v) periodically inspect refrigerator condensation pans, air conditioners (if applicable), and any other water-retaining appliances for the presence of Mold; (vi) avoid carpeting or similar types of floor covering in bathrooms that may be conducive to Mold

growth; (vii) Replace heating and air conditioning filters not less frequently than quarterly or as recommended by the manufacturer; and (viii) take such other prudent steps as may be appropriate to prevent Mold growth or eliminate any existing Mold. Should an Owner fail to comply with the Owner's obligations under this Subsection (f), the Association shall have no liability for any resulting damage or loss, including, but not limited to, Mold, fungi, spores, pollens or other botanical substances, or allergens within the Unit.

(g) **Modifications.** Each Owner, his successors and assigns, shall be solely responsible for the Maintenance, Repair and Replacement of any modifications made to the Unit, Exclusive Use Common Area or Common Area, whether or not such modifications received approval pursuant to Article IX of this Declaration, and also shall be responsible for any damage arising from or relating to such modifications. Notwithstanding the foregoing, the Board shall have the power to enforce the provisions of this Declaration relating to unauthorized modifications to the Exclusive Use Common Area and Common Area, including, without limitation, the remedies set forth in Article XV of this Declaration. Wherever Maintenance, Repair and/or Replacement required of an Owner under this Declaration may result in an exterior alteration, modification, improvement or structure, Owner shall first comply with the requirements of Article IX of this Declaration.

ARTICLE IX

Architectural Control

Section 9.01. Improvements in General; Establishment of Architectural Committee. The objective of this Article IX is to Maintain, preserve and enhance the overall appearance and quality of the community and to prevent additions, alterations or Replacements which are reasonably likely to be detrimental to the overall ambiance of the Properties, and reasonably likely to adversely affect property values throughout the Properties. The Board has the ultimate responsibility to perform the obligations under this Article IX, but may delegate that authority to an Architectural Committee. As used in this Article, the term "Architectural Committee" is the Board, unless a separate Architectural Committee is appointed by the Board. The Board and the Architectural Committee shall operate pursuant to the following guidelines:

These restrictions are not intended to empower the Architectural Committee to act arbitrarily, capriciously, or whimsically in the process of reviewing plans. A decision on a proposal shall be made in good faith. The Board may adopt Architectural Standards which are both reasonable and objective, and which are reasonably ascertainable, and are uniformly

and fairly applied to all, and in all cases. The Architectural Standards shall be adopted as Operating Rules. The Board and the Architectural Committee shall base their decisions on what is in the best interests of the Properties as a whole, and not upon what will appease a particular Member or group of Members.

(a) The Architectural Committee, if appointed, shall consist of three (3) members. The Board shall have the power to appoint and remove all of the members of the Architectural Committee. Members appointed to the Architectural Committee must be Members of the Association. A majority of the Architectural Committee may designate a representative to act for it. In the event of death, resignation or removal of any member of the Architectural Committee, the Board shall appoint a successor. Neither the members of the Architectural Committee nor its designated representatives shall be entitled to any compensation for services performed pursuant to this Declaration.

(b) No building, fence, wall, pool, spa, obstruction, outside or exterior wiring, balcony, screen, ornamental screen, screen door, sunshades, glass or screen enclosures, patio, patio cover, tent, awning, carport, carport cover, trellis, addition, modification, improvement or structure of any kind shall be commenced, installed, erected, painted, repainted or maintained upon the Properties, nor shall any exterior alteration, improvement or change, or structural modification of any kind be made thereto until the same has been approved in writing by the Board. No landscaping or physical improvements or additions shall be made to any decks, balconies, patios or yards which are visible from the street or from the Common Area by any Owner until plans and specifications showing the nature, kind, shape and location of the materials shall have been submitted to the Architectural Committee and approved in writing by the Board.

(c) Notwithstanding the foregoing, Owners may improve or alter any improvements within the interior boundaries of the Owner's Unit, provided such improvement or alteration does not impair other Units, the structural or acoustical integrity of any Common Area, the utilities or other systems serving the Common Area or other Units, and does not involve altering any Common Area (including bearing walls).

(d) Plans and specifications showing the nature, kind, shape, color, size, materials and location of any proposed improvements or alterations shall be submitted to the Architectural Committee for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation. In evaluating such applications, the Board shall consider the overall benefit or detriment of the proposed improvements or alterations to the Properties as a whole.

(e) Nothing contained in this paragraph shall be construed to limit the right of an Owner to paint the interior of the Unit any color desired. No Member whose voting rights have been suspended pursuant to the Second Restated Bylaws and/or this Declaration, shall have the right to submit any such plans and specifications pursuant to this Subsection (e) until such Owner's voting rights have been reinstated. Furthermore, the Architectural Committee shall not be obligated to act upon any architectural application submitted pursuant to this Subsection (e) during the time that the Owner's voting rights have been suspended pursuant to the Second Restated Bylaws and/or this Declaration until such Owner's voting rights have been reinstated.

(f) No Owner or occupant shall Replace the glass in the windows of his or her Unit without written approval by the Board. All window replacements shall be with glass of similar color and quality to that originally installed with the Units.

(g) The Board shall adopt Operating Rules pursuant to Article V, Section 5.08 to implement a fair, reasonable and expeditious procedure for decisions consistent with this Section 9.01, including prompt deadlines to respond to an Owner's application or request for reconsideration by the Board, and shall state the maximum time for response to an application or to a request for reconsideration. In no event may the deadline for the initial response to an Owner's written application or response to a request for reconsideration by the Board exceed forty-five (45) days. Approval of plans by the Board shall in no way make the Committee or its members or the Board or its members responsible for or liable for the improvements built after approval of the plans. The Owner whose plans are approved in writing shall defend, indemnify and hold the Architectural Committee, the Board, the Association, and its Members harmless from any and all liability arising out of such approval.

(h) All alterations, modifications, or other improvements on or within the Properties shall comply with all design requirements, approvals and procedures of the governmental entity with appropriate jurisdiction. Before commencement of any alteration or improvements approved by the Board, the Owner shall comply with all appropriate governmental laws and regulations. Approval by the Board does not satisfy the appropriate approvals that may be required by any governmental entity with appropriate jurisdiction. The Association may remove any unapproved installations, modifications, or changes made in violation of this Article IX, at the expense of the Owner, and recover the cost of such removal and restoration of the property as a Special Individual Assessment under Article VI, Section 6.04 of this Declaration.

(i) Upon approval by the Board, the Owner shall diligently proceed with the commencement and completion of all work so approved in compliance with the approvals

granted. The work must be commenced within six months from the date of approval unless the Board permits the work to be commenced at a later time. If the work is not commenced within six months after the approval date, or such later time as the Board has granted, then the approval shall be deemed canceled, and the Owner must reapply to the Board before undertaking any such work.

(j) If a proposed change is disapproved, the written decision shall include both an explanation of why the proposed change is disapproved and a description of the procedure for reconsideration of the decision by the Board. If a proposed change is disapproved by the Board, the applicant is entitled to reconsideration at a meeting of the Board that satisfies the requirements of Civil Code Section 4900 and following.

(k) The Owner shall notify the Architectural Committee within thirty (30) days of completion of any project. The Architectural Committee shall inspect the work within thirty (30) days of receipt of such notice of completion. The Architectural Committee may also inspect the work at any time prior to completion as it deems appropriate to determine that the Board approval is being followed. The Architectural Committee is to inspect the work performed, and determine whether it was performed and completed in compliance with the approval granted, in all material respects. If at any time during the construction of any work, the Architectural Committee finds that the work was not performed or completed in compliance of the approval granted, in all material respects, or if the Architectural Committee finds that the appropriate approval which was required for any work was not obtained, the Board shall notify the Owner in writing of the non-compliance. The notice shall specify in writing the particulars of non-compliance, and shall set forth the requirement of the Owner to remedy the non-compliance. The Board shall determine in its reasonable judgement whether an alteration, modification or improvement complies with the approval as granted in all material respects.

In addition to the requirements of this Section 9.01(k), the Owners shall be responsible for obtaining all necessary governmental permits and inspections required in connection with the alteration, improvement, change or modification approved by the Board.

If the Board has determined an Owner has not constructed an improvement in compliance of the approval granted in all material respects, and if the Owner fails to remedy such non-compliance in accordance with provisions of the notice of non-compliance, then, after expiration of thirty (30) days from the date of such notification, the Association may exercise the remedies set forth in Section 9.03.

(l) Following the issuance of an opinion by the Architectural Committee or the Board, it shall be the burden of proof of the Owner to establish that the Architectural Committee or the Board acted improperly with respect to any procedural or substantive conduct.

(m) The Association shall provide its Members with notice of the requirements for Association approval of physical changes to property. The notice shall describe the types of changes that require Association approval, and shall include a copy of the procedure used to review and approve or disapprove a proposed change.

(n) Nothing in this Section 9.01 shall impair the rights of Owners to place certain noncommercial signs, posters, flags or banners pursuant to Civil Code Section 4710 or any successor statute. In the event of any conflict between this Section 9.01 and Sections 10.05 or 10.12, Sections 10.05 or 10.12 shall control.

(o) Neither the Association nor the Board or the Architectural Committee (if any) or any member thereof, shall be liable to any Owner for any damage, loss or prejudice suffered or claimed on account of any mistakes in judgment, negligence or nonfeasance arising out of (a) the approval or disapproval of any plans, drawings, and specifications, whether or not defective; (b) the construction or performance of any improvement project, whether or not under approved plans, drawings, or specifications; (c) the granting of a variance under Section 9.04; or (d) the execution and delivery of a compliance certificate under Section 9.01(k), whether or not the facts are correct.

Section 9.02. Common Area. No improvement, excavation or work which in any way alters any Common Area from its natural or existing state shall be made or done except upon strict compliance with, and within the restrictions and limitations of, the following provisions of this Section.

(a) No Person other than the Association or its duly authorized agents shall construct, reconstruct, refinish, alter or Maintain any improvement upon, or shall make or create any excavation or fill upon, or shall change the natural or existing drainage of, or shall destroy or remove any tree, shrub or other vegetation from, or plant any tree, shrub, or other vegetation upon the Common Area.

(b) The Association may from time to time:

(1) Reconstruct, Replace, or refinish any Common Facility or other improvement or portion thereof upon the Common Area.

(2) Construct, reconstruct, Replace and refinish any road improvement or surface upon any portion of Common Area designated on a subdivision Map as a private road or parking area.

(3) Replace trees or other vegetation and plant trees, shrubs and ground cover upon any portion of Common Area.

(4) Place and Maintain upon the Common Area such signs as the Association may deem necessary for the identification of the development and of roads, the regulation of traffic, including parking, the regulation and use of Common Area and Common Facilities and for the health, welfare and safety of Owners, Tenants, Guests and Licencees.

(c) If the Board determines that a new Capital Improvement project should be commenced, the Board may appoint a Technical Committee to assist in the planning and implementation of the project. The Technical Committee, if appointed, shall consist of two (2) or more Members of the Association. If so appointed, the Technical Committee shall evaluate the feasibility of the proposed project and report to the Board. If the Board elects to proceed with the Capital Improvement project, with or without a Technical Committee report, it may submit proposed plans for the project to the Architectural Committee. The proposed Capital Improvement project must be approved by the Board. If the Board approves the Capital Improvement project, and the cost of the project will exceed ten percent (10%) of the budgeted gross expenses of the Association for that year the Board shall submit the Capital Improvement project to the membership for approval. For purposes of this Section 9.02(c), "cost of the project" includes costs of design, permits, legal and consulting expenses, costs of construction and other actual and anticipated expenses of the Capital Improvement project including a reasonable contingency. Capital Improvement projects requiring membership approval and Special Assessments to fund such Capital Improvements must be approved as provided in Section 6.03 of this Declaration. If the Capital Improvement and Special Assessment are approved by the membership, the Board shall levy a Special Assessment, and may commence construction of the Capital Improvement after such time as the Board has collected not less than seventy-five percent (75%) of the principal amount of the Special Assessment. The Board may, but shall not be obligated to, retain one or more consultants such as architects, engineers and/or construction managers to assist in the planning and supervision of the Capital Improvement project. Any excess proceeds of the Special Assessment, following completion of the Capital Improvement project, shall be placed in the reserve fund, unless otherwise specified by the membership vote approving the Capital Improvement project. As used in this Section 9.02(c) the term "Capital Improvement" means the construction or implementation of new facilities, features or elements to the Properties, excluding the Replacement of existing facilities, features or elements of the Unit or Common

Area. This Section 9.02(c) does not apply to the expenditure of any funds accumulated in a reserve fund for capital Replacement of components of existing buildings or structures to be maintained, repaired or replaced by the Association under Article VIII, Section 8.01 of this Declaration.

(d) Masts, towers, poles, television and radio antennas, including satellite dishes installed by the Association, are subject to the provisions of Article X, Section 10.12 of this Declaration.

Section 9.03. Enforcement of Architectural Restrictions. If an Owner makes an improvement, addition or change to the interior/exterior or structure of the Owner's Unit or on the Common Area not authorized by this Declaration without approval from the Board, the Association may direct that the improvement, addition or change be removed or that an application be submitted and the improvement brought into conformance with the applicable Architectural Standards and any additional requirements of the Architectural Committee. In the event that the Owner fails to so comply, following notice and an opportunity to be heard as provided in Section 15.06, the Association may either enter into the Unit to effect removal or commence legal action to compel removal. However, no such entry for removal or modification shall be made unless the affected Owner(s) has been provided notice and an opportunity to be heard in accordance with the procedure set forth in Article XV, Section 15.06 of this Declaration. The Association may also exercise any of its other applicable remedies under the Bylaws, this Declaration or California law. Any costs and expenses incurred by the Association in the discharge of its responsibilities hereunder, including reasonable attorneys' fees and costs, fees of consultants and experts, including but not limited to, architects and engineers, may be recovered from the Owner by means of a Special Individual Assessment.

Section 9.04. Variances. The Board shall be entitled to allow reasonable variances with respect to this Article IX in order to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardships, provided the following conditions are met:

(a) All requests for variances shall be submitted to the Board in writing. Requests shall be submitted to the Association's Secretary or the Association's management agent, as the Board may designate. If variance authority is delegated to the Architectural Committee, submissions shall be made to the Committee Chair.

