

6.1.3. **Encroachments.** Declarant reserves, for its benefit and for the benefit of all Owners and their Condominiums, a reciprocal easement appurtenant to each Condominium over the other Condominiums and the Association Property to accommodate (a) any existing encroachment of any wall or any other Improvement installed by Declarant or approved by the Design Review Committee, and (b) shifting, movement or natural settling of the Residence or other Improvements.

6.1.4. **Easements for Public Service Use.** Declarant reserves easements over the Community for public services of the local government agencies, including but not limited to, the right of law enforcement and fire protection personnel to enter upon the Community to carry out their official duties.

6.1.5. **Easements for Water and Utility Purposes.** Declarant reserves easements over the Community for public and private utility purposes, including but not limited to, the right of any public utility or mutual water district of ingress and egress over the Community to read and maintain meters, and use and maintain fire hydrants.

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

6.1.7. **Owners' Easements in Association Property.** Declarant reserves, for the benefit of every Owner, and each Owner's Family, contractors, residents, tenants or invitees, nonexclusive easements for pedestrian and vehicular access (all as applicable) over the Association Property in the Community as reasonably necessary for the use and enjoyment of each Condominium in the Community. This easement is appurtenant to and passes with title to every Condominium in the Community, but is to be exercised subject to the rights, restrictions, covenants and easements in the Governing Documents and the Association's right to reasonably restrict access to rooftops, maintenance facilities and other areas of the Association Property that are designated by the Board.

6.1.8. **Community Wall Easements.** Declarant reserves for the benefit of the Association the following easements:

(a) An easement over all Units abutting a Community Wall (as shown on an exhibit to this Declaration or a Declaration of Annexation), consisting of a three foot (3') wide strip of land lying along the perimeter boundary or the Community Wall (as applicable), to accommodate the footings and other structural components of any Community Wall located on or immediately adjacent to such property line, including any encroachments thereof onto the Condominium; and

(b) An easement for access over such Units as reasonably necessary for maintaining the Community Walls and related Improvements.

6.1.9. **Access Easements.**

(a) **Reserved for Declarant and the Annexable Area.** Declarant reserves for its benefit and for the benefit of the owners of Condominiums located in the

Annexable Area (whether annexed to the Community or not) easements for pedestrian and vehicular access, including construction access, over all Private Streets and sidewalks located within the Community.

(b) **Reserved for Models.** Declarant reserves for its benefit easements for pedestrian and vehicular ingress and egress over the Private Streets and through any entry gates serving the Community during business hours, seven (7) days per week, for access to those Condominiums within the Community which are used by Declarant, or its assignee, for models or sales offices. Declarant shall have the right to assign this easement, by written assignment, to any successor in interest. This easement shall terminate when the use of such Condominiums by Declarant or its assignee, for models or sales office purposes, has been permanently terminated.

6.1.10. **Drainage Easements.** Declarant reserves, for the benefit of the Community, the Owners and the Association, reciprocal nonexclusive easements for drainage of water over, across, on and under the Community. Cross-Unit drainage Improvements on the Units (including area drains and underground drain lines) shall be maintained in good condition by the Owner of the Unit, including removal of blockages and debris as necessary. The approximate locations of the Cross-Unit drainage Improvements in Phase 1 are shown on *Exhibit E*. Those in future Phases will be shown on Exhibits to the applicable Declaration of Annexation or Supplemental Declaration.

6.1.11. **Easements for Access to and Maintenance of Area Lighting Fixtures.** Declarant reserves, for the benefit of the Association, nonexclusive easements over each Unit for access to and maintenance of the area lighting fixtures and lamps on the Private Street facing exterior of the Residence. No Owner may interfere with the Association's exercise of its rights under the easements reserved in this Section.

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

6.2. **ADDITIONAL EASEMENTS.** Declarant reserves easements over the Association Property owned in fee simple by the Association for the exclusive use by an Owner or Owners of contiguous property as a yard, recreational, gardening, and landscaping area. Subject to Section 4.2.3, any such easement may be conveyed by the Declarant before the last Close of Escrow for sale of a Condominium in the Community and the Annexable Area. Such conveyance must be approved by the Board, which approval must not be unreasonably withheld. The purpose of the easement, the portion of the Association Property affected, the Condominium to which the easement is appurtenant, and any restrictions on use of the easement area shall be identified in a Recorded grant of easement.

6.3. **DELEGATION OF USE.** Any Owner may delegate the Owner's right to use the Association Property in writing to the Owner's tenants, contract purchasers or subtenants who reside in such Owner's Unit, subject to regulation by the Board. An Owner who has delegated this right may not use the Recreational Facilities on the Association Property so long as such delegation remains in effect.

6.4. **RIGHT OF ENTRY.**

6.4.1. **Association.** The Association has the right to enter the yard areas of the Units (but not the interior of the Residence) to inspect the Community, and may take whatever corrective action it determines to be necessary or proper. Entry onto the yard areas of any Unit under this Subsection may be made after at least three (3) days' advance written notice to the Owner of the Unit except for emergency situations, which shall not require notice. For purposes hereof, an "emergency situation" is a situation in which there is an imminent threat of injury to persons or damage to property, as determined by the Board in the exercise of its sound business judgment. Nothing in this Subsection otherwise limits the right of an Owner to exclusive occupancy and control over the Owner's Unit. Any damage to the Unit (or the Residence or personal property thereon) that is caused by entry under this Subsection shall be repaired by the Association. In making such repair, the Association shall not be responsible for costs beyond those necessary to repair or restore the damaged item to the condition it was in immediately prior to the damage.