(b) The Board must make a good faith determination that: (i) the requested variance, if granted, will not constitute a material deviation from the overall plan and scheme of development within the Properties or from any restriction contained herein (or the

Architectural Standards) or that the proposal allows the objectives of the violated requirement(s) to be substantially achieved despite noncompliance; or (ii) the variance relates to a requirement hereunder that is unnecessary or burdensome under the circumstances; or (iii) the variance, if granted, will not result in a material detriment, or create an unreasonable nuisance, with respect to any other Unit, Common Area or Owner within the Property.

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

Section 9.05. Solar Installations. Notwithstanding the provisions of this Declaration, including Article IX, Section 9.01 hereof, the following provisions apply to solar installations. Solar installations are only permitted in the Unit and Exclusive Use Common Area.

(a) The Board shall not impose restrictions on the construction of solar energy systems, as defined in paragraphs (1) and (2) of Subdivision (a) of Civil Code Section 801.5, so as to significantly increase the cost of the system or significantly decrease its efficiency or specified performance. The Board may allow for an alternative system of comparable cost, efficiency and energy conservation benefits. For purposes of this Section 9.05, the term "significantly" as to a solar domestic water heating system that complies with state and federal law, means an amount exceeding ten percent (10%) of the cost of the system, but in no case more than One Thousand Dollars (\$1,000), or decreasing the efficiency of the solar energy system by an amount exceeding ten percent (10%) as originally specified and proposed.

(b) For photovoltaic systems that comply with state and federal law, the term "significantly" means an amount not to exceed One Thousand Dollars (\$1,000) over the system cost as originally specified and proposed, or a decrease in system efficiency of an amount exceeding ten percent (10%) as originally specified and proposed.

(c) Any solar collectors installed shall meet applicable health and safety standards and requirements imposed by California and local permitting authorities and by the Board. A solar energy system for heating water shall be certified by the California Plumbing and

Mechanical Codes or other nationally recognized certification agency, and the certification shall be for the entire solar energy system and installation. A solar energy system for producing electricity also shall meet all applicable safety and performance standards established by the California Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories, such as Underwriters Laboratories, and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

(d) If the Board grants permission for the installation of a solar energy system it may require the Owner to execute an agreement providing for Maintenance, Repair and Replacement of the roof and other affected building components, and also may require that the installer of the solar energy system indemnify or reimburse the Association and its Members for loss or damage caused by the installation, Maintenance or use of the solar energy system. Owners installing solar energy systems are responsible for the cost of Repair of any damage, loss or injury arising from or relating to the installation.

(e) Applications for the installation or use of a solar energy system shall be processed and approved by the Board in the same manner as an application for approval of an architectural modification, and shall not be willfully avoided or delayed. The approval or denial of such an application shall be in writing. If an application is not denied in writing within forty-five (45) days from the date of receipt of the application, the application shall be deemed approved, unless that delay is the result of a reasonable request for additional information.

(f) The provisions of this Section 9.05 are based on California Civil Code Sections 714, 714.1 and 801.5, as enacted or hereafter modified. This Declaration shall be deemed amended to conform with those statutes, or any successor statutes, as enacted or hereafter modified. The Owners, successors and assigns shall be solely responsible for the cost of Maintenance, Repair and Replacement of the system, including the cost of removing and repairing the system incident to Maintenance, Repair or Replacement of roofs and/or gutters.

Section 9.06. Electric Vehicle Charging Stations. Notwithstanding the provisions of this Declaration, including Article IX, Section 9.01 hereof, the Board shall not impose restrictions on the installation of an electric vehicle charging station in a manner inconsistent with California law, including Civil Code Section 4745, or any successor statute or statutes. Without limitation, (i) Owners and successor Owners are solely responsible for the cost of installing, maintaining, removing and replacing electric vehicle charging stations, and for the payment of all associated utilities; (ii) Owners shall comply with the Association's Architectural Standards; (iii) a licensed contractor shall install the station with appropriate permits; (iv) the Association shall be named on the Owner's insurance policy with limits of

not less than \$1,000,000.00; (v) the Owner and all successor Owners are responsible for all damage to the station, the Common Area, the Exclusive Use Common Area and the Units resulting from the installation, Maintenance, Repair, removal, or Replacement of the charging station; (vi) the Owner is responsible for all costs of Maintenance, removal, Repair, and Replacement of the charging station until it is removed, and for the restoration of the Common Area after removal. The installation of electric vehicle charging stations in the unrestricted Common Area is limited as provided in Section 4745(g) of the Civil Code. Owners of electric vehicles are solely responsible for the installation of dedicated electrical service and for the payment of electrical utilities necessary for their vehicles.

Section 9.07. Maintenance Responsibility. Notwithstanding Article VIII, the Owner shall be solely responsible for Maintenance, Repair and Replacement of any construction component(s) which has been added, altered or replaced from the original construction condition by or on behalf of the Owner or occupant, or by or on behalf of any prior Owner or occupant, regardless of the cause of any damage or destruction necessitating such Repair or Replacement. This Section 9.07 shall control in the event of any conflict with Article VIII or Exhibit "C" of this Declaration.

ARTICLE X

Use of Properties and Restrictions

Use of the Units, the Common Area and other portions of the Properties shall be subject to the following Sections of this Article. The use of all Properties shall be limited to those uses, as strictly interpreted, which are specified in this Declaration. Any change in use of the Properties, or any part thereof, shall require the vote or written consent of two-thirds (2/3) of the Members of the Association. In the event that the Association is compelled to expend funds to gain compliance, whether for attorneys' fees or otherwise, the same may be recovered from the offending Owner by means of a Special Individual Assessment.

Section 10.01. Residential Use.

- (a) No Person who has been convicted of a felony may reside on the Properties.
- (b) The use of the Units within the Properties is hereby restricted to Residential Use.

(c) No Unit or Units or any portion thereof in the Properties shall be leased, subleased, occupied, rented, let, sublet, or used for or in connection with any time sharing agreement, plan, program or arrangement, including, without limitation, any so called "vacation License", "travel club", "extended vacation", or other membership or time interval ownership arrangement. The term "time sharing" as used herein shall be deemed to include, but shall not be limited to, any agreement, plan, program, or arrangement under which the right to use, occupy, or possess the Unit or Units or any portion thereof in the Properties rotates among various Persons, either corporate, partnership, individual, or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like kind use privileges. Provided, this Section shall not be construed to limit the personal use of any Unit or any portion thereof in the Properties by any Unit Owner or the Owner's social or familial Guests.

(d) No more than three (3) Persons may occupy a one bedroom Unit; no more than four (4) Persons may occupy a two (2) bedroom Unit; and no more than five (5) Persons may occupy a three (3) bedroom Unit. Attached hereto as Exhibit "D" and incorporated herein by reference, is a true and correct inventory of the number of bedrooms and baths contained in each Unit and identified by street address.

Section 10.02. Common Area.

(a) The landscaped Common Area shall be preserved as open space and used for those purposes originally planned as Common Facilities by the Declarant or subsequently installed by the Association in accordance with this Declaration. The Common Area shall be limited to the private use, for aesthetic and recreational purposes, of the Association's resident Members, their families and Guests and of the Tenants of nonresident Members and the families and Guests of such Tenants. Nothing shall be altered, constructed, placed or stored in such Common Area except upon the direction and under the authority of the Association in accordance with Article IX hereof.

(b) No structure of a temporary character, trailer, mobilehome, camper, motor vehicle, tent, shack, or other outbuilding shall be used on the Common Area at any time as a residence, either temporarily or permanently.

(c) Use and enjoyment of the Common Area shall at all times be subject to the Bylaws, this Declaration and the Operating Rules and other purposes incidental and ancillary to the use of Units.

Section 10.03. Prohibition of Noxious Activities. No noxious or offensive activities shall be carried out on or conducted in any Unit or the Common Area nor shall anything be done in any Unit or the Common Area that shall be or become an unreasonable annoyance or nuisance, or which may in any way increase the rate of insurance for the Properties, or cause any insurance policy to be canceled, or to cause a refusal to renew the same, or which will impair the structural integrity of any building. Without limiting any of the above, no Owner or Tenant shall permit excessive noise, including, but not limited to, the barking of dogs, the operation of air conditioners, audio systems, television systems, motor vehicles or power tools, to emanate from any Unit, or the Common Area, which would unreasonably disturb any other Member's enjoyment of the Member's Unit or the Common Area. Excessive noise levels may be determined according to the ordinances of the City of Saratoga or other applicable governmental regulation dealing with such matters. Under no circumstances may explosives, fireworks, or highly flammable or highly corrosive materials be stored or used by Members, Members' Lessees or their respective family, invitees, or Guests in parking areas, Common Areas, Exclusive Use Common Area, or Units. Notwithstanding the foregoing, small amounts of flammable liquids may be stored in consumer sized (i.e. not in excess of 5 gallon size) containers that are approved for such storage within their Units.

Section 10.04. Household Pets. The following restrictions regarding the care and maintenance of pets within the Properties shall be observed by each Owner and resident:

(a) Not more than two (2) common household pets, such as dogs and cats, may be kept in each Unit by an Owner. Tenants, lessees, renters and similar occupants are not entitled to maintain pets within the Properties. Current Tenants with existing pets, prior to recordation of this Declaration, are exempt from this provision, but may not acquire replacement pets. No animal which is dangerous or a nuisance may be kept on the Properties. Animals may not be kept, bred or maintained for commercial purposes. A reasonable number of fish or small caged animals also may be kept, subject to the Operating Rules. No other animals, livestock, or poultry of any kind shall be kept, bred or raised in any Unit.

(b) Dogs shall only be allowed on the Common Area when they are leashed and otherwise under the supervision and restraint of their Owners. Pet owners shall be responsible for the prompt removal of pet wastes deposited by their pets on the Properties.

(c) No household pet shall be left chained or otherwise tethered in front of a Unit or in the Common Area. No dogs shall be left unattended outdoors, including Exclusive Use Common Area.

(d) Each Person bringing or keeping a pet on the Properties shall be solely responsible for the conduct of their pets. The Association, its Board, officers, employees and agents shall have no liability (whether by virtue of this Declaration or otherwise) to any Owners, their Household members, Guests, invitees, Tenants and contract purchasers for any damage or injury to Persons or property caused by any pet.

(e) The Board shall have the right to establish and enforce additional Operating Rules imposing standards for the reasonable control and keeping of household pets in, upon and around the Properties to ensure that the same do not interfere with the quiet and peaceful enjoyment of the Properties by the other Owners and residents.

(f) An Owner who keeps or maintains any pet upon any portion of the property shall be deemed to have indemnified and to have agreed to hold the Association free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the property. All pets shall be properly registered with the City and/or County and any other appropriate agency to the extent required by law. The Board of Directors may establish reasonable fees for registration of pets.

(g) Any animal which is found loose on the Common Area may be removed by the Association, or any Person designated by the Board, to a pound or animal shelter under the jurisdiction of the County of Santa Clara, or any municipality therein, subject to the laws and rules governing said pound or shelter.

(h) For purposes of this Section 10.04, "dangerous" shall mean an animal that without justification attacks a Person or domestic animal causing physical injury or death, or behaves in a manner that a reasonable Person would believe poses an unjustified imminent threat of serious injury or death to one or more Persons or domestic animals. For purposes of this Section 10.04 an animal will be considered a "nuisance" if it: damages, soils, defiles, or defecates on private property (other than the Owner's) or on Common Area walks or recreation areas, unless such waste is immediately removed and properly disposed of by the Owner; causes unsanitary, "dangerous," or offensive conditions; causes a disturbance by excessive barking or other noise making; or chases vehicles, or molests, attacks, or interferes with Persons or other domestic animals on property of the Association or of another Owner.

(i) The Board may, in its sole discretion, prohibit maintenance within the Properties of any animal that constitutes a nuisance (whether due to its size, viciousness, unreasonable noise or otherwise) with respect to any other Owner(s).

(j) In the event of any conflict between any state, county or city law, ordinance or regulation concerning pets, and the provisions of this Section 10.04, the said laws, ordinances and regulations shall control.

Section 10.05. Signs. No advertising signs, except as permitted below, shall be erected, placed or permitted to remain on any window or the Common Area, nor shall any Unit be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any Unit or any resident thereof. Any Owner of a Unit or the Owner's agent may display or have displayed in a window of the Owner's Unit or in a location on the Common Area approved by the Board, in accordance with Civil Code Section 712, or on another Owners' Unit with that Owners' consent, a sign which is reasonably located, in plain view of the public, and is of reasonable dimensions and design and not adversely affecting public safety, including traffic safety, advertising the property for sale, Lease, or exchange, or advertising directions to the property by the Owner or the Owner's agent. The "for sale" sign shall be promptly removed upon close of escrow and the site restored. Signs permitted hereunder shall not be nailed to the exterior of any structure. The right to place a "for rent"/"for Lease" or "for sale" sign shall be subject to the control of the Board regarding placement, size and content. The placement of all signs is subject to the Operating Rules. In addition, noncommercial signs, posters, flags and banners are permitted to the extent provided in Civil Code Section 4710 or any successor statute. Nothing in this Section 10.05 prohibits the posting or displaying of noncommercial signs, posters, flags or banners on or in an Owner's separate interest except as required for the protection of public health or safety, or if the posting or display would violate a local, state, or federal law. Noncommercial signs, posters, flags or banners may be made of paper, cardboard, cloth, plastic, or fabric, and may be posted or displayed from the yard, window, door, balcony or outside wall of the separate interest, but may not be made of lights, roofing, siding, painting materials, flora, or balloons, or any other similar building, landscaping or decorative component, or include the painting of architectural surfaces. Noncommercial signs and posters that are more than nine (9) square feet in size, and noncommercial flags or banners that are more than fifteen (15) square feet in size are prohibited.

Section 10.06. Business Activities. No trade or business shall be conducted in any Condominium, except that residential Condominiums may be used as a combined residence and executive or professional office by the Owner or occupant thereof, so long as such use: (i) does not interfere with the quiet enjoyment by other Owners; (b) does not include visiting clients; (c) business activities take place solely inside the Unit; (d) does not generate in-Person visits by suppliers or clientele; (e) complies with all laws, regulations and ordinances applicable to the Properties, including zoning, health and licensing requirements; (f) otherwise complies with the Declaration and is consistent with the residential character of the Properties;

(g) no signs, logos, billboards, or other advertising materials or devices are displayed in the windows of the Unit, or on exterior of the building, or on any Common Area, to advertise the activity; (h) the existence or operation of the business is not apparent or detectable outside the Unit by sight, sound or odor; and (i) the business does not increase the liability or casualty insurance obligation or premium of the Association. This Section 10.06 does not apply to other businesses to the extent specifically authorized by statute, including family day care centers as specifically authorized by California Health and Safety Code Section 1597.40, and community care facilities as specifically authorized by California Health and Safety Code Section 1566.5.

Section 10.07. Garbage and Storage. No rubbish, trash, or garbage shall be allowed to accumulate on the Common Area. All trash, garbage and recycling bins shall be stored in garages or within patios, and may not be visible from the Common Area. No disposal containers, other than those maintained by the Association, shall be allowed in the Common Area. In the event of any extraordinary accumulation of rubbish, trash, garbage or debris the Owner shall provide for the removal of such material from the Properties at the Owner's expense.

No tank for storage of gas or liquid shall be installed on or in the Properties unless such installation has been approved by the Association, the Architectural Committee or the Board.

No toxic or hazardous materials may be stored on the Properties which, in the discretion of the Board, constitute a fire or other health hazard. No toxic or hazardous material shall be disposed of within the Properties by dumping in the garbage containers or down the drains, or otherwise. Toxic or hazardous material disposal must be performed outside the Properties in accordance with all applicable statutes, ordinances and regulations.

The Association shall be entitled to impose reasonable fines and penalties for collection of garbage, refuse or material which is disposed of in any manner inconsistent with this Section. Each Owner shall defend, indemnify and hold harmless the Association, its officers and Directors against any liability, loss, damage, cost or penalty, including attorneys' fees, arising from or relating to the unlawful disposal of hazardous or toxic materials.

Nothing in this Section shall be interpreted so as to preclude the Association from establishing and maintaining within the Properties appropriate storage yards and storage buildings for the Maintenance and retention of materials and equipment needed for planting, building, Repair, Maintenance and preservation of the structures, gardens and other improvements of the Common Area.

Section 10.08. Exterior Storage and Appliances. No clothes washers, clothes dryers, furniture (other than furniture made expressly for outdoor use), refrigerators, freezers or other appliances may be kept, stored or operated outside the Unit. Barbecue use and storage is governed by Section 10.15. Without limitation, no personal property may be stored outside a fenced area and may not be visible above a fence line. Any such property may be removed by the Association and stored at the Owner's expense following an opportunity to be heard as provided in Section 15.06(c). Residents may use clotheslines or drying racks as defined in Civil Code Section 4750.10(a)(b) in the Owner's exclusive use backyard, subject to the Operating Rules.

Section 10.09. No Common Area Maintenance by Owners. Except as may be specifically provided in Section 8.02 of this Declaration, without the prior written approval of the Board, there shall be no exterior painting of residential structures by Owners, or occupants, nor Repair or replacing of original roofs or utility laterals by Owners or occupants, it being the intention hereunder that such items be maintained and replaced by the Association in conjunction with the Association's Maintenance of the Common Area in order to preserve the external harmony of the Properties, as provided in Article IX hereof. No Owner, or occupant, may interfere with or damage the structural integrity of any building or the Common Area.

Section 10.10. Cooperative Maintenance Obligations. Any cooperative action necessary or appropriate to the proper Maintenance and upkeep of the Common Area and all Units to the extent provided in Section 8.01 of this Declaration shall be undertaken by the Board of Directors or by its duly delegated representatives and, to the extent necessary or desirable to accomplish such Maintenance, individual Owners shall cooperate with the Association and its agents in the prosecution of its work.

Section 10.11. No Alterations. No Owner shall undertake any action or work that will impair the structural soundness, integrity, or liveability of the Owner's Unit or another Unit or impair any easement or estate, or do any act or allow any condition to exist which will adversely affect quality of life of the other Units or their Owners. No changes may be made to the Unit floor plan without written Board approval.

Section 10.12. Restrictions on Changes. In order to insure adequate aesthetic controls and to Maintain the general attractive appearance of the Properties, no Owner, resident or Tenant shall, at the Owner's expense or otherwise, perform plumbing or electrical work within any bearing or common walls, construct fences, walls, or make any alterations, additions or modifications to or on any part or portion of the Common Area or exterior surfaces of any residential structure, or place or Maintain any objects, such as masts, towers,

poles, or television and radio antennas, or satellite dishes, on or about the exterior of any building within the Properties, except as authorized pursuant to Article IX hereof. No construction or alteration of improvements may be undertaken on the Common Area without written approval of the Board pursuant to Article IX hereof. Notwithstanding Article IX, Section 9.01 of this Declaration and this Section 10.12, the Board shall authorize the installation of antennas as required by applicable California and federal laws and regulations. Standard height television antennas and satellite dishes of one meter or less in diameter do not require approval by the Board if installed within a Unit or in the Exclusive Use Common Area of the installing Owner or such Owner's Tenant. However, such installations are subject to such reasonable safety Rules and reasonable preferred location Rules as may be adopted by the Board. The installation of any antenna authorized by this Section 10.12 is subject to the Architectural Standards which may be adopted by the Board pursuant to Section 9.01(a) of this Declaration and the Operating Rules.

Section 10.13. Parking and Vehicle Restrictions. The following parking and vehicle restrictions shall apply within the Properties:

(a) All private driveways and garages shall be maintained in a neat and orderly condition. All petroleum products, including oil and gasoline, shall be properly recycled and shall not be spilled, dumped or poured on the Common Area or into the storm drainage system. Garage doors shall be maintained in a closed position except as necessary to permit ingress and egress of vehicles or to provide ventilation when the resident is in the garage area. Garage doors shall be deemed "closed" for purposes of this Section 10.13(a) if it is open no more than twenty-four inches (24").

(b) The residents of a Unit may park no more vehicles on the Properties than are allowed by the Operating Rules. The parking of such vehicles is limited to the garage and Common Area parking areas as may be allowed by the Operating Rules. Non-resident Owners may not park vehicles on the Properties except temporarily as required for the management and Maintenance of their Unit.

(c) Garages are to be used for the parking of such standard vehicles as may be approved by the Board. Garages shall not be converted to living quarters or workshops or used for the storage of boats, trailers, campers or recreation vehicles, except with the written consent of the Board. In no event shall the garage area be used in a way which will preclude the parking of one four-wheeled vehicle of the Owner's or occupant's customary four-wheeled vehicles within the garage.

(d) All Common Area parking is on a first-come, first-serve basis and is subject to the Operating Rules.

(e) Designated parking areas within the Common Area are not to be used, either permanently or temporarily, for the storage of boats, trailers or any items of personal property. No vehicle shall be parked or left in the street areas in front of the garages, or along any curb areas, unless the area is specifically marked as a designated parking space. Use of the parking areas is subject to the Operating Rules.

(f) No motor vehicle shall be constructed, dismantled, reconstructed or repaired within the Common Area and no dilapidated or inoperable vehicle, including vehicles with flat tires or without wheel(s) or an engine, shall be stored in the Common Area. However, the provisions of this Section shall not apply to emergency vehicle repairs not to exceed twenty-four (24) hours. Vehicles without license plates or current tags may not be kept in the Common Area. The Board may designate an area within the Properties for the purpose of washing and polishing vehicles.

(g) Campers, boats, trailers, mobile homes, motor homes, commercial vehicles, golf carts, mopeds, motorized scooters, motorcycles, limousines, vans having seating capacity in excess of eight (8) Persons and trucks in excess of three-quarter ton capacity are not to be parked in the Common Area, except with the written consent of the Association, or as authorized by the Operating Rules. Personal property, other than authorized vehicles, shall not be stored in garages if such storage will necessitate or result in the parking of vehicles elsewhere in the Common Area. No unlicensed or unregistered motor vehicles shall be operated or stored in the Common Area.

(h) The Operating Rules may regulate vehicle size, weight, type and signage.

(i) The Board shall have the authority to tow, at the Owner's expense, any motor vehicle, trailer or equipment parked or stored in violation of this Section.

(j) The Association shall install a sign at each vehicular entrance to the Properties containing a statement that public parking is prohibited and that all vehicles not authorized to park on the Properties will be removed at the Owner's expense. The sign shall contain the telephone number of the local traffic law enforcement agency and the name and telephone number of each towing company that is a party to a written general towing authorization agreement with the Association. The sign may also indicate that a citation may be issued for the violation. The sign shall not be less than 17 x 22 inches in size with lettering not less than

one inch in height. The Association shall comply with Vehicle Code Section 22658 in performing the removal of motor vehicles from the Properties.

Section 10.14. Use of Private Streets in Common Area.

(a) Although all roads within the Properties are subject to the California Vehicle Code, the Association shall have the right to adopt reasonable Rules regarding the control and use of roads within the subdivision, vehicles operated thereon and the speed and parking of such vehicles, and is further authorized to delegate the discharge of its rights hereunder to a municipality or other governmental entity or to contract with a private security patrol company for such purposes so long as the private character of the subdivision's roads is not jeopardized by such action.

(b) Private streets within the Properties shall not be used for "joy riding" or racing. The use of motorcycles, mopeds, motorized scooters, cars, in-line skates, roller skates, skateboards, bicycles and similar vehicles on such private streets is subject to the Operating Rules.

(c) All operators of motor vehicles, including motorcycles, within the Properties must possess a valid driver's license.

(d) All provisions of the California Vehicle Code must be honored at all times when operating any motor vehicle within the Properties.

Section 10.15. Barbecues, Fire Pits and Outdoor Fireplaces. The operation and use of all barbecues, barbecue pits and outdoor fireplaces shall conform to local and California ordinances, laws and regulations.

Section 10.16. Sports Apparatus. No portable or fixed basketball standards or fixed sports apparatus shall be placed in the Common Area without written approval of the Board.

Section 10.17. Sidewalks. The use of sidewalks is subject to the Operating Rules. Sidewalks shall not be used in a manner which creates a danger to pedestrians.

Section 10.18. Machinery and Equipment. With the exception of air conditioning condensers, no appliances, machinery, or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Unit except such machinery or equipment as is usual or customary in connection with the use or Maintenance of a Condominium or appurtenant structures within the Properties. Without limitation, no personal property may be stored in

the Common Area, excluding only decorative items allowed by the Operating Rules. Any such property may be removed by the Association and stored at the Owner's expense following an opportunity to be heard as provided in Section 15.06(c).

Section 10.19. Visitors. Owners shall be accountable for their families, visitors, Guests and invitees, for the conduct and behavior of the Household members and Guests residing in or visiting the Owner's Condominium and for any property damage caused by such Persons.

Section 10.20. Compliance With Local Laws. Subject to rights of reasonable contest, nothing shall be done or kept in any Unit or within the Common Area which would be in violation of any applicable statute, ordinance, law or administrative ruling or regulation.

Section 10.21. Activities Affecting Insurance. Nothing shall be kept in any Unit or within the Common Area which will increase the rate of insurance relating thereto without the prior written consent of the Association, and no Owner shall permit anything to be done or kept in the Owner's Unit or the Common Area which would result in the cancellation of insurance on any Condominium or any part of the Common Area.

Section 10.22. Restriction on Further Subdivision and Severability. No Condominium shall be further subdivided nor shall less than all of any such Condominium be conveyed by an Owner thereof. No Owner of a Unit within the Properties shall be entitled to sever that Unit from the Common Area portions of the Properties. No easement or other interest in a Unit shall be given without the prior written approval of the Board.

Section 10.23. Diseases, Insects and Vermin. No Owner shall permit any thing or condition to exist in the Owner's Unit which shall induce, breed, or harbor infectious plant diseases, noxious insects or vermin.

Section 10.24. Window Coverings. Windows can be covered only by drapes, blinds, shutters, or shades and cannot be painted or covered by foil, cardboard, non-transparent reflective films, bed sheets, towels or other similar materials. The use and the covering of the interior surfaces of the glass doors and windows appurtenant to any Unit in the Properties, whether by draperies, blinds, shades or other items visible from the exterior of the building, shall be subject to the Operating Rules; provided, however, that the exterior lining or surface of the draperies, shades or other covering items visible from the exterior shall be white or other neutral color approved by the Board.

Section 10.25. Heavy Use of Electrical Power. No large or heavy use of electrical power shall be permitted in the Common Area where there is a central meter or master meter serving more than one Condominium. In any case where a garage or carport assigned to a particular Condominium is supplied with power through a central meter or master meter, the Owner of the Condominium to which the garage or carport is assigned shall not use electrical outlets in the garage or carport for running appliances, tools, power equipment, battery chargers, or any other machinery or equipment using large amounts of electrical power. The Board may establish regulations regarding the individual use of any utility on a common meter, and may impose reasonable charges for the individual use thereof. In the case of electric vehicle charging stations, Section 9.06 of this Declaration and Civil Code Section 4745, or any successor statute or statutes, shall control over this Section 10.25.

Section 10.26. Floor Coverings. No alteration in the type of floor coverings of the Unit may be made which will result in an increase in sound transmission into any other Unit. Only soft-cover floors may be installed on floor levels located above and adjacent to any other Unit, except for Replacement of any hard coverings in kitchen, bath or other areas where such hard coverings were originally installed.

Section 10.27. Smoking. No Person may carry or smoke any kind of lighted pipe, cigar, cigarette, or use of any other lighted smoking apparatus, equipment or product, including electronic cigarettes and personal vaporisers anywhere within the Properties including, without limitation, all indoor and outdoor places, the Common Area, Common Facilities, Condominiums, Condominium Buildings and Exclusive Use Common Areas.