6.4.2. **Declarant.** The Declarant has the right to enter the yard areas of the Unit (but not the interior of the Residence) and the Association Property (a) to comply with requirements for the recordation of subdivision maps or lot line adjustments in the Community, (b) for repair of Improvements in accordance with the provisions of the Right to Repair Law, (c) to accommodate grading or construction activities, and (d) to comply with requirements of applicable governmental agencies. Declarant shall provide the applicable Owner reasonable notice before such entry, except for emergency situations, which shall not require notice. For purposes hereof, an "emergency situation" is a situation in which there is an imminent threat of injury to persons or damage to property, as determined by the Declarant. Any damage to the Association Property or to the Unit (or the Residence or personal property thereon) that is caused by entry under this Subsection shall be repaired by the Declarant. In making such repair, the Declarant shall not be responsible for costs beyond those necessary to repair or restore the damaged item to the condition it was in immediately prior to the damage. Unless otherwise specified in the applicable initial grant deed by which Declarant has transferred ownership of the subject Condominium or subject Association Property, this right of entry shall automatically

expire on the later of the date that is twelve (12) years after (a) the date on which this Declaration is Recorded, or (b) the date the grant deed is Recorded by which Declarant first conveyed fee title to the subject real property under authority of a Public Report.

6.4.3. **Owners.** Each Owner shall permit other Owners, and their representatives, to enter the yard areas of the Unit (but not the interior of the Residence) to perform installations, alterations or repairs to the mechanical or electrical services to a Condominium if (a) requests for entry are made in advance, (b) entry is made at a time reasonably convenient to the Owner whose yard area is to be entered, and (c) the entered yard area is left in substantially the same condition as existed immediately preceding such entry. Notwithstanding the foregoing, an Owner shall not have the right to enter another Owner's Unit unless entry is reasonably necessary to enable the entering Owner to correct or repair an Improvement for which the entering Owner is responsible. Owners have no right to enter another Owner's Unit to perform maintenance or repair of any Association Property or any other Improvement for which the Association is responsible. Any damage to the Exclusive Use Area or the Condominium or personal property therein which is caused by entry under this Subsection shall be repaired by the entering Owner. In making such repair, the entering Owner shall not be responsible for costs beyond those necessary to repair or restore the damaged item to the condition it was in immediately prior to the damage.

6.5. **EASEMENTS FOR SIDEYARD PURPOSES.** Declarant hereby reserves over each "Burdened Unit" in the Community a nonexclusive easement over the Burdened Area thereon for the benefit of the adjacent Benefitted Unit for use and enjoyment of a private sideyard. The Burdened Units and Benefitted Units in Phase 1 are designated in Section 1.3.6 above and the Burdened Areas are approximately shown on *Exhibit I* attached hereto. Those in subsequent Phases of the Community will be depicted in an exhibit attached to the applicable Declaration of Annexation or Supplemental Declaration.

6.5.1. **Exercise of Easements in the Burdened Areas.** The Owner of each Benefitted Unit shall exercise the foregoing sideyard easements subject to the following limitations and restrictions:

(a) Benefitted Unit Owner shall not attach to the Residence on the Burdened Unit any fence, wall, string lights, wires, clotheslines, barbecues, outdoor kitchens, fireplaces, fire pits, shade structures, or outdoor leisure or sports equipment customarily used in residential yards;

(b) The Benefitted Unit Owner shall not block any vent or window of the Residence on the Burdened Unit.

(c) The Burdened Area-facing wall of the Residence on each Burdened Unit is solely the responsibility of the Owner of the Burdened Unit; it is not to be repainted, refinished, penetrated or modified in any other way by the Owner of the Benefitted Unit whose Burdened Area is enclosed thereby;

(d) Irrigation equipment in the Burdened Area (if any) shall be maintained by the Owner of the Benefitted Unit in good condition and operated in such a manner

that it does not spray the Burdened Area-facing wall of the Residence on the Burdened Unit, or cause water to accumulate and stand on the Burdened Unit;

(e) No Improvement (including landscaping) shall be constructed, altered, placed or permitted to remain upon the Burdened Area if it will: (i) change the direction of flow of the established drainage on the Burdened Unit; or (ii) damage or alter any drainage system serving the Burdened Unit; or (iii) obstruct, interfere with, or retard the flow of water through such drainage system, unless the change is mitigated by alternative drainage facilities constructed with the prior written approval of the Committee and applicable Local Government Agencies.

(f) The Benefitted Unit Owner shall not bounce balls or other objects against the Burdened Area-facing wall of the Residence on the adjacent Burdened Unit, nor place any entertainment equipment (including monitors and loudspeakers) or other device or object that would create noise or vibration in the Residence on the Burdened Unit;

(g) Movable items, including outdoor furniture and leisure or sports equipment customarily used in residential yards may not be placed in such a manner as to block access to the Burdened Unit Residence by the Owner of the Burdened Unit or the Owner's contractors;

(h) Retaining walls, seat walls, or planters may not be attached to the Residence on the Burdened Unit; and

(i) Trees and shrubs planted in the sideyard shall not be planted closer than 24 inches from the foundation of the Residence on the Burdened Unit.

6.5.2. Access by Owner of Burdened Unit. The Owner of each Burdened Unit and its contractors has the right to enter the sideyard of the Benefitted Unit and the Burdened Area at reasonable times and in a reasonable manner on at least 72 hours' prior written notice to the Owner of the Benefitted Unit (subject to Section 4 below), for the purpose of maintaining the Residence on the Burdened Unit, including without limitation paint, stucco and stain, roof, trim, utility access, and any gutter or downspout attached to the Residence.

(a) The right of entry reserved hereby shall include the right to temporarily place equipment, including compressors and ladders or other supports in the sideyard of the Benefitted Unit or in the Burdened Area as reasonably necessary to carry out the work.

(b) The entering Owner shall make reasonable efforts to promptly complete the work and minimize interference with the reasonable use and enjoyment of the Burdened Area by the Owner of the Burdened Unit.

(c) Damage to Improvements or landscaping in the Burdened Area, to the extent caused by the entering Owner or its contractors, shall be repaired by the entering Owner to at least the condition it was in immediately prior to the damage. Plants destroyed in exercise of the foregoing easements shall be replaced by the entering Owner with specimens of the same species and size.

(d) When necessary to re-paint the Burdened Area-facing Residence wall, the entering Owner shall cause improvements and plants in the Burdened Area to be covered with appropriate materials to prevent damage from paint overspray.

6.5.3. **Emergency Entry.** In the event of an emergency, the Burdened Unit Owner may enter upon the sideyard of the Benefitted Unit and the Burdened Area at any time and without prior notice, so long as the entering Owner advises the Owner of the Benefitted Unit in writing of the entry and its purpose no later than 24 hours after entry. For purpose of this Section, an "emergency" means any situation where there is an imminent threat of injury to persons or damage to property.

6.5.4. **Mechanics' and Other Liens.** By accepting a deed to a Benefitted Unit, the Owner thereof covenants to keep the Burdened Unit, and title thereto, free and clear of all mechanics', laborers', materialmens', contractors', subcontractors' or any other liens arising from, or any claims for damages going out of, any work of construction performed by or for the Benefitted Unit Owner in the Burdened Area. If any such liens are filed against the Burdened Unit, then the Owner of the Benefitted Unit shall cause the immediate release of the liens by all necessary means, including without limitation, the posting of a lien release bond pursuant to California Civil Code Section 8424.

6.5.5. **Disputes.** In the event of any dispute arising concerning the rights and obligations created under this Section 6.5, the Burdened Unit Owner and the Benefitted Unit Owner shall, before seeking legal relief, follow the procedures established in Sections 5900, *et seq.*, and 5925, *et seq.* of the California Civil Code.

ARTICLE 7 ASSOCIATION MAINTENANCE FUNDS AND ASSESSMENTS

7.1. **PERSONAL OBLIGATION TO PAY ASSESSMENTS.** Each Owner shall pay to the Association all Assessments established and collected pursuant to this Declaration. The Association shall not levy or collect any Assessment that exceeds the amount necessary for the purpose for which it is levied. All Assessments, together with late payment penalties, interest, costs, and reasonable attorney fees for the collection thereof, are a charge and a continuing lien on the Condominium against which such Assessment is made. Each Assessment, together with late payment penalties, interest, costs and reasonable attorney fees, is also the personal obligation of the Person who was the Owner of the Condominium when the Assessment accrued. The personal obligation for delinquent Assessments may not pass to any new Owner ("**Purchaser**") unless expressly assumed by the Purchaser or unless the Purchaser has actual or constructive knowledge of such delinquent Assessments, whether by virtue of the Recordation of a Notice of Delinquent Assessment or receipt from the Association of a certificate pursuant to California Civil Code Section 4525.

7.2. **ASSOCIATION MAINTENANCE FUNDS.** The Association shall establish no fewer than two (2) separate Association Maintenance Fund accounts into which shall be deposited all money paid to the Association and from which disbursements shall be made, as provided in this Declaration. The Association Maintenance Funds may be established as trust accounts at a banking or savings institution and shall include: (a) an Operating Fund for current

Common Expenses, (b) an adequate Reserve Fund for the portion of Common Expenses allocated to reserves for Improvements which the Board does not expect to repair or replace on an annual or more frequent basis, and (c) any other funds which the Association may elect to establish.

7.3. **PURPOSE OF ASSESSMENTS.** The Assessments shall be used exclusively to (a) promote the Owners' recreation and welfare, (b) operate, improve and maintain the Association Property, and (c) discharge any other Association obligations under this Declaration. All amounts deposited into the Association Maintenance Funds must be used solely for the common benefit of all Owners for purposes authorized by this Declaration. Disbursements from the Operating Fund generally shall be made by the Association to discharge Association responsibilities which cannot be discharged by disbursements from the Reserve Fund. However, if the Board determines that the Operating Fund contains excess funds, the Board may transfer the excess funds to any other Association Maintenance Fund. Disbursements from the Reserve Fund shall be made by the Association only for the purposes specified in this Article and in California Civil Code Sections 5510(b) and 5515.

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

7.5. **LIMITS ON ANNUAL ASSESSMENT INCREASES.** The following shall apply to the general component of Annual Assessments:

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

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

(a) If the increase in Annual Assessments is less than or equal to twenty percent (20%) of the Annual Assessments for the immediately preceding Fiscal Year, then the Board must either (1) have distributed the Budget for the current Fiscal Year in accordance with California Civil Code Section 5300, or (2) obtain the approval of Owners casting a majority of votes in an Increase Election; or

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

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

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

7.5.4. Automatic Assessment Increases. Despite any other provisions of this Section 7.5, on Declarant's annexation of the Annexable Area pursuant to Article 16, the Annual Assessment shall be automatically increased by the additional amount, if any, necessary to maintain the Association Property identified in the Declaration of Annexation as a part of the Phase that includes the Annexable Area so long as (a) the annexation is permitted by DRE, and (b) the amount of such automatic increase does not result in the levy of an Annual Assessment which exceeds the maximum automatic increase allowed under California Civil Code Section 5605(b).

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

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

7.6. ANNUAL ASSESSMENTS.

7.6.1. Commencement of Annual Assessments. Except as provided below, Annual Assessments shall commence on all Condominiums in a Phase on the first day of the first calendar month following the first Close of Escrow in such Phase.

7.6.2. **Assessment and Proration.** Annual Assessments for fractions of a month shall be prorated. Declarant shall pay its full pro rata share of the Annual Assessments on all unsold Condominiums for which Annual Assessments have commenced. The Board shall fix the amount of the Annual Assessment against each Condominium at least thirty (30) days in advance of each Annual Assessment period. However, unless otherwise established by the Board, the initial Annual Assessments shall be assessed in accordance with the most recent Budget on file with and approved by DRE. Written notice of any change in the amount of any Annual Assessment, Capital Improvement Assessment or Reconstruction Assessment shall be sent by first-class mail to every Owner subject thereto not less than thirty (30) nor more than sixty (60) days before the increased Assessment becomes due.

7.6.3. **Apportionment of Annual Assessments.** All Annual Assessments shall be assessed uniformly and equally against the Owners and their Units based on the number of Units owned by each Owner, except as may be otherwise provided in a Supplemental Declaration. The Board may determine that funds in the Operating Fund at the end of the Fiscal Year be retained and used to reduce the following Fiscal Year's Annual Assessments. On dissolution of the Association incident to the abandonment or termination of the Community as a planned development, any amounts remaining in any of the Association Maintenance Funds shall be distributed to or for the benefit of the Owners in the same proportions as such money was collected from the Owners.