Section 10.28. Flags. Notwithstanding the provisions of this Declaration, including Article IX, Section 9.01, an Owner may display the flag of the United States in the Owner's Unit or within the Owner's Exclusive Use Common Area, subject to the Operating Rules required for the protection of the public health or safety. For purposes of this Section 10.28, "display of the flag of the United States" means a flag of the United States made of fabric, cloth or paper displayed from a staff or pole or in a window, and such display is authorized only to the extent permitted by California Civil Code Section 4705 or any successor statute thereto.

Section 10.29. Limitation on Association Enforcement Responsibility. Notwithstanding any provisions of this Declaration, or any Operating Rule, neither the Association, the Board of Directors, the officers or the agents of the Association shall have any responsibility or duty of any kind or nature to enforce this Declaration when the violation or claimed violation affects only one other Household. Without limitation, any such violations or claimed violations affecting only one other Household shall not be considered

to be a noxious or offensive activity under Section 10.04 of this Declaration which creates a duty of enforcement on the part of the Association, the Board or their agents. The Association may, in its sole discretion, enforce this Declaration and the Operating Rules where the violation, or the claimed violation, affects only one Household.

Section 10.30. Drones. A “drone” is defined as a powered aerial recreational vehicle that flies autonomously or is remotely piloted. The operation of drones in the Properties, if allowed by the Association, must comply with the Operating Rules. No Person may operate, cause, allow or authorize the operation of a drone anywhere within or above the Properties in such a way as to invade the privacy of Association Members, Guests, residents or vendors, whether equipped with a camera or otherwise. Prior written approval of the Board of Directors must be given for drone operations that fall outside the Operating Rules and must comply with such terms and conditions as the Board may deem appropriate under the circumstances.

Section 10.31. Variances. Upon application by any Owner, the Board of Directors shall be authorized and empowered to grant reasonable variances from the property use restrictions set forth in this Article X, if specific application of the restriction will, in the sole discretion of the Board, either cause an undue hardship to the affected Owner or fail to further or preserve the common plan and scheme of development contemplated by this Declaration.

ARTICLE XI

Easements

Section 11.01. Encroachment Easements. Each Unit is hereby declared to have an easement over adjoining Units and Common Area for the purpose of accommodating any encroachment due to roof overhangs, chimneys and fences or walls which are built in accordance with the original design, plans and specifications, and due to engineering errors in original construction, settlement or shifting of the building, or similar causes. There shall be valid easements for the Maintenance of said encroachments as long as they shall exist, and the rights and obligations of each Owner 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 occurs due to the willful misconduct of said Owner or Owners. In the event any Condominium is partially or totally destroyed, and is repaired or rebuilt, the Owners of each adjoining Condominium agree that minor encroachments over adjoining Condominiums shall

be permitted and that there shall be valid easements for the Maintenance of said encroachments so long as they shall exist.

Section 11.02. Maintenance Easements. An easement is hereby granted to the Association, its officers, agents, employees, and to any management company selected by the Association to enter in or to cross over the Common Area, Exclusive Use Common Area and any Unit to perform the duties of Maintenance and Repair of the Common Area provided for herein. The right of the Association to enter the interior of a Unit is subject to Section 7.02(d) and Section 9.03 of this Declaration.

Section 11.03. Blanket Utility Easement. There is hereby created a blanket easement in favor of the Association and utility providers upon, across, over and under all of the Properties for ingress, egress, installation, replacing, repairing and maintaining all utilities on the Properties, including but not limited to water, sewer, gas, telephone, drainage and electricity, heating and air conditioning facilities, drainage facilities, fire protection, Internet service, cable television and a master television antenna system, if any. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and Maintain the necessary equipment and underground facilities on the Properties. Notwithstanding the foregoing, no sewer, electrical lines, data lines, water lines, or other utilities may be installed or relocated on said Properties except as initially constructed or thereafter approved by the Association's Board of Directors. The easements provided for in this Section 11.03 shall in no way affect any other recorded easement on the Properties.

Section 11.04. View. Each Owner, by acceptance of a deed or other conveyance of a Condominium, acknowledges that any construction or improvement by the Association or any other Owner, or any Owner of any other property, may change, impair, obstruct or otherwise affect any view that such Owner may have enjoyed at the time of the purchase of his Condominium. The Governing Documents do not contain any provisions intended to protect any view or to guarantee that any views that an Owner may have enjoyed will not be impaired or obstructed in the future by changes to other property. Each Owner further acknowledges that any rights acquired do not include the preservation of any view and further consents to such obstruction and/or impairment. No representations or warranties of any kind, express or implied, have been given by the Association, or any of its officers, Directors or agents. Owner agrees to hold the Association, and all of its officers, Directors and agents free of liability from such damages, costs, expenses or charges incurred in connection therewith, such as, but not limited to, attorneys' fees and court costs, and costs arising from any changes, obstruction or impairment of the view from such Owner's Condominium.

ARTICLE XII

Insurance

Section 12.01. Liability Insurance. To the extent such insurance is reasonably obtainable, the Association shall obtain and maintain commercial general liability insurance insuring the Association, the Board of Directors, volunteers working at the direction of the Board, and the Association Manager against any liability incident to the ownership, Maintenance and Repair of the Common Area and any other Association owned or maintained real or personal property, and including, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than Five Million Dollars (\$5,000,000) covering all claims for death, personal injury, and property damage arising out of a single occurrence. Such insurance shall include coverage against liability or risk customarily covered with respect to projects similar in construction, location and use.

Section 12.02. Fire and Extended Coverage Insurance.

(a) Association Fire Insurance. The Association shall obtain and maintain a master or blanket policy of hazard insurance coverage covering the full insurable replacement value of all of the insurable property of the Properties, (including all the Common Area and all the Units, fixtures, building service equipment and supplies, and other common personal property belonging to the Association, but excluding betterments and improvements and further excluding those components of the Unit that the Owner is obligated to insure under Subsection (d) of this Section 12.02), and against loss or damage from all other perils which are customarily covered with respect to Condominium developments similar in construction, location and use. The form, content, and term of the policy and its endorsements and the issuing company must be satisfactory to institutional First Mortgagees. If more than one institutional First Mortgagee has a loan of record against a Condominium in the Properties, the policy and endorsements shall meet the maximum standards of the various institutional First Mortgagees represented in the Properties. To the extent available the policy shall contain an agreed amount endorsement or its equivalent; inflation guard coverage; replacement cost endorsement; primary coverage endorsement; an increased cost of construction endorsement and a contingent liability from operation of building laws endorsement or their equivalent; an extended coverage endorsement; vandalism, malicious mischief coverage; a special form endorsement; and a determinable cash adjustment clause or a similar clause to permit cash settlement covering full value of the improvements in case of partial destruction and a decision not to rebuild. The policy also shall include, if reasonably available, (i) Maintenance fees receivable coverage, or its equivalent, to cover the loss from

unpaid or uncollected Assessments resulting from a covered property loss; and (ii) demolition and debris removal endorsement in the amounts adequate to cover demolition and debris removal costs. The policy shall provide amounts of coverage as shall be determined by the Board. The policy shall name as insured the Association, the Owners and all Mortgagees as their respective interests may appear, and may contain a loss payable endorsement in favor of the trustee described in the following paragraph of this Section 12.02.

All fire and casualty insurance proceeds payable under this Section 12.02 for losses to real property and improvements, may be paid to a trustee, to be held and expended for the benefit of the Owners, Mortgagees, and others, as their respective interests shall appear. The trustee shall be a commercial bank or other financial institution with trust powers in the County in which the Properties are located that agrees in writing to accept such trust. If Repair or reconstruction is authorized, the Association shall have the duty to contract for such work as provided for in this Declaration.

(b) The Association shall obtain and maintain flood insurance only if the Properties are, or in the future become, in an area designated by an appropriate governmental agency as a special flood hazard area.

(c) Fire and Casualty Insurance Provisions. Except as provided in Subsection (d) of this Section 12.02, no Owner shall separately insure the Unit against loss by fire or other casualty covered by any insurance carried under Section 12.02 of this Article XII. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable under policies described in Section 12.02 that results from the existence of such other insurance will be chargeable to the Owner who acquired other insurance, and such Owner will be liable to the Association to the extent of any such diminution. Insurance maintained by the Association does not cover the Owner's or occupant's personal property and does not cover personal liability for damages or injuries occurring within the Unit. Insurance maintained by the Association also does not cover relocation costs or expenses, loss of use, or loss of rents, or any other items described elsewhere as the responsibility of the Owner or occupant, or (if not described elsewhere) normally considered the responsibility of the Owner or occupant.

(d) Owner's Insurance. Each Owner and Tenant shall carry an "HO-6" (Condominium occupant insurance) or equivalent form of policy providing coverage for the Condominium interior, including paint, floor coverings, wall coverings, cabinetry, appliances, fixtures, betterments and improvements, and the Owner's personal property, as well as liability and loss Assessment insurance related to the Owner's Unit. Such insurance shall include coverage for sewer backups. In no event shall the Association be obligated to verify that an Owner carries any insurance required by this Section, however the Board may adopt

Rules related to the enforcement of the Owner's insurance obligations under this Section 12.02(d). In the event of a loss, coverage under the Owner's and Tenant's HO-6 policy shall be primary and any coverage that may exist under the Association's master or blanket policy of hazard insurance carried under this Section 12.02 of this Declaration shall be secondary. Owners may, in their discretion, carry loss Assessment coverage and earthquake loss Assessment coverage. If an Owner fails to carry an "HO-6" or equivalent form of policy as required by this Section, the Owner shall be personally responsible for all property damages and losses that would otherwise be covered, and waive their claims against the Association to the extent of such uninsured loss.

Section 12.03. Demolition, Workers' Compensation, Fidelity Bond and Other Insurance. The Association may purchase and maintain demolition insurance in adequate amounts to cover demolition, in case of total or partial destruction of the Properties and a decision not to rebuild. The Association shall purchase and maintain workers' compensation insurance, to the extent that it is required by law, for all employees or uninsured contractors of the Association. The Association also shall purchase and maintain fidelity bonds or insurance sufficient to meet the reasonable requirements of any Mortgagee. The Association shall purchase and maintain such insurance on personal property owned by the Association, and any other insurance, that it deems necessary.

Section 12.04. Provision To Adjust Losses. The Association is authorized to negotiate and agree on the value and extent of any loss under any policy carried by it pursuant to Sections 12.01-12.03 of this Article XII. The Association is granted full right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer. If an Owner or an Owner's agent Repairs or Replaces one or more construction components that the Association is obligated to Maintain, Repair or Replace, or that is covered by the master policy of insurance referred to in Section 12.02 before the Association or its insurance carrier may complete an inspection of all relevant conditions, neither the Association nor its carrier shall be liable for any damage, loss, expense or cost of Repair. In no event shall the Association be liable for any loss or damage to an Owner in excess of the current cost of Replacement of the original construction grade materials.

Section 12.05. Distribution to Mortgagees. Any Mortgagee has the option to apply insurance proceeds payable on account of a Condominium in reduction of the obligation secured by the Mortgage of such Mortgagee as provided in Article XVII, Section 17.06.

Section 12.06. Director and Officer Liability Insurance. To the extent insurance is available, the Association shall purchase and maintain insurance in an amount not less than

Two Million Dollars (\$2,000,000) on behalf of any manager, Director, Officer, or member of a Committee of the Association (collectively the “agents”) against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, regardless of whether the Association would have the power to indemnify the agent against such liability under applicable law.

Section 12.07. Earthquake and Other Insurance. The Board may, at its discretion, purchase earthquake insurance and/or other insurance including an umbrella policy with such coverages and in such amounts as the Board may deem prudent from time to time, including, by way of example and not of limitation, insurance on personal property owned by the Association.

Section 12.08. Adjustment of Insurance Specifications. Should the Board, despite its reasonable efforts to do so, be unable to obtain insurance coverage meeting all the specifications set forth above, it shall observe such specifications as closely as possible, and where forms of coverage or insuring agreements specified above are unavailable, the Board shall substitute available forms of coverage and insuring agreements which in its judgment are the nearest equivalent to those specified.

Section 12.09. Annual Insurance Review. The Board shall at least annually determine whether the amounts and types of insurance obtained provide adequate coverage in light of increased construction costs, inflation, practice in the area in which the Properties are located, or any other factor which tends to indicate that either additional insurance policies or increased coverage under the existing policies is necessary or desirable to protect the interests of the Owners and of the Association. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain the same.

Section 12.10. Insurance Disclosures. The Association shall provide the following insurance disclosures to the Members.

(a) A summary of the Association’s property, general liability, earthquake and flood insurance policies, and fidelity insurance policies, which shall be distributed within not less than thirty (30) nor more than ninety (90) days preceding the beginning of the Association’s fiscal year, that includes all of the following information about each policy:

- (1) The name of the insurer.
- (2) The type of insurance.

- (3) The policy limits of the insurance.
- (4) The amount of deductibles, if any.
- (5) Policy term showing effective and expiration dates.

(b) The Association shall, as soon as reasonably practical, provide Individual Notice if any of the policies described in Subsection (a) 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 deductible, for any of those policies. If the Association receives any notice of nonrenewal of a policy described in Subsection (a), the Association shall immediately notify its Owners if replacement coverage will not be in effect by the date the existing coverage will lapse.

(c) To the extent that any of the information required to be disclosed pursuant to Subsection (a) 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 of its Members.

(d) The summary distributed pursuant to Subsection (a) shall contain, in at least 10-point boldface type, the following statement:

“This summary of the association’s policies of insurance provides only certain information, as required by Section 5300 of the Civil Code, and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance. Any association member may, upon request and provision of reasonable notice, review the association’s insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the association maintains the policies of insurance specified in this summary, the association’s policies of insurance may not cover your property, including personal property, or real property improvements to or around your dwelling, or personal injuries or other losses that occur within or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association members should consult with their individual insurance broker or agent for appropriate additional coverage.”