7.6.4. **Payment of Annual Assessments.** Each Owner shall pay Annual Assessments in installments at such frequency, in such amounts and by such methods as are established by the Board. If the Association incurs additional expenses because of a payment method selected by an Owner, the Association shall charge the additional expenses to the Owner. Each installment of Annual Assessments may be paid to the Association in one (1) check or in separate checks as payments attributable to specified Association Maintenance Funds. If any payment of an Annual Assessment installment (a) is less than the amount assessed and (b) does not specify the Association Maintenance Fund or Funds into which it should be deposited, then the amount received shall be credited in order of priority first to the Operating Fund, until that portion of the Annual Assessment has been satisfied, and second to the Reserve Fund.

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

ARTICLE 8 INSURANCE

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

8.1.1. **Commercial General Liability.** A policy of commercial general liability insurance (including coverage for medical payments), insuring the Association and the Owners against liability for bodily injury, death and property damage arising from or relating to the ownership or use of the Association Property. Such policy shall specify amounts and include protection from liability and risks as are customarily covered in similar condominium developments in the area of the Community, and shall include a severability of interest endorsement or the equivalent which shall preclude the insurer from denying the claim of an Owner because of negligent acts or omissions of other Owners, or the Association or the Association's officers and directors acting in their capacity as officers and directors. The Association's policies shall at all times specify limits no less than the minimum amounts required by California Civil Code Sections 5800 and 5805.

8.1.2. **Fire and Casualty Insurance.** A "master" or "blanket" policy of fire and casualty insurance with extended coverage, special form, without deduction for depreciation, in an amount as near as possible to the full replacement value of all insurable Improvements on the Association Property including fixtures, to the extent they are part of the Association Property and other common personal property belonging to the Association. The policy amount shall be at least equal to such coverage as is commonly required by prudent institutional mortgage investors in the area in which the Community is located. The Association shall not carry a policy of earthquake insurance unless the Board is directed to obtain earthquake coverage by a majority of the Association's voting power.

8.1.3. **Fidelity Insurance.** Fidelity insurance coverage, naming the Association as insured, for any Person handling funds of the Association, including Association officers, directors, employees, volunteers, and agents, and the Manager and its employees, whether or not such Persons are compensated for their services, in an amount not less than the estimated maximum of funds, including reserve funds, in the custody of the Person during the term of the insurance. However, the aggregate amount of the fidelity insurance coverage may not be less than the sum equal to three (3) months of Annual Assessments on all Condominiums in the Community, plus reserve funds. The insurance policies or bonds shall provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least 10 days' prior written notice to the Association and each servicer of a Fannie Mae -held or -serviced Mortgage.

8.1.4. **Requirements of FHA, VA, Fannie Mae, Ginnie Mae, Freddie Mac and FHFA.** Notwithstanding anything in the Governing Documents to the contrary, the amount, term and coverage of any policy of insurance required under this Article 8 (including the endorsements, the amount of the deductible, the named insureds, the loss payees, standard mortgage clauses, notices of changes or cancellations, and the insurance company rating) shall also satisfy the minimum requirements established for this type of development (if applicable) by FHA, VA, Fannie Mae, Ginnie Mae, Freddie Mac and FHFA, and any successor to those

entities, so long as any of those entities is a Mortgagee or Owner of a Condominium in the Community, except to the extent such coverage is not reasonably available or has been waived in writing by the entity requiring the insurance coverage. If the above entities have not established requirements on any policy required hereunder, the term, amount and coverage of such policy shall, subject to Section 8.1.1 above, be no less than that which is customary for similar policies on similar projects in the area of the Community.

8.1.5. Flood Insurance on Association Property. If the Community is located in an area which has been officially identified by the Federal Emergency Management Agency as a "Special Flood Hazard Area" then the Association must carry at all times If the Community is located in an area which has been officially identified by the Federal Emergency Management Agency as a "Special Flood Hazard Area," then the Association must carry at all times a "master" or "blanket" policy of flood insurance on all of the Association Property in an amount deemed appropriate by the Association, but not less than the lesser of: (a) the maximum coverage available under National Flood Insurance Program for all Association Property in the Community to the extent the Association Property is located in a Special Flood Hazard Area; or (b) 100% of current replacement cost of all Association Property located in such area.

8.1.6. Other Insurance. Such other insurance insuring other risks customarily insured by associations managing condominium projects similar in construction, location and use. Such additional insurance may include general liability insurance and director's and officer's errors and omissions insurance in the minimum amounts established in California Civil Code Section 5805.

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

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

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

8.4. NOTICE OF EXPIRATION REQUIREMENTS. If available, each of the Association's insurance policies must contain a provision that the policy may not be canceled,

terminated, materially modified or allowed to expire by its terms, without at least ten (10) days' prior written notice to the Board and Declarant, and to each Owner and Mortgagee, insurer and guarantor of a First Mortgage who has filed a written request with the carrier for such notice and every other Person in interest who requests such notice of the insurer. In addition, fidelity insurance shall provide that it may not be canceled or substantially modified without at least ten (10) days' prior written notice to any insurance trustee named pursuant to Section 8.5 and to each Fannie Mae servicer who has filed a written request with the carrier for such notice.