ARTICLE XIII

Reconstruction and Insurance Distribution Proceeds

Section 13.01. Destruction: Proceeds Exceed Eighty-Five Percent (85%) of Reconstruction Costs. If there is a total or partial destruction of any of the Common Area improvements in the Properties insured by the Association, and if the available proceeds of the insurance carried pursuant to Article XII are sufficient to cover not less than eighty-five percent (85%) of the costs of Repair and reconstruction, such improvements shall be promptly rebuilt to the condition prior to the damage or destruction, unless, within ninety (90) days from the date of destruction, Owners then holding at least seventy-five percent (75%) of the total Voting Power of Owners present and entitled to vote, in Person or by proxy, at a duly constituted meeting, determine that Repair and reconstruction shall not take place. If such a meeting is called, the Association shall solicit and obtain bids from at least two reputable contractors to Repair and reconstruct the improvements in accordance with the original plans and shall present this information to the Owners at the meeting. If Repair and reconstruction is to take place, the Association shall be required to execute, acknowledge, and record in the Office of the County Recorder of the County, not later than one hundred twenty (120) days from the date of destruction, a certificate declaring the intention of the Owners to rebuild. In no event shall the Association be liable for any loss or damage to an Owner in excess of the current cost of Replacement of the original construction grade materials.

Section 13.02. Destruction: Proceeds Less than Eighty-Five Percent (85%) of Reconstruction Costs. If the proceeds of insurance carried pursuant to Article XII are less than eighty-five percent (85%) of the costs of Repair and reconstruction, such Common Area improvements shall be promptly rebuilt to the condition prior to the damage or destruction unless, within ninety (90) days from the date of destruction, Owners then holding at least two thirds (2/3rds) of the total Voting Power of Owners present and entitled to vote, in Person or by proxy, at a duly constituted meeting, determine that Repair and reconstruction shall not take place. If such a meeting is called, the Association shall solicit and obtain bids from at least two reputable contractors to Repair and reconstruct such improvements in accordance with the original plans and shall present this information to the Owners at the meeting. If such Repair and reconstruction are to take place, the Association shall execute, acknowledge, and record in the Office of the County Recorder of the County not later than one hundred twenty (120) days from the date of destruction, a certificate declaring the intention of the Owners to rebuild. In no event shall the Association be liable for any loss or damage to an Owner in excess of the current cost of Replacement of the original construction grade materials.

Section 13.03. Apportionment of Assessments for Reconstruction. If the Common Area improvements are to be rebuilt pursuant to Sections 13.01 or 13.02 of this Article XIII, each Owner and Condominium shall be obligated to contribute an equal share of the cost of reconstruction or restoration over and above the available insurance proceeds. If any Owner fails or refuses to pay the Owner's share, the Board may levy a Special Assessment against the Condominium of such Owner, which may be enforced under the lien provisions contained in Article VI or in any other manner provided in this Declaration.

Section 13.04. Rebuilding Contract. If Common Area rebuilding is authorized, the Association or its authorized representative shall, after having obtained bids from at least two reputable contractors as required by Sections 13.01 or 13.02 of this Article XIII, award the Repair and reconstruction work to the contractor the Board believes is best qualified to perform the necessary rebuilding. The Association shall have the authority to enter into a written contract with the contractor for the Repair and reconstruction, and the insurance proceeds shall be disbursed to the contractor according to the terms of the contract. It shall be the obligation of the Association to take all steps necessary to assure the commencement and completion of authorized rebuilding at the earliest possible date.

Section 13.05. Election Not to Rebuild and Distribution of Proceeds.

(a) Association Purchase of Uninhabitable Units. If the Owners determine not to rebuild, and if, prior to the expiration of one hundred twenty (120) days from the date of destruction, Owners holding seventy-five percent (75%) of the total Voting Power of Owners consent in writing or by vote at a duly constituted meeting and seventy-five percent (75%) of institutional First Mortgagees with Mortgages encumbering Condominiums in the Properties consent, the Association shall have the right to purchase the Condominium(s) rendered uninhabitable by such damage or destruction at its/their fair market value immediately prior to the damage or destruction, as determined by an appraiser in accordance with the provisions in Section 13.08 of this Article, using the available proceeds of insurance for such purchase. Any shortage of insurance proceeds shall be made up by a Special Assessment levied against all remaining Owners in the manner described in Article XIII, Section 13.03 (but without the consent or approval of Owners, despite any contrary provisions in the Declaration). The Board's decision as to whether a Condominium is uninhabitable shall be final and binding on all parties. Any payment of the purchase price shall be made jointly to the selling Owner and all Mortgagees of that Owner's Condominium, and each Owner by accepting a deed to a Condominium agrees to be bound by these provisions and to sell the Owner's Condominium and to convey it by grant deed to the Association as provided in this clause. Concurrently with such purchase, the Association or individuals authorized by the Board, acting as attorney-in-fact of all Owners, shall amend the Condominium Plan, the Subdivision Map (if

necessary), and this Declaration to eliminate from the Properties the Condominiums so purchased and to adjust the undivided ownership interest of the remaining Owners to reflect the reduced number of Condominiums in the Properties; and the Association shall convey to each remaining Owner a proportionate share of the undivided interests in the Common Area represented by the Condominiums purchased. This proportion shall be in the ratio that each remaining Owner's undivided interest in the Common Area bears to all remaining Owners' undivided interest in the Common Area.

(b) **Apportionment if Purchase Not Authorized.** If the Owners elect not to rebuild, and if the required seventy-five percent (75%) of all Owners and institutional First Mortgagees do not consent to purchase the Condominiums of which the Units were rendered uninhabitable, an appraiser shall determine the relative fair market values of all Condominiums in the Properties in accordance with the provisions in Article XIII, Section 13.08 as of a date immediately prior to any damage or destruction and the proceeds of insurance shall be apportioned among all Owners, and their respective Mortgagees, in proportion to such relative values. The Board shall have the duty, within one hundred twenty (120) days from the date of destruction, to execute, acknowledge, and record in the Office of the County Recorder of the County, a certificate declaring the intention of the Owners not to rebuild. On recordation of the certificate, the right of any Owner to partition through legal action as described in Article II, Section 2.03 shall revive immediately.

Section 13.06. Minor Repair and Reconstruction. In all cases of partial destruction of the Common Area when the estimated cost of Repair and reconstruction does not exceed Five Hundred Thousand Dollars (\$500,000), the Association shall have the duty to Repair and reconstruct improvements, without the consent of Owners and irrespective of the amount of available insurance proceeds. However, Owners are liable for the uninsured loss where so provided in this Declaration including, but not limited to, Sections 6.04(a)(2) and 8.01(b). The Owner also shall bear the uninsured cost of Repair and Replacement of the Unit which results from the insurance deductible.

The Association is empowered to levy a Special Assessment for the cost of repairing and reconstructing improvements to the extent insurance proceeds are unavailable, such Assessment to be levied as described in Article XIII, Section 13.03 (but without the consent or approval of the Owners, despite any contrary provisions in this Declaration).

Section 13.07. Standard of Repair and Reconstruction. All Repair, reconstruction and rebuilding which is authorized or required by this Article XIII shall restore the improvements to the standard of construction as originally built, or as thereafter improved by

the Association, and as may be required by law, but shall not include Owner installed upgrades, unless approved by the Association in writing.

Section 13.08. Owner Duty to Repair Unit Including Betterments. If there is a total or partial destruction of any Unit, the Owner of the Unit is solely responsible for Repair and reconstruction of the Unit, including betterments and improvements, which Repair and reconstruction shall be completed in a reasonable time.

Section 13.09. Fair Market Value as Appraisal Standard. Wherever in this Article XIII reference is made to a determination of the relative fair market value of one or more Condominiums by an appraiser, this means the relative fair market value of such Condominiums as of a date immediately prior to any damage or destruction, as determined by an appraisal by an independent appraiser selected by the Board, who shall be an MAI member and who shall apply its or such other organization's standards in determining the value or fair market value of each Condominium. The costs of such appraisals shall be paid from the sale or insurance proceeds, as the case may be.

ARTICLE XIV

Condemnation

Section 14.01. Sale by Unanimous Consent or Taking. If an action for condemnation of all or a portion of the Properties is proposed or threatened by any governmental agency having the right of eminent domain, then, on unanimous written consent of all of the Owners and all Institutional Mortgagees, the Properties, or a portion of it, may be sold and conveyed to the condemning authority by the Association or its designees acting as the attorney-in-fact of all Owners under an irrevocable power of attorney, which each Owner by accepting a deed to a Condominium in the Properties grants to the Association and which shall be coupled with the interest of all other Owners, for a price deemed fair and equitable by the Board. If the requisite number of Owners or Institutional Mortgagees do not consent to a sale of all or a portion of the Properties, and the condemning authority institutes condemnation proceedings, the court shall fix and determine the condemnation award. A Mortgagee shall be deemed to have consented to such action if notice is provided by return receipt mail to the Mortgagee's last known address as shown in the Association's records or in the Mortgage itself and if the Mortgagee shall fail to object to such action within thirty (30) days thereafter.

Section 14.02. Distribution of Sale Proceeds or Condemnation Award.

(a) **Total Sale or Taking.** If there is a total sale or taking of the Properties, meaning a sale or taking (1) that renders more than fifty percent (50%) of the Units uninhabitable (such determination to be made by the Board in the case of a sale and by the court in the case of a taking) or (2) that renders the Properties as a whole uneconomical as determined by the vote or written consent of two-thirds (2/3rds) of those Owners and their respective Institutional Mortgagees whose Units will remain habitable after the taking, the right of any Owner to partition through legal action as described in Article II, Section 2.03 shall revive immediately. However, any determination that a sale or taking is total must be made before the proceeds from any sale or award are distributed. The proceeds of any such total sale or taking of the Properties, together with the proceeds of any sale pursuant to a partition action, after payment of all expenses relating to the sale, taking, or partition action, shall be paid to all Owners and to their respective Mortgagees in proportion to the respective fair market value of their Condominiums. The fair market values of Condominiums shall be determined in the condemnation action, if such be instituted, or by an Appraiser pursuant to Section 14.03 of this Article XIV.

(b) **Partial Sale or Taking.** In case of a partial sale or taking of the Properties, meaning a sale or taking that is not a total taking as described in this Section 14.02, the proceeds from the sale or taking shall be paid or applied in the following order of priority, and any judgment of condemnation shall include the following provisions as part of its terms:

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

(2) To Owners and their respective Mortgagees, as their interests may appear, of Condominiums in the Properties whose Units have been sold or taken, an amount up to the fair market value of such Condominiums as determined by the Court in the condemnation proceeding or by an appraiser selected by the Board, who meets the qualifications described in Section 14.03 of this Article XIV, less such Owner's share of expenses paid pursuant to the preceding subsection (1) (which share shall be in proportion to each Owner's undivided interest in the Common Area). After such payment, the recipient shall no longer be deemed an Owner, and the Board or individuals authorized by the Board, acting as attorney-in-fact of all Owners shall amend the Condominium Plan, the Subdivision Map (if necessary), and this Declaration to eliminate from the Properties the Condominiums so sold or taken and to adjust the undivided ownership interest of the remaining Owners in

the Condominium Area based upon the ratio that each remaining Owner's undivided interest bears to all the remaining Owners' undivided interest in the Common Area; then

(3) To any remaining Owner and to the Owner's Mortgagees, as their interest may appear, whose Condominium has been diminished in fair market value as a result of the sale or taking disproportionately to any diminution in value of all Condominiums, as determined pursuant to Section 14.03, but as of a date immediately after any announcement of condemnation, an amount up to the total diminution in value; then

(4) To all remaining Owners and to their respective Mortgagees, as their interest may appear, the balance of the sale proceeds or award in proportion to the ratio that the fair market value of each remaining Owner's Condominium bears to the fair market value of all remaining Owners' Condominiums as determined by the Court in the condemnation proceeding or by an appraiser pursuant to Article XIV, Section 14.03.

Section 14.03. Fair Market Value as Appraisal Standard. Wherever in this Article XIV reference is made to a determination of the value or fair market value of one or more Condominiums, it shall mean the relative fair market value of each such Condominium as of a date immediately prior to the announcement of condemnation, as determined by an appraisal by an independent appraiser selected by the Association, who shall be an MAI member and who shall apply its standards in determining the value or fair market value of each Condominium.

ARTICLE XV

Breach and Default

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

Section 15.02. Nuisance. Without limiting the generality of the foregoing, the result of every act or omission whereby any covenant contained in this Declaration is violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy against nuisance, either public or private, shall be applicable against every such act or omission.

Section 15.03. Costs and Attorneys' Fees. In any action brought because of any alleged breach or default of any Owner or other party hereto under this Declaration, the Court may award to any party to such action such attorneys' fees and other costs as it may deem just and reasonable. In addition, in the event that the Association incurs any legal fees and/or costs incurred as a result of any act or omission of an Owner or the Owner's Tenant or invitee in violation of the Governing Documents, the Association shall be entitled to recover such fees and/or costs from the Owner as a Special Individual Assessment under Article VI, Section 6.04 of this Declaration.

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

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

Section 15.06. Suspension, Fines and Enforcement.

(a) **Limitations.** The Association shall have no power to cause a forfeiture or abridgment of an Owner's right to the full use and enjoyment of the Owner's Unit, or physical access to the Member's Unit, either by restricting access through the Common Area to the Unit or by restricting access solely to the Unit on account of a failure by the Owner to comply with the provisions of the Governing Documents except (1) as otherwise provided by law, (2) an order of the court, or (3) an order pursuant to a final and binding arbitration decision.

(b) **Complaint.** Upon an allegation by the Board of a violation of a provision of the Governing Documents, except with respect to nonpayment of Assessments as provided in

Section 6.09, the Board shall serve a complaint on the Owner who is alleged to have violated, or whose Household member(s), Tenant(s), Guest(s), invitee(s) or agent(s) are alleged to have violated, any such provision. The complaint shall be served in the manner prescribed for the delivery of notices in Article XVIII entitled "Notices" of the Declaration and shall contain the following information:

(1) A brief description of the alleged violation and, in the event the correction of the alleged violation requires actions, such as the installation, removal, Repair, Replacement, reconstruction or Maintenance of improvements, the date by which such violation is to be corrected.

(2) The disciplinary and/or corrective action and/or penalties, such as the levying of a Special Individual Assessment or the suspension of voting and other membership rights, which are contemplated by the Board, and the suspension of voting or other privileges that may be imposed for a period of not more than sixty (60) days unless the violation (including the nonpayment of Assessments) continues beyond such period of time, in which event such suspension may be imposed for as long as the violation continues. The notice shall specify whether the suspension of voting and/or other membership rights, such as the right to use the Common Facilities, may apply to all of the separate interests owned by the Owner within the Properties.