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

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

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

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

- 8.8.1. Subrogation of claims against the Owners and tenants of the Owners;
- 8.8.2. Any defense based on coinsurance;

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

8.8.4. Any invalidity, other adverse effect or defense due to any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act or omission of any named insured or the respective agents, contractors and employees of any insured;

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

8.8.6. Notice of the assignment of any Owner of the Owner's interest in the insurance by virtue of a conveyance of any Condominium;

8.8.7. Any right to require any assignment of any Mortgage to the insurer;

8.8.8. Any denial of an Owner's claim because of negligence or willful acts by the Association or other Owners; and

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

ARTICLE 9 DESTRUCTION OF IMPROVEMENTS

9.1. **RESTORATION OF THE COMMUNITY.** Except as otherwise authorized by the Owners, if any portion of the Community which the Association is responsible for maintaining is destroyed, the Association shall restore the same to its former condition as promptly as practical and in accordance with applicable law and Local Government Agency approvals, including plan checks, permits and fee payments. The Association shall use the proceeds of its insurance for reconstruction or repair of the Community unless otherwise authorized in this Declaration or by the Owners. The Board shall commence such reconstruction promptly. The Community shall be reconstructed or rebuilt substantially in accordance with the original construction plans if they are available, unless changes recommended by the Design Review Committee have been approved by at least a majority of the Owners. If the insurance proceeds amount to at least ninety percent (90%) of the estimated cost of restoration and repair, the Board shall levy a Reconstruction Assessment to provide the additional funds necessary for such reconstruction. If the insurance proceeds amount to less than ninety percent (90%) of the estimated cost of restoration and repair, the Board may levy a Reconstruction Assessment and proceed with the restoration and repair only if both of the following conditions ("**Conditions To Reconstruction**") have been satisfied: (a) the levy of a Reconstruction Assessment to pay the costs of restoration and repair of the Community is approved by the Owners, and (b) within one (1) year after the date on which the destruction occurred, the Board Records a certificate of the resolution authorizing the restoration and repair ("**Reconstruction Certificate**"). If either of the Conditions to Reconstruction does not occur after a destruction for which insurance proceeds available for restoration and repair are less than ninety percent (90%) of the estimated cost of restoration and repair, then the Board shall proceed as provided in Section 9.2.

9.2. SALE OF COMMUNITY AND RIGHT TO PARTITION. No Owner shall have the right to partition of the Owner's interest in the Condominium and there shall be no judicial partition of the Community, or any part thereof, except as provided in California Civil Code Section 4610. For purposes of Subsection 4 of Section 4610(b) partition may occur only if all of the following conditions are satisfied: (a) either or both of the Conditions to Reconstruction described in Section 9.1 have failed to occur; (b) within six (6) months after the date on which destruction occurred, restoration or repair has not actually commenced; and (c) the Owners of at least sixty seven percent (67%) of the Condominiums in the Community and a Mortgagee Majority approve the partition. In such event, the Association shall prepare, execute and Record, as promptly as practical, the certificate stating that a majority of the Board may properly exercise an irrevocable power of attorney to sell the Community for the benefit of the Owners and execute such other documents and instruments as may be necessary for the Association to consummate the sale of the Community at the highest and best price obtainable, either in its damaged condition, or after damaged structures have been razed. Such certificate shall be conclusive evidence of such authority for any Person relying thereon in good faith. The net proceeds of such sale and the proceeds of any insurance carried by the Association shall be divided proportionately among the Owners, such proportions to be determined in accordance with the relative appraised fair market valuation of the Condominiums as of a date immediately before such destruction (or condemnation), expressed as percentages, and computed by dividing such appraised valuation of each Condominium by the total of such appraised valuations of all Condominiums in the Community. The Board is authorized to hire one (1) or more appraisers for such purpose and the cost of such appraisals shall be a Common Expense of the Association. However, the balance then due on any valid Mortgage shall be first paid in order of priority before the distribution of any proceeds to an Owner whose Condominium is so encumbered. Nothing in this Declaration prevents partition of a co-tenancy in any Condominium. Except as provided above, each Owner and the successors of each Owner, whether by deed, gift, devise, or by operation of law, for their own benefit and for the Condominiums and for the benefit of all other Owners, specifically waive and abandon all rights, interests and causes of action for a judicial partition of the tenancy in common ownership of the Community and do further covenant that no action for such judicial partition shall be instituted, prosecuted or reduced to judgment.

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

9.4. NOTICE TO OWNERS AND FIRST MORTGAGEES. The Board, immediately on having knowledge of any damage or destruction of a Unit or affecting a material portion of the Community, shall promptly notify all Owners and First Mortgagees.

9.5. **DAMAGE BY OWNERS.** Each Owner is liable to the Association for any damage to the Common Property not fully reimbursed to the Association by insurance proceeds (including any deductible amounts under any insurance policies against which the Association files a claim for such damage), in accordance with Section 2.2.6 above.

ARTICLE 10 EMINENT DOMAIN

The term "taking" as used in this Article means inverse condemnation by exercise of the power of eminent domain or by sale under threat of the exercise of the power of eminent domain. The Board shall represent the Owners in any proceedings, negotiations, settlements, or agreements regarding takings. All takings proceeds shall be payable to the Association for the benefit of the Owners and their Mortgagees, and shall be distributed to such Owners and Mortgagees as provided in this Article.

10.1. **PROPERTY CONDEMNATION.** If (a) there is a taking of an interest in all or part of the Community such that the ownership, operation and use of the Community in accordance with this Declaration is substantially and adversely affected, and (b) within one hundred twenty (120) days after the effective date of the taking the Owners of Units (1) not taken, or (2) only partially taken but capable of being restored to at least ninety-five percent (95%) of their floor area and to substantially their condition before the taking (collectively, the "**Remaining Units**") do not by affirmative vote of at least one third (1/3) of their voting power approve the continuation of the Community and the repair, restoration and replacement to the extent feasible of the Association Property and the Remaining Units, then, after obtaining the consent of a Mortgagee Majority, the Board shall proceed with the sale of that portion of the Community which was not taken and distribute the net proceeds of such sale after deducting any incidental fees and expenses, in the same proportion and manner as provided in Section 9.2.

10.2. **CONDEMNATION OF ASSOCIATION PROPERTY.** If there is a taking of the Association Property or any interest therein, then the award in condemnation shall be paid to the Association and shall be deposited in the Operating Fund.

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

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

10.5. **NOTICE TO OWNERS AND FIRST MORTGAGEES.** The Board, on learning of any taking affecting a Unit or a material portion of the Community, or any threat thereof, shall promptly notify all Owners and First Mortgagees.

**ARTICLE 11
RIGHTS OF MORTGAGEES**

11.1. **GENERAL PROTECTIONS.** No amendment or violation of this Declaration defeats or renders invalid the rights of the Mortgagee under any Mortgage encumbering one (1) or more Condominiums made in good faith and for value, provided that after the foreclosure of any such Mortgage, the foreclosed Condominium(s) will remain subject to this Declaration.