(c) Notice of Right to a Hearing. At the time the complaint is served, the Board shall serve the Owner with notice of the Owner's right to request a hearing before the Board and to present evidence concerning the alleged violation. If the Owner does not request a hearing in writing within fifteen (15) days of the service of the notice, the Owner's right to a hearing shall be deemed waived. If the Owner makes a timely request for a hearing, the Board shall set a date for a hearing before the Board and shall serve notice of the date, time and place of the hearing to the Owner and to any witnesses designated by the Board or the Owner who are to be present for the purpose of presenting any relevant evidence. The notice of the hearing also shall include a statement that the Member has a right to attend and may address the Board at the meeting or may have a representative attend and address the Board at the meeting. Such hearing shall be held not less than ten (10) days nor more than sixty (60) days from the date of said written notice to the Owner. Such hearing shall be conducted according to such reasonable Rules and procedures as the Board shall adopt which shall provide the Owner with the right to present oral and written evidence and to confront and cross-examine any Person offering at such hearing evidence adverse to the Owner.

(d) Decision of Board. The Board shall deliver its decision and the reasons therefor to the Owner within fifteen (15) days after the hearing, by either personal delivery or first-

class mail. The disciplinary and/or corrective action and/or penalties determined by the Board shall become effective five (5) days after delivery of the decision and the reasons therefor to the Owner. Where the Owner owns more than one separate interest in the Properties, the decision shall state whether the suspension of voting rights, suspension of Common Area use rights, or other penalty shall apply to all separate interests of the Owner within the Properties.

(e) Corrective Work. If a violation requiring corrective work continues to exist after the expiration of the time limitation established by the Board for the completion of such corrective work, the Board shall have the right, but not the obligation, to enter upon such Owner's Unit or Exclusive Use Common Area as necessary to accomplish such corrective work. Prior to entering onto the interior of the Unit, the Board shall provide the Owner notice of the right to a hearing as provided in Subsection (c) of this Section 15.06. Unless Owner and the Board otherwise agree, such entry upon the Owner's Condominium to perform the corrective work shall take place only during daylight hours on any day, Monday through Friday, excluding holidays.

(f) Reimbursement. If the Association pays for all or any portion of any corrective work required to correct a violation, such amount shall be reimbursed by the Owner. Notwithstanding the foregoing, as provided in the Declaration, notice and an opportunity to be heard must be initiated before any item of construction can be altered or demolished.

(g) Exceptions. The provisions of this Section 15.06 shall not apply to the imposition of late charges or interest for the late payment of any Assessment nor to the recordation of a lien or foreclosure of a lien in the case of delinquent Assessments, nor to suspension of rights of a Member for nonpayment of Assessments. Further, nothing in this Section 15.06 shall limit the power of the Board to take immediate action that may be necessary to alleviate an emergency situation.

(h) Schedule of Penalties. The Board shall adopt and distribute to each Member, by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed. The Board of Directors shall distribute, in like manner, additional schedules of monetary penalties whenever changes to the schedule are adopted.

(i) In addition to the other remedies herein set forth, the Board, by vote of a majority of a quorum, may levy a fine against such Owner, after notice and opportunity for a hearing as provided in Section 15.06(c), in an amount not to exceed two (2) monthly installments of the Regular Assessment for each such violation and the payment of such fine may be enforced as a Special Individual Assessment in the manner set forth in Section 6.04 of Article VI hereof. The Board shall implement schedules of reasonable fines and penalties

as part of its general rulemaking power. The Board shall distribute to each Member, in the Annual Policy Statement prepared pursuant to Civil Code Section 5310, the schedule of the monetary penalties that may be assessed for those violations, which shall be in accordance with authorization for Member discipline set forth in this Declaration. A violation shall be defined as a single act or omission occurring on a single day. If the detrimental effect of a violation continues for additional days, discipline imposed by the Board shall include one component for the violation and a per diem component for so long as the detrimental effect continues, according to the Board's discretion. Similar violations on different days shall justify cumulative imposition of discipline. The Association shall take reasonable and prompt action to Repair or avoid the continuing damaging effects of a violation or nuisance in the Common Area at the cost of the responsible Owner; provided that no discipline may be founded upon continuance of a violation beyond a date when the Association should reasonably have commenced action to end it.

Section 15.07. Violation of Law. Any violation of any state, municipal or local law, or ordinance or regulation pertaining to the ownership, occupation or use of any property within the Properties is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

Section 15.08. Dispute Resolution Procedure.

(a) This Section applies to a dispute between the Association and a Member involving their rights, duties, or liabilities under the Davis-Stirling Act, under the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code), or under the Governing Documents of the Association.

(b) This Section supplements, and does not replace, Section 15.09 relating to alternative dispute resolution as a prerequisite to an enforcement action.

(c) The Association shall provide a fair, reasonable, and expeditious procedure for resolving a dispute within the scope of this Section by adopting appropriate Operating Rules.

(d) In developing a procedure pursuant to this Section, the Association shall make maximum, reasonable use of available local dispute resolution programs involving a neutral third party, including low-cost mediation programs such as those listed on the Internet Web sites of the Department of Consumer Affairs and the United States Department of Housing and Urban Development.

(e) If the Association does not provide a fair, reasonable, and expeditious procedure for resolving a dispute within the scope of this Section, the procedure provided in Civil Code Section 5915 and Subparagraph (f)(8) of this Section 15.08 shall be used.

(f) A fair, reasonable, and expeditious dispute resolution procedure shall at a minimum satisfy all of the following requirements:

(1) The procedure may be invoked by either party to the dispute. A request invoking the procedure shall be in writing.

(2) The procedure shall provide for prompt deadlines. The procedure shall state the maximum time for the Association to act on a request invoking the procedure.

(3) If the procedure is invoked by a Member, the Association shall participate in the procedure.

(4) If the procedure is invoked by the Association, the Member may elect not to participate in the procedure. If the Member participates but the dispute is resolved other than by agreement of the Member, the Member shall have a right of appeal to the Association's Board of Directors.

(5) A resolution of a dispute pursuant to the procedure, that is not in conflict with the law or the Governing Documents, binds the Association and is judicially enforceable. An agreement reached pursuant to the procedure, that is not in conflict with the law or the Governing Documents, binds the parties and is judicially enforceable.

(6) The procedure shall provide a means by which the Member and the Association may explain their positions.

(7) A Member of the Association shall not be charged a fee to participate in the process.

(8) If the Association does not otherwise provide a fair, reasonable, and expeditious dispute resolution procedure, the following provisions shall apply and will be deemed fair, reasonable, and expeditious, within the meaning of Civil Code Section 5910:

(i) Either party to a dispute within the scope of this Section may invoke the following procedure:

- (A) The party may request the other party to meet and confer in an effort to resolve the dispute. The request shall be in writing.
 - (B) The Member may refuse a request to meet and confer. The Association may not refuse a request to meet and confer.
 - (C) The Board of Directors shall designate a member of the Board to meet and confer.
 - (D) The parties shall meet promptly at a mutually convenient time and place, explain their positions to each other, and confer in good faith in an effort to resolve the dispute.
 - (E) A resolution of the dispute agreed to by the parties shall be memorialized in writing and signed by the parties, including the Board designee on behalf of the Association.
- (ii) An agreement reached under this Section binds the parties and is judicially enforceable if both of the following conditions are satisfied:
 - (A) The Agreement is not in conflict with law or the Governing Documents of the Association.
 - (B) The Agreement is either consistent with the authority granted by the Board of Directors to its designee or the Agreement is ratified by the Board of Directors.
 - (iii) A Member of the Association may not be charged a fee to participate in the process.

Section 15.09. Alternative Dispute Resolution.

- (a) Definitions as used in this Section:

(1) “Alternative dispute resolution” means mediation, arbitration, conciliation, or other nonjudicial procedure that involves a neutral party in the decision making process. The form of alternative dispute resolution chosen may be binding or nonbinding, with the voluntary consent of the parties.

(2) “Enforcement action” means a civil action or proceeding, other than a cross-complaint, for any of the following purposes:

- (i) Enforcement of the Davis-Stirling Act.
- (ii) Enforcement of the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code).
- (iii) Enforcement of the Governing Documents.

(b) The Association or an Owner may not file an enforcement action in the Superior Court unless the parties have endeavored to submit their dispute to alternative dispute resolution pursuant to this Section.

(c) This Section applies only to an enforcement action that is solely for declaratory, injunctive, or writ relief, or for that relief in conjunction with a claim for monetary damages not in excess of the jurisdictional limits stated in Sections 116.220 and 116.221 of the California Code of Civil Procedure.

(d) This Section does not apply to a small claims action.

(e) Except as otherwise provided by law, this Section does not apply to an Assessment dispute.

(f) Any party to a dispute may initiate the process required by Section 5930 by serving on all other parties to the dispute a Request for Resolution. The Request for Resolution shall include all of the following:

- (1) A brief description of the dispute between the parties.
- (2) A request for alternative dispute resolution.
- (3) A notice that the party receiving the Request for Resolution is required to respond within thirty (30) days of receipt or the request will be deemed rejected.
- (4) If the party on whom the request is served is the Owner of a separate interest, a copy of Civil Code Sections 5925 - 5965.

(5) A description of the Association's internal dispute resolution process.

(g) Service of the Request for Resolution shall be by personal delivery, first-class mail, express mail, facsimile transmission, or other means reasonably calculated to provide the party on whom the request is served actual notice of the request.

(h) A party on whom a Request for Resolution is served has thirty (30) days following service to accept or reject the request. If a party does not accept the request within that period, the request is deemed rejected by the party. In an enforcement action in which attorney's fees and costs may be awarded, the court, in determining the amount of the award, may consider whether a party's refusal to participate in alternative dispute resolution before commencement of the action was reasonable.

(i) If the party on whom a Request for Resolution is served accepts the request, the parties shall complete the alternative dispute resolution within ninety (90) days after the party initiating the request receives the acceptance, unless this period is extended by written stipulation signed by both parties.

(j) Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code applies to any form of alternative dispute resolution initiated by a Request for Resolution under this article, other than arbitration.

(k) The costs of the alternative dispute resolution shall be borne by the parties.

(l) At the time of commencement of an enforcement action, the party commencing the action shall file with the initial pleading a certificate stating that one or more of the following conditions is satisfied:

(1) Alternative dispute resolution has been completed in compliance with this Section.

(2) One of the other parties to the dispute did not accept the terms offered for alternative dispute resolution.

(3) Preliminary or temporary injunctive relief is necessary.

(m) The Association shall annually provide the Members a summary of the provisions of this Section that specifically references Civil Code Sections 5925 - 5965. The summary shall include the following language:

Failure of a member of the association to comply with the alternative dispute resolution requirements of Section 5930 of the Civil Code may result in the loss of your right to sue the association or another member of the association regarding enforcement of the governing documents or the applicable law.

The Annual Policy Statement prepared pursuant to California Civil Code Section 5310 shall include a description of the internal dispute resolution process provided pursuant to this Section 15.09.

Section 15.10. Emergency Situations. The following shall constitute emergency situations: (i) an immediate and unreasonable infringement of or threat to the safety or peaceful enjoyment of residents of the Properties, (ii) a traffic or fire hazard, (iii) a threat of material damage to or destruction of the Properties or any portion thereof, or (iv) a violation of any provision of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether the violation has occurred (such as parking violations). Notwithstanding any other provisions of the Governing Documents, in an emergency situation, the Board or its duly authorized agents may undertake immediate corrective or disciplinary action and, upon request of the Owner as to whom such corrective or disciplinary action has been taken, or on its own initiative, conduct a hearing as soon thereafter as reasonably possible. If the Owner desires a hearing, the Owner's written request shall be delivered to the Association no later than ten (10) days following the date when the notice of the Board's disciplinary action is transmitted to the Owner. The hearing shall be held not later than fifteen (15) days following the date of the Board's notice of the disciplinary action or fifteen (15) days following the receipt of the Owner's request for a hearing, whichever is later. If a hearing is scheduled or requested, any sanctions imposed or other disciplinary action taken by the Board shall be held in abeyance and shall become effective only if affirmed at the hearing.

Section 15.11. Board Discretion. The Board shall make a business judgment concerning which, if any, of the rights, remedies and procedures shall be exercised under this Article XV in the event of breach, default or violation ("violation") of any of the Association Governing Documents. In exercising its business judgment under this Section 15.11, the Board may consider, among other factors the following considerations: (a) the nature and character of the violation; (b) the effect of the violation on Owners, their Tenants and Guests; (c) the effect of the violation on property of Owners, their Tenants or Guests; (d) whether the violation was a single event or is continuing in nature; (e) the cooperation of the Owner with respect to the cure of the violation; (f) the nature and character of the evidence of the violation; (g) potential legal and/or equitable defenses that may be asserted against

enforcement of the Governing Documents by the Owner; and (h) the legal fees and costs that may be incurred by the Association in pursuing a remedy for the violation.

ARTICLE XVI

Amendment of Declaration

Section 16.01. Amendment.

(a) **Amendment in General.** This Declaration may be amended or revoked in any respect by the vote by secret written ballot of the holders of not less than a majority of the Voting Power of the Members. All votes of the Members pursuant to this Section shall be conducted in accordance with Section 7.04(c) of the Bylaws.

(b) **Effective Date of Amendment.** The amendment shall be effective upon the recordation in the Office of the Recorder of Santa Clara County, California of an instrument setting forth the terms thereof, duly certified and executed by the President and Secretary of the Association. Notwithstanding anything to the contrary herein contained, no such amendment shall affect the rights of the holder of any first deed of trust or Mortgage recorded prior to the recordation of such amendment.

Section 16.02. Control if Amendment Provisions Conflict With Mortgagee Protection or Other Provisions. To the extent any provisions of this Article XVI conflict with the provisions of Article XVII or any other provisions of this Declaration, the provisions of Article XVII or the other provisions shall control.

Section 16.03. Reliance on Amendments. Any amendments made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith.