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

11.2.1. **Right of First Refusal.** Any "right of first refusal" created or purported to be created by the Governing Documents shall not apply to nor adversely affect the rights of a First Mortgagee to (a) foreclose or take title to a Condominium pursuant to the remedies in the First Mortgage, or (b) accept a deed or assignment in lieu of foreclosure in the event of default by a Mortgagor, or (c) sell or lease a Condominium acquired by the First Mortgagee through any of the remedies described in (a) or (b).

11.2.2. **Required Mortgagee Approvals.** A Mortgagee Majority must approve any amendment of any of the Governing Documents which is of a material adverse nature to First Mortgagees, as further described in Section 13.2.1.

11.2.3. **Deemed Approval.** Each First Mortgagee who receives proper written notices from the Association by certified or registered mail with a return receipt requested of any matter requiring the approval of a Mortgagee Majority is deemed to have approved that matter if that First Mortgagee does not submit a written response within sixty (60) days after the notice is delivered to the First Mortgagee.

11.2.4. **Notices.** Each Mortgagee, insurer and guarantor of a Mortgage encumbering one (1) or more Condominiums, upon filing a written request for notification with the Board, is entitled to written notification from the Association of: (a) any proposed amendment to the Governing Documents affecting a change in (i) the boundaries of any Unit, (ii) the interest in the Condominium Common Area appurtenant to any Unit or the liability for Common Expenses, (iii) the number of Association votes appurtenant to any Unit, or (iv) the purposes to which any Unit or the Association Property are restricted, (b) any proposed termination of the status of the Community as a "condominium project" as defined in California Civil Code Section 4125, (c) any condemnation or casualty loss which affects either a material portion of the Community or the Condominium(s) securing the respective First Mortgage, (d) any delinquency of sixty (60) days or more in the performance of any obligation under the Governing Documents, including the payment of Assessments or charges owed by the Owner(s) of the Condominium(s) securing the Mortgage, which notice each Owner hereby consents to and authorizes, (e) a lapse, cancellation, or material modification of any policy of insurance or fidelity bond kept by the Association, and (f) any proposed action that requires the consent of a specified percentage of First Mortgagees.

11.2.5. **First Mortgagee Rights Confirmed.** No provision of this Declaration or any other Governing Document gives any Owner or any other party priority over any rights of a First Mortgagee pursuant to its Mortgage concerning payment to the Owner of insurance proceeds or condemnation awards for losses to or taking of a Condominium or any portion of the Association Property.

11.2.6. **Unpaid Pre-Foreclosure Assessments.** The transfer of fee interest in a Condominium as the result of the exercise of the power of sale or a judicial foreclosure involving a default under the First Mortgage shall extinguish the lien of unpaid Assessments which were due and payable prior to the date of the transfer, and the transferee shall take title to the Condominium free and clear of all claims for such unpaid Assessments.

11.2.7. **Availability of Association Documents; Audits.** Notwithstanding any requirements of the Bylaws, upon request by a First Mortgagee, owner, lender, holder, insurer or guarantor of a First Mortgage or prospective purchaser, the Association shall make available for inspection, during normal business hours, and on the same terms as members those documents listed in California Civil Code Section 4525. Notwithstanding the foregoing, within a reasonable time after receipt of written request by a First Mortgagee, owner, lender, holder, insurer or guarantor of a First Mortgage or prospective purchaser, the Association shall prepare and furnish to such requesting party an audited financial statement of the Association for the immediately preceding fiscal year. The Association shall have the right to be reimbursed by such requesting party for its reasonable costs associated with furnishing an audited financial statement, and the reasonable costs associated with preparing an audited financial statement if the Association is not otherwise obligated to prepare such audited financial statement. For so long as VA is guaranteeing Mortgages in the Community, a Mortgagee Majority shall have the right to demand an audit of the Association's financial records.

ARTICLE 12 ENFORCEMENT AND DISPUTE RESOLUTION

12.1. **ENFORCEMENT OF GOVERNING DOCUMENTS.** All violations of the Governing Documents, except for: (a) those governed by Sections 12.2 or 12.3, or (b) those subject to the Right to Repair Law and accordingly subject to resolution through the statutory non-adversarial pre-litigation process commencing at California Civil Code Section 910 and alternative dispute resolution provisions commencing at Section 12.4 below), or California Civil Code Section 6000, *et seq.*, shall be resolved as follows:

12.1.1. **Right to Enforce.** The Board, the Association, the Declarant and any Owner may enforce the Governing Documents as described in this Article, subject to California Civil Code Sections 5900, *et seq.*, and 5925, *et seq.* Each Owner has a right of action against the Association for the Association's failure to comply with the Governing Documents. Each remedy provided for in this Declaration is cumulative and not exclusive or exhaustive.

12.1.2. **Violations Identified by the Association.** If the Board or the Design Review Committee determines that there is a violation of the Governing Documents, other than nonpayment of any Assessment, then the Board shall give written notice to the responsible Owner identifying (a) the condition or violation complained of, and (b) the length of time the

Owner has to remedy the violation including, if appropriate, the length of time the Owner has to submit plans to the Design Review Committee and the length of time the Owner has to complete the work proposed in the plans submitted to the Design Review Committee. This requirement shall apply notwithstanding the fact that this Declaration may duplicate Local Government Agency ordinances or regulations. If an Owner does not perform corrective action within the allotted time, the Board, after Notice and Hearing, may remedy such condition or violation complained of, and the cost thereof shall be charged to the Owner as a Special Assessment. If the violation involves nonpayment of any Assessment, then the Board may collect such delinquent Assessment pursuant to the procedures established in Section 12.2.

12.1.3. Violations Identified by an Owner. If an Owner alleges that another Person is violating the Governing Documents (other than nonpayment of any Assessment), the complaining Owner must first submit the matter to the Board for Notice and Hearing before the complaining Owner may resort to alternative dispute resolution, as required by California Civil Code Section 5925, *et seq.*, or litigation for relief.

12.1.4. Legal Proceedings. Failure to comply with any of the terms of the Governing Documents by any Person is grounds for relief which may include an action to recover damages, injunctive relief, foreclosure of any lien, or any combination thereof; however, the procedures established in California Civil Code Sections 5900, *et seq.*, and 5925, *et seq.* and in Sections 12.1.2 and 12.1.3 must first be followed, if they apply.

12.1.5. Additional Remedies. After Notice and Hearing, the Board may impose any of the remedies provided for in the Bylaws. The Board may adopt a schedule of reasonable fines or penalties which, in its reasonable discretion, the Board may assess against a Person for the failure of such Person to comply with the Governing Documents. Such fines or penalties may only be assessed pursuant to California Civil Code Section 5850 and 5855. After Notice and Hearing, the Board may direct the officers of the Association to Record a notice of noncompliance (if allowed by law) against a Condominium owned by any Owner who has violated any provision of this Declaration. The notice shall include a legal description of the Condominium and shall specify the provision of this Declaration that was violated, the violation committed, and the steps required to remedy the noncompliance. Once the noncompliance is remedied or the noncomplying Owner has taken such other steps as reasonably required by the Board, the Board shall direct the officers of the Association to Record a notice that the noncompliance has been remedied.

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

12.1.7. Limit on Expenditures. The Association may not incur litigation expenses, including attorneys' fees, or borrow money to fund litigation, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings, unless the Association first obtains the consent of a majority of the Association's voting power (excluding the voting power of any Owner who would be a defendant in such proceedings) and, if applicable, complies with the requirements of California Civil Code Sections 5900, *et seq.*, and 5925, *et seq.* Such approval is not necessary if the legal proceedings are initiated (a) to enforce the use restrictions contained in Article 2, (b) to enforce the architectural and landscaping control provisions

contained in Article 5, (c) to collect any unpaid Assessments levied pursuant to the Governing Documents, (d) for a claim, other than a Right to Repair Law Claim, or a Dispute (defined in Section 12.4) the total value of which is less than Five Hundred Thousand Dollars (\$500,000), or (e) as a cross-complaint in litigation to which the Association is already a party. If the Association decides to use or transfer Reserve Funds or borrow funds to pay for any litigation, the Association must notify the Owners of the decision by mail. Such notice shall provide an explanation of why the litigation is being initiated or defended, why Operating Funds cannot be used, how and when the Reserve Funds will be replaced or the loan will be repaid, and a proposed budget for the litigation. The notice must state that the Owners have a right to review an accounting for the litigation which will be available at the Association's office. The accounting shall be updated monthly. If the Association action to incur litigation expenses or borrow money to fund litigation concerns a Right to Repair Law Claim, then the voting requirements of both Sections 4.5.2 and 12.1.7 must be met.

12.2. DELINQUENT ASSESSMENTS.

12.2.1. **Delinquency.** Assessments are delinquent if not paid within fifteen (15) days after the due date established by the Association. Assessments not paid within thirty (30) days after the due date, plus all reasonable costs of collection (including attorneys' fees) and late charges bear interest at the maximum rate permitted by law commencing thirty (30) days after the due date until paid. The Association may also require the delinquent Owner to pay a late charge in accordance with California Civil Code Section 5650. The Association need not accept any tender of a partial payment of an Assessment and all costs and attorneys' fees attributable thereto. Acceptance of any such tender does not waive the Association's right to demand and receive full payment.

12.2.2. Creation and Release of Lien.

(a) **Priority of Lien.** All liens levied in accordance with this Declaration shall be prior and superior to (1) any declaration of homestead Recorded after the Recordation of this Declaration, and (2) 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 made in good faith and for value and Recorded before the date on which the "Notice of Delinquent Assessment" (described in this Section) against the assessed Condominium was Recorded.

(b) **Notice Before Creating Lien.** Before the Association may place a lien on an Owner's Condominium to collect a past due Assessment, the Association shall send written notice ("**Notice of Intent to Lien**"), at least thirty (30) days before Recording the lien, to the Owner by certified mail which contains the following information: (1) the Association's fee and penalty procedure, (2) an itemized statement of the charges owed by the Owner, including the principal owed, any late charges, any interest, the method of calculation, and any attorneys' fees, (3) the collection practices used by the Association, (4) a statement that the Association may recover reasonable costs of collecting past due Assessments, (5) a statement that the Owner has the right to inspect the Association's records, pursuant to California Corporations Code Section 8333, (6) the following statement in 14-point boldface type or all capital letters: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN

FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION,” (7) 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, (8) a statement that the Owner has the right to request a meeting with the Board, as provided by California Civil Code Section 5705(b) and Section 12.2.2(g) below, (9) a statement concerning the Owner’s 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 California Civil Code Section 5900, *et seq.* and (10) a statement concerning the Owner’s right to request alternative dispute resolution with a neutral third party pursuant to California Civil Code Section 5925 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.

(c) ***Dispute Resolution Before Recording Lien.*** Before Recording a Notice of Delinquent Assessment, the Association shall offer the Owner and, if the Owner so requests, participate in dispute resolution under the Association’s “meet and confer” program.

(d) ***Dispute Resolution Before Foreclosure.*** Before initiating a foreclosure for delinquent Assessments, the Association shall offer the Owner and, if the Owner so requests, shall participate in dispute resolution under the Association’s “meet and confer” program or alternative dispute resolution with a neutral third party. The decision to pursue resolution or a particular type of alternative dispute resolution is the Owner’s choice, except that binding arbitration is not available if the Association intends to initiate a judicial foreclosure.

(e) ***Board Approval.*** The decision to Record a Notice of Delinquent Assessment shall be made only by the Board and may not be delegated to an Association agent. The Board must 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.