ARTICLE XVII

Provisions to Satisfy Lender Requirements

Section 17.01. Rights of First Lenders. No breach of any of the Covenants, Conditions and Restrictions contained in this Declaration, nor the enforcement of any of its lien provisions, shall render invalid the lien of any first lender on any Condominium made in good faith and for value, but all of those 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. Notwithstanding any provision in the Governing Documents to the contrary, first lenders shall have the rights in this Section 17.01. For First Mortgagees to be Eligible Mortgage Holders and for any insurer or guarantor of a First Mortgage to be an Eligible Insurer or Guarantor under this Section 17.01, such First Mortgagees or insurer or guarantor of a First Mortgage must provide a written notice of request to the Association stating the name and address of such First Mortgagee or holder, insurer or guarantor of a First Mortgage and the applicable Unit number.

Section 17.02. Amendments.

(1) Amendments of a material adverse nature to first lenders require the approval of at least fifty-one percent (51%) of first lenders (based on one vote for each First Mortgage owned);

(2) Any action to terminate the legal status of the Properties, or to use insurance proceeds for any purpose other than to rebuild, requires approval of at least fifty-one percent (51%) of first lenders (based on one vote for each First Mortgage owned); and,

(3) Implied approval may be assumed when a Mortgagee fails to submit a response to any written proposal for an amendment within sixty (60) days after the Mortgagee actually receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

Section 17.03. Notice of Action. Upon written request to the Association, identifying the name and address of the Eligible Mortgage Holder or Eligible Insurer or Guarantor, and the Condominium number or address, such Eligible Mortgage Holder or Eligible Insurer or Guarantor will be entitled to timely written notice of:

(1) Any condemnation loss or any casualty loss that affects either a material portion of the Properties or any Condominium on which there is a First Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, as applicable;

(2) Any default in performance of obligations under the Governing Documents or delinquency in the payment of Assessments or charges owed by an Owner of a Condominium subject to a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, which remains uncured for a period of sixty (60) days;

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

(4) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders.

The Association shall discharge its obligation to notify Eligible Mortgage Holders or Eligible Insurers or Guarantors by sending written notices required by this Declaration to such parties, at the address given on the current request for notice, in the manner prescribed by Section 17.07(c).

Section 17.04. Reserves. The Association shall establish and maintain a reserve fund for Replacements and a general operating reserve sufficient in an amount to satisfy the minimum amounts necessary to comply with the requirements of FNMA, FHLMC, and FHA.

Section 17.05. First Lenders Rights Confirmed. Any first lender who comes into possession of the Condominium by virtue of foreclosure of the Mortgage, or any purchaser at a foreclosure, will take the Condominium free of any claims for unpaid Assessments and fees, late charges, fines or interest levied in connection with such claims, against the Condominium which accrue more than six (6) months prior to the time such first lender or purchaser at a foreclosure takes title to the Condominium, except for fees or costs related to the collection of the unpaid Assessments, claims for a pro rata share of such Assessments or charges to all Condominiums including the mortgaged Condominium, and except for Assessment liens as to which a notice of delinquent Assessments has been recorded prior to the Mortgage.

Section 17.06. Distribution of Proceeds of Insurance, Condemnation or Termination. No provision of the Governing Documents gives an Owner, or any other party, priority over any rights of first lenders in the case of a distribution to Owners of proceeds of termination or any insurance proceeds or condemnation awards for losses to or taking of Condominiums and/or Common Area.

Section 17.07. Special Voting Requirements.

(a) Unless at least sixty-seven percent (67%) of First Mortgagees (based on one vote for each Condominium secured by the First Mortgage) or sixty-seven percent (67%) of the total voting power of the Members of the Association have given their prior written approval, the Association shall not:

(1) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Area except for minor lot line adjustments. However, the granting of easements for public utilities or for any other public purposes consistent with the intended

use of the Common Area by the Association is not a transfer within the meaning of this clause;

(2) change the method of determining the obligations, Assessments, dues or other charges that may be levied against a Condominium;

(3) by act or omission change, waive or abandon the provisions of the Declaration, or the enforcement of them, pertaining to architectural design or the exterior Maintenance of Condominium structures, the Maintenance of the Common Area walkways or common fences and driveways, or the upkeep of lawns and plantings within the Properties;

(4) fail to maintain fire and extended coverage insurance on insurable Association Property and Common Area improvements, on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement costs); or

(5) use property insurance proceeds for losses to any Association Property and Common Area improvements, for other than the Repair, Replacement or reconstruction of such improvements.

(b) Approval by Eligible Mortgage holders who represent at least fifty-one percent (51%) of the votes of Condominiums that are subject to Mortgages held by Eligible Mortgage holders must be obtained prior to adoption of any amendment of a material nature affecting any of the following matters:

(1) voting rights;

(2) increases in Assessments that raise the previously assessed amount by more than twenty-five percent (25%), Assessment liens, or the priority of Assessment liens;

(3) reductions in reserves for Maintenance, Repair or Replacement of the Common Area or Association Property improvements;

(4) responsibility for Maintenance and Repairs;

(5) reallocation of interests in the Common Area or Exclusive Use Common Area or rights to their use;

(6) redefinition of any Unit boundary;

- (7) convertibility of Units into Common Area or vice versa;
 - (8) expansion or contraction of the Properties or the addition, annexation or withdrawal of property to or from the Properties;
 - (9) hazard or fidelity insurance requirements;
 - (10) imposition of any restrictions on the leasing of Units;
 - (11) imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit;
 - (12) a decision by the Association to establish self management when professional management had been required previously by the Governing Documents or by an Eligible Mortgage holder;
 - (13) restoration or Repair of the Properties (after damage or partial condemnation) in a manner other than that specified in this Declaration;
 - (14) any provisions that expressly benefit Mortgage holders, insurers, or guarantors; or
 - (15) any action to terminate the legal status of the Properties after substantial destruction or condemnation occurs.
- (c) If any Eligible Mortgage holder fails to submit a response to any written proposal for an amendment within thirty (30) days after it received proper notice of the proposal, provided the notice was delivered by certified or registered mail with a return receipt requested, the Eligible Mortgage holder shall be considered to have granted approval.

ARTICLE XVIII

Notices

Section 18.01. Notice Requirements. Notice hereunder, not otherwise specified shall be delivered as follows:

(a) If to any Owner: To the street address of the Condominium or to such other address as he may from time to time designate in writing to the Association, consistent with Section 18.02 of this Declaration.

(b) If to the Association: If a provision of the Governing Documents requires that a document be delivered to the Association, the document shall be delivered to the Person designated in the Annual Policy Statement, prepared pursuant to Section 12.16 of the Bylaws, to receive documents on behalf of the Association. If no Person has been designated to receive documents, the document shall be delivered to the President or Secretary of the Association. A document delivered pursuant to this Section may be delivered by any of the following methods:

- (i) First-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service carrier.
- (ii) By e-mail, facsimile, or other electronic means, if the Association has assented to that method of delivery.
- (iii) By personal delivery, if the Association has assented to that method of delivery. If the Association accepts a document by personal delivery it shall provide a written receipt acknowledging delivery of the document.

(c) If to a Mortgagee: To the last known address of the Mortgagee as shown in the Official Records of Santa Clara County or as specifically designated by the Mortgagee, in written notice to the Association.

Section 18.02. Personal Service Upon Co-Owners and Others. Personal service of a notice or demand to one of the co-Owners of any Condominium, to any general partner of a partnership which is the Owner of Record of the Unit, or to any officer or agent for service of process of a corporation which is the Owner of Record of the Unit, shall be deemed delivered to all such co-Owners, to such partnership, or to such corporation, as the case may be.

Section 18.03. Completion of Delivery.

- (a) This Section governs the delivery of a document pursuant to this Declaration.
- (b) If a document is delivered by mail, delivery is deemed to be complete on deposit into the United States mail.
- (c) If a document is delivered by electronic means, delivery is complete at the time of transmission.

ARTICLE XIX

General Provisions

Section 19.01. Construction and Severability; Singular and Plural; Titles.

- (a) **Restrictions Construed Together.** All of the Covenants, Conditions and Restrictions of this Declaration shall be liberally construed together to promote and effectuate the fundamental concepts of the development of the Properties as set forth in the Recitals of this Declaration. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce that provision in a subsequent application or any other provision hereof.
- (b) **Restrictions Severable.** Notwithstanding the provisions of Subsection (a) above, the Covenants, Conditions and Restrictions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.
- (c) **Singular Includes Plural.** The singular shall include the plural and the plural the singular unless the context requires the contrary; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter, as the context requires.
- (d) **Captions.** All captions or titles used in this Declaration are intended solely for convenience of reference and shall not affect the interpretation or application of that which is set forth in any of the terms or provisions of the Declaration.
- (e) **Liberal Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose. Failure to enforce any provision of the Declaration shall not constitute a waiver of the right to enforce the provision thereafter.

Section 19.02. No Discriminatory Practices. No Owner shall execute or cause to be recorded any instrument that imposes a restriction upon the sale, leasing, or occupancy of the Owner's Unit on the basis of age, race, sex, sexual orientation, gender, gender identity, gender expression, marital status, familial status, national origin, ancestry, color, disability, medical condition, genetic information, religion or source of income. No sale, rental or leasing of a Unit shall be prevented directly or indirectly by reason of age, race, sex, sexual orientation, gender, gender identity, gender expression, marital status, familial status, national origin, ancestry, color, disability, medical condition, genetic information, religion or source of income.

Section 19.03. Notification of Sale. Concurrently with the consummation of sale of any Condominium under circumstances where the transferee becomes an Owner of the Condominium, or within five (5) business days thereafter, the transferee shall notify the Association in writing of such sale. Such notification shall set forth the name of the transferee and the transferee's Mortgagee and transferor, the common address of the Condominium purchased by the transferee, the transferee's and the Mortgagee's mailing address, and the date of sale. Before the receipt of such notification, any and all communications required or permitted to be given by the Association, the Board, or the Association Manager shall be deemed to be duly made and given to the transferee if duly and timely made and given to the prior Owner. Mailing addresses may be changed at any time by giving written notification to the Association.

Section 19.04. Runs With Property. This Declaration shall run with the Properties, and the provisions of this Declaration shall be enforceable as equitable servitudes, covenants running with the land, and in any other manner allowed by law, and shall be binding upon and inure to the benefit of the Association, each Owner of a Condominium within the Properties, or any part of it, and each successor in interest of the Association and any such Owner and shall be binding on each user of such property.

Section 19.05. Easements Reserved and Granted. Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, whether or not this Declaration is referred to in the deed to a Unit. If a legally sufficient easement for any purpose described in this Declaration cannot or has not been created, the reference to "easement" shall be construed to be a right or a benefit in favor of the party for whom the benefit of the easement was intended to be conferred and a duty, obligation, or equitable servitude, if applicable, of the party against whom the right or benefit is stated or intended to be exercisable or enforceable.

Section 19.06. Power of Attorney. To the extent necessary to carry out and enforce the provisions of this Declaration, an irrevocable power of attorney coupled with an interest is granted to the Association by the Owners and each of them.

Section 19.07. Conflicts Between Documents. The terms and provisions set forth in this Declaration are not exclusive, as Owners are also subject to the terms and provisions of other Governing Documents, including the Articles of Incorporation, Bylaws, Operating Rules, and Architectural Standards.

(a) To the extent of any conflict between the Governing Documents and the law, the law controls;

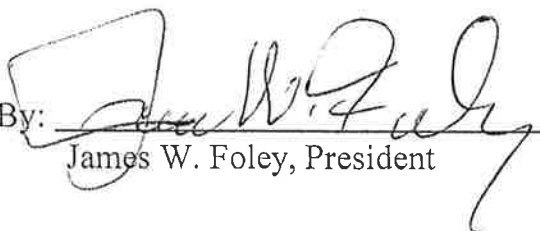
(b) To the extent of any conflict between the Articles of Incorporation and the Declaration, the Declaration controls;

(c) To the extent of any conflict between the Bylaws and the Articles of Incorporation or Declaration, the Articles of Incorporation or Declaration control; and

(d) To the extent of any conflict between the Operating Rules and the Bylaws, Articles of Incorporation, or Declaration, the Bylaws, Articles of Incorporation, or Declaration control.

Section 19.08. Term. The term of this Declaration shall be for a period of fifty (50) years from the date on which this Declaration is recorded in the records of the county in which the development is located. After that time, this Declaration and each of its restrictions and covenants and other provisions automatically shall be extended for successive ten (10) year periods.

Dated: MARCH 17, 2017 The Vineyards of Saratoga

By: 
James W. Foley, President

By: 
Laurel G. Smith, Secretary

EXHIBIT "A"

Legal Description

All that certain real property described on the Map entitled Tract No. 4892, filed for record on October 23, 1970, in Book 274, Pages 31 and 32 as File No. 3893608 in the records of Santa Clara County, State of California;

and

All that certain real property described on the Map entitled Tract No. 5343, filed for record on April 13, 1973, in Book 321 as Page 4, File No. 4494466 in the records of Santa Clara County, State of California.

EXHIBIT "B"

The Vineyards of Saratoga Assessments

All Condominiums of resident and nonresident Owners shall be assessed each year for the estimated costs attributable to the operation and Maintenance of the Common Area and Expenses, including but not limited to the following:

1. Maintenance, Management, Operation, Repair and Replacement of all real property and the improvements thereon which the Association is obligated to Maintain pursuant to the provisions of this Declaration.
2. Unpaid Assessments.
3. Management and administration of the Association including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees.
4. To the extent not metered or billed to Owners, utilities and services which generally benefit and enhance the value and desirability of the Properties.
5. Premiums on all insurance and fidelity bonds maintained by the Association pursuant to the Declaration (except for fidelity bonds obtained by a management agent for its officers, employees and agents).
6. Reserves for the periodic Maintenance, Repair and Replacement of the improvements maintained by the Association pursuant to this Declaration.
7. Taxes paid by the Association.
8. Discharge of any lien or encumbrance levied against Association property or portions thereof.
9. Security systems or services, if any, installed or maintained by the Association.
10. Other expenses incurred by the Association in connection with the Common Area or the cost of any other item or items designated by the Declaration or Bylaws, or in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association.