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

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

(h) ***Notice of Delinquent Assessment.*** The lien becomes effective on Recordation by the Board or its authorized agent of a Notice of Delinquent Assessment (“*Notice of Delinquent Assessment*”) securing the payment of any Assessment or installment

thereof levied by the Association against any Condominium Owner, as provided in California Civil Code Section 5675. The Notice of Delinquent Assessment must identify (1) the amount of the Assessment and other authorized charges and interest, including the cost of preparing and Recording the Notice of Delinquent Assessment, (2) the amount of collection costs incurred, including reasonable attorneys' fees, (3) a sufficient description of the Condominium that has been assessed, (4) the Association's name and address, (5) the name of the Owner of the Condominium that has been assessed, and (6) if the lien is to be enforced by non-judicial foreclosure, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice of Delinquent Assessment must be signed by an authorized Association officer or agent and must be mailed in the manner required by California Civil Code Section 2924b to the Owner of record of the Condominium no later than ten (10) calendar days after Recordation. The lien relates only to the individual Condominium against which the Assessment was levied and not to the Community as a whole.

(i) **Service on Owner's Legal Representative.** In addition to the requirements of California Civil Code Section 2924, a Notice of Delinquent Assessment shall be served by the Association on the Owner's legal representative as provided in California Code of Civil Procedure Section 415.10, *et seq.*

(j) **Secondary Addresses.** Upon receipt of an Owner's written request identifying a secondary address for purposes of collection notices, the Association shall send an additional copy of any Notice of Intent to Lien, Notice of Delinquent Assessment or other Notice given under Section 12.2.2 to the secondary address provided. The Association shall notify Owners of their right to submit secondary addresses to the Association, when the Association issues its pro forma operating budget under California Civil Code Section 5300. The Owner's request must be in writing and mailed to the Association in a manner which indicates the Association has received it. The Owner may identify or change a secondary address at any time, provided that, if a secondary address is identified or changed during the collection process, the Association shall only be required to send Notices to the indicated secondary address from the point the Association receives the request.

(k) **Exceptions.** Assessments described in California Civil Code Section 5725(b), and California Code of Regulations Section 2792.26(c) may not become a lien against an Owner's Condominium enforceable by the sale of the Condominium under California Civil Code Sections 2924, 2924b and 2924c.

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

12.2.3. **Enforcement of Liens.** The Board shall enforce the collection of amounts due under this Declaration by one (1) or more of the alternative means of relief afforded by this Declaration, subject to the restrictions in California Civil Code Sections 5705, 5715 and 5720.

(a) The lien on a Condominium may be enforced by foreclosure and sale of the Condominium after the Owners failure to pay any Assessment, or installment thereof, as provided in this Declaration.

(b) The decision to initiate foreclosure after Recording a Notice of Delinquent Assessment shall be made only by the Board and may not be delegated to an Association agent. 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 Board meeting open to all members. The Board shall maintain the confidentiality of the Owner or Owners by identifying the matter in the minutes by the Unit number, rather than the name of the Owner or Owners. A Board vote to approve foreclosure of a lien shall take place at least 30 days before any public sale.

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

(d) The sale shall be conducted in accordance with the provisions of the California Civil Code applicable to the exercise of powers of sale in Mortgages, or in any manner permitted by law. The Association (or any Owner if the Association refuses to act) may sue to foreclose the lien if (1) at least thirty (30) days have elapsed since the date on which the Notice of Delinquent Assessment was Recorded, and (2) at least ten (10) days have elapsed since a copy of the Notice of Delinquent Assessment was mailed to the Owner affected thereby. The Association may bid on the Condominium at foreclosure sale, using as a credit bid the amounts secured by its lien plus trustee's fees and expenses, Association funds, or funds borrowed for such purpose, and acquire and hold, lease, mortgage and convey the same. On completion of the foreclosure sale, the Association or the purchaser at the sale may file suit to secure occupancy of the defaulting Owner's Condominium, and the defaulting Owner shall be required to pay the reasonable rental value for the Condominium during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. A nonjudicial foreclosure to collect delinquent Assessments shall be subject to the right of redemption within ninety (90) days after the sale, as provided in California Civil Code Section 5715(b).

(e) A suit to recover a money judgment for unpaid Assessments may be brought without foreclosing or waiving any lien securing the same, subject to the provisions of California Civil Code Section 5655, but this provision or any suit to recover a money judgment does not affirm the adequacy of money damages. Any recovery resulting from a suit at law or in equity initiated pursuant to this Section may include reasonable attorneys' fees as fixed by the court.

12.2.4. **Priority of Assessment Lien.** Mortgages Recorded before a Notice of Delinquent Assessment have lien priority over the Notice of Delinquent Assessment. Sale or transfer of any Condominium does not affect the Assessment lien, except that the sale or transfer of any Condominium pursuant to judicial or non-judicial foreclosure of a First Mortgage extinguishes the lien of such Assessments as to payments which became due before such sale or transfer. No sale or transfer relieves such Condominium from liens for any Assessments thereafter becoming due. No Person who obtains title to a Condominium pursuant to a judicial or non-judicial foreclosure of the First Mortgage is liable for the share of the Common Expenses or Assessments chargeable to such Condominium which became due before the acquisition of title to the Condominium by such Person. Such unpaid share of Common Expenses or Assessments is a Common Expense collectible from all Owners including such Person. The Association may take such action as is necessary to make any Assessment lien subordinate to the interests of the California Department of Veterans Affairs under its Cal-Vet loan contracts as if the Cal-Vet loan contracts were First Mortgages.

12.2.5. **Alternative Dispute Resolution.** An Owner may dispute the Assessments imposed by the Association as provided in this Declaration and in California Civil Code Section 5600, *et seq.* If it is determined through dispute resolution pursuant to the Association's "meet and confer" program required in this Declaration or alternative dispute resolution with a neutral third party pursuant to California Civil Code Section 5925, *et seq.*, that the Association Recorded a Notice of Delinquent Assessment in error, the Association shall promptly reverse all late charges, fees, interest, attorney's fees, costs of collection, costs imposed for the Notice prescribed in Section 5660, and costs of Recordation and release of the lien authorized under Section 5720(b) and pay all costs related to the dispute resolution or alternative dispute resolution.

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

12.2.7. **Compliance with Law.** To the extent that any provision in this Section 12.2 conflicts with the provisions of the CID Act, the statutory provisions shall control.

12.3. **ENFORCEMENT OF BONDED OBLIGATIONS.** If (a) the Association Property Improvements in any Phase are not completed