EXHIBIT “C”

Maintenance Duties

The Symbol “O” Designates Owner Responsibility; the Symbol “A” Designates Association Responsibility. As used herein, the terms “Maintenance”, “Repair” and “Replacement” have the meanings as defined in Sections 1.35, 1.47 and 1.48 respectively. Owner Maintenance, Repairs and Replacement are subject to architectural control under Article IX, where applicable.

Component	Maintenance	Repair	Replacement
Appliances			
Heating equipment, filters and controls	Owner	Owner	Owner
Air conditioner, controls and piping	Owner	Owner	Owner
Disposal	Owner	Owner	Owner
Stove and oven	Owner	Owner	Owner
Microwave oven	Owner	Owner	Owner
Refrigerator	Owner	Owner	Owner
Dishwasher	Owner	Owner	Owner
Stove hood, fan and filter	Owner	Owner	Owner
Washer and dryer	Owner	Owner	Owner
Smoke alarm and carbon monoxide detector	Owner	Owner	Owner
Plumbing			
Water heater	Owner	Owner	Owner
Kitchen sinks	Owner	Owner	Owner
Bathroom sinks	Owner	Owner	Owner
Overflow valve	Owner	Owner	Owner

Component	Maintenance	Repair	Replacement
Bathroom tub	Owner	Owner	Owner
Bathroom shower stall	Owner	Owner	Owner
Shower valve stems	Owner	Owner	Owner
Bathroom toilets	Owner	Owner	Owner
Faucets in kitchen and bathrooms	Owner	Owner	Owner
Faucets in garage, on patio or balcony	Owner	Owner	Owner
Plumbing in walls, ceilings and floors, that serves multiple Units	Association	Association	Association
Plumbing in Common Area serving one or two Units, whether located in the Unit or the Common Area; water supply line expenses shared equally if line serves two Units	Owner	Owner	Owner
Main water shutoff valve	Association	Association	Association
Shutoffs for toilets, sinks and showers	Owner	Owner	Owner
Plumbing lines and hoses in Unit interior including those for washing machines and ice makers	Owner	Owner	Owner
Pipes, faucets and conduits within the Common Area	Association	Association	Association
Sewer in Common Area to the clean out	Association	Association	Association
Sewer line on house side of clean out	Owner	Owner	Owner
HVAC equipment, controls, piping and wiring	Owner	Owner	Owner
Mechanical			
Heating and air conditioning ducts and return air ducts	Owner	Owner	Owner

Component	Maintenance	Repair	Replacement
Dryer ducts (from the interior wall through the outlet flapper valve)	Owner	Owner	Owner
Kitchen range exhaust flue	Owner	Owner	Owner
Exhaust flue from water heater	Owner	Owner	Owner
Exhaust flue from heating equipment	Owner	Owner	Owner
Exhaust duct from bathroom fan	Owner	Owner	Owner
Bathroom exhaust fan	Owner	Owner	Owner
Gas shutoff valve in Unit	Owner	Owner	Owner
Gas shutoff valve and meter in Common Area	Owner	utility provider (owner responsible for reporting issues to utility provider)	utility provider (owner responsible for reporting issues to utility provider)
Electrical			
Electric fixtures - inside Unit	Owner	Owner	Owner
Electric fixtures - outside Unit (including bulbs) controlled by electric switch in Unit	Owner	Owner	Owner
Electric fixtures outside Unit not controlled by electric switch in Unit	Association	Association	Association
Electric switches and outlets in Unit or Exclusive Use Common Area	Owner	Owner	Owner
Telecommunications equipment, outlets and wiring	Owner	Owner	Owner
Door chime and intercom	Owner	Owner	Owner

Component	Maintenance	Repair	Replacement
Push button door for chime	Owner	Owner	Owner
Electric wiring in Unit	Owner	Owner	Owner
Common Area circuit breaker panel serving Unit	Owner	Owner	Owner
Unit circuit breaker panel and breakers	Owner	Owner	Owner
Structural			
Garage structure, including siding, and including Common Area electrical system	Association	Association	Association
Garage interior, garage electrical system connected to Unit, and water damage to garage interior or personal property	Owner	Owner	Owner
Front door stoop	Association	Association	Association
Exterior stairs and banisters	Association	Association	Association
Subfloors	Association	Association	Association
Floor coverings	Owner	Owner	Owner
Fireplaces	see below	see below	see below
(a) firebox and damper	Owner	Owner	Owner
(b) flue	Owner	Association	Association
(c) screen	Owner	Owner	Owner
(d) hearth	Owner	Owner	Owner
(e) fireplace surround	Owner	Owner	Owner
(f) chimneys (exterior structure)	Association	Association	Association
(g) chimney (cleaning)	Owner	Owner	Owner
(h) chimney caps and spark arrester	Association	Association	Association

Component	Maintenance	Repair	Replacement
Patios and Balconies, including balcony railings	Association	Association	Association
Fences and gates	Association	Association	Association
Walls - load bearing	Association	Association	Association
Walls - non-load bearing (changes allowed only after written approval of Board)	Owner	Owner	Owner (Replacement subject to written approval of Board)
Siding	Association	Association	Association
Roof covers	Association	Association	Association
Roof structure	Association	Association	Association
Roof jacks	Association	Association	Association
Skylights and flashings (original construction)	Association	Association	Association
Skylights and flashings (Owner installed)	Association	Association	Association (only after written approval of Board)
Gutters and downspouts	Association	Association	Association
Owner additions and/or modifications of any nature (present or former Owner) to Unit or Common Area, and any damages resulting from such modifications	Owner	Owner	Owner
Attic	Association	Association	Association
Doors and Windows			

Component	Maintenance	Repair	Replacement
Exterior residence door	see below	see below	see below
(a) exterior door frames, except incident to door Replacement	Association	Association	Association
(b) door	Owner	Owner	Owner (with written approval of Board)
(c) door screens	Owner	Owner	Owner
(d) hardware and lockset	Owner	Owner	Owner
(e) paint exterior side of door (with Board approved color only)	Owner	Owner	Owner
House door to garage and related hardware (door must be fire rated)	Owner	Owner	Owner
Garage door and hardware	see below	see below	see below
(a) door and door frame	Association	Association	Association
(b) door hardware and springs	Association	Association	Association
(c) automatic garage door opener	Owner	Owner	Owner
Interior doors, frames and hardware	Owner	Owner	Owner
Sliding glass exterior doors	Owner	Owner	Owner (only after written approval by the Board)
Window assemblies: glass, tracks and weep holes	Owner	Owner	Owner (only after written approval by the Board)
Window trim	Association	Association	Association
Window Screens	Owner	Owner	Owner

Component	Maintenance	Repair	Replacement
Finishes			
Kitchen and bathroom cabinets	Owner	Owner	Owner
Interior stairs and banisters	Owner	Owner	Owner
Exclusive use storage spaces	Owner	Association	Association
Closet shelves and hardware	Owner	Owner	Owner
Bookshelves	Owner	Owner	Owner
Countertops	Owner	Owner	Owner
Interior wood trim	Owner	Owner	Owner
Sheetrock on all walls and ceilings	Owner	Owner	Owner
Blinds, drapes and curtains	Owner	Owner	Owner
Shower curtains and doors	Owner	Owner	Owner
Wall and ceiling coverings	Owner	Owner	Owner
Interior painting	Owner	Owner	Owner
Exterior painting	Association	Association	Association
Landscaping			
Trees, shrubs and other plantings in Exclusive Use Common Area	Owner	Owner	Owner
Trees and shrubs in Common Area	Association	Association	Association
Other			
Except as otherwise provided above, Common Area and Common Facilities (painting, maintaining, cleaning, repairing and replacing of the Common Area, including landscaping, parking areas and recreational facilities)	Association	Association	Association

Component	Maintenance	Repair	Replacement
Maintenance and Repair of Unit occasioned by the presence of mold, mildew or fungi	Owner	Owner	Owner
Common Area termites (periodic Repair and Maintenance occasioned by the presence of wood-destroying pests or organisms)	Association	Association	Association
Termite and dryrot inspections, Repairs and clearances incident to sales and refinance transactions are the sole responsibility of the Owner.	Owner	Owner	Owner
Owners are solely responsible for the cost of temporary relocation occasioned by the Repair and Maintenance of the areas within the responsibility of the Association	Owner	Owner	Owner
Insulation	Owner	Owner	Owner (Replacement needs HOA approval)
Pest control in Unit including, but not limited to, termites, insects, rodents, birds, bats, and resulting damage from such pests	Owner	Owner	Owner
Pest control in Common Area including, but not limited to, insects, rodents, birds, bats, and resulting damage from such pests	Association	Association	Association

Wherever Maintenance, Repair and/or Replacement required of Owner under this Declaration may result in an exterior alteration, modification, improvement or structure, Owner shall first comply with the requirements of Article IX of this Declaration.

EXHIBIT “D”

Unit Bedroom/Bathroom Inventory List

UNIT	BDRM	BATH
19101	2	1.5
19102	2	1.5
19103	2	1.5
19104	2	2
19105	2	2
19106	2	2
19107	1	1
19108	1	1
19109	3	2.5
19110	3	2.5
19111	2	1.5
19112	1	1
19113	1	1
19114	2	1.5
19115	2	1.5
19116	2	1
19117	1	1
19118	2	1
19119	1	1
19120	3	2.5
19121	2	1.5
19122	2	1.5
19123	3	2.5
19124	3	2.5
19125	2	2
19126	2	2

UNIT	BDRM	BATH
19201	2	1
19202	1	1
19203	2	1.5
19204	2	1.5
19205	2	1.5
19206	2	1.5
19207	2	1
19208	1	1
19209	2	1
19210	1	1
19211	2	1.5
19212	2	1.5
19213	2	1.5
19214	2	1.5
19215	2	1
19216	1	1
19217	3	2.5
19218	2	1.5
19219	2	1.5
19220	2	2
19221	2	2
19222	3	2.5
19223	2	1.5
19224	2	1.5
19225	3	2.5
19226	3	2.5
19227	2	2
19228	2	2
19229	2	1.5

UNIT	BDRM	BATH
19230	1	1
19231	1	1
19232	2	2
19233	2	2
19234	3	2.5
19235	3	2.5
19236	2	1.5
19237	2	1.5
19301	2	1
19302	1	1
19303	2	1
19304	1	1
19305	2	1
19306	1	1
19307	2	1.5
19308	2	1
19309	1	1
19310	3	2.5
19311	3	2.5
19312	3	2.5
19313	2	2
19314	2	2
19315	1	1
19316	1	1

UNIT	BDRM	BATH
19401	2	1.5
19402	2	1.5
19403	2	1.5
19404	2	1.5
19405	2	1
19406	1	1
19407	2	1
19408	1	1
19409	2	1.5
19411	2	1
19412	1	1
19413	3	2.5
19414	3	2.5
19415	3	2.5
19416	2	2
19417	2	2
19418	1	1
19419	1	1
19420	3	2.5
19421	2	2
19422	2	2
19423	3	2.5
19424	2	2
19425	2	2
19426	3	2.5
19427	2	1
19428	1	1
19429	3	2.5
19430	3	2.5
19431	2	2
19432	2	2

UNIT	BDRM	BATH
19534	2	2
19535	2	2
19536	3	2.5
19537	3	2.5
19538	2	2.5
19539	2	2.5
19542	2	2
19543	2	2.5
19544	2	2.5
19545	2	2.5
19546	2	2.5
19547	2	2.5
19548	2	2.5
19549	3	2.5
19550	3	2.5
19551	3	2.5
19552	3	2.5
19553	2	2
19554	2	2
19555	2	2.5

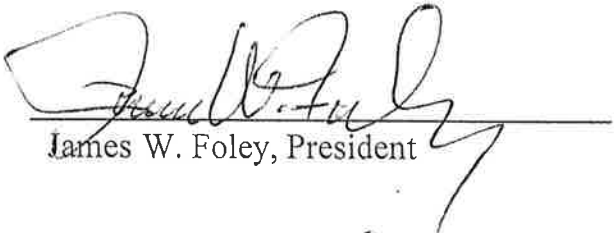
UNIT	BDRM	BATH
19622	2	2.5
19623	2	2.5
19624	2	2
19625	2	2
19626	2	2.5
19627	2	2.5
19628	2	2
19629	2	2
19630	2	2
19631	2	2
19632	3	2.5
19633	3	2.5
19640	2	2
19641	2	2
19701	2	2
19702	3	2.5
19703	3	2.5
19704	3	2.5
19712	2	2.5
19713	2	2.5
19714	2	2.5
19715	2	2.5
19816	2	2
19817	2	2
19818	2	2.5
19819	2	2.5
19820	2	2
19821	2	2
19905	2	2.5
19906	3	2.5
19907	3	2.5
19908	2	2.5
19909	2	2.5
19910	2	2.5
19911	3	2.5

**Officers' Certification of Adoption
of
Second Restated Declaration of
Covenants, Conditions and Restrictions**

We, the undersigned, say:

That we are the duly elected and acting President and Secretary, respectively, of The Vineyards of Saratoga, a California non-profit mutual benefit corporation; that the Second Restated Declaration of Covenants, Conditions and Restrictions to which this Certification is attached, which amends that certain Restated Declaration of Covenants, Conditions and Restrictions recorded on November 1, 2000 as Instrument No. 15443339, Official Records of the County Recorder of Santa Clara County, California, has been duly approved by vote of not less than a majority of the Members of The Vineyards of Saratoga pursuant to and as required by Article XVI, Section 16.01(a) of said Declaration.

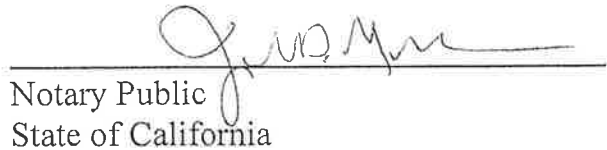
That this Certification is made pursuant to Section 4270 of the Civil Code of the State of California, and is to be recorded together with said Second Restated Declaration of Covenants, Conditions and Restrictions in the records of the County Recorder of Santa Clara County, the County in which said common interest development is located.


James W. Foley, President


Laurel G. Smith, Secretary

State of California)
County of Santa Clara) ss

WITNESS my hand and official seal.



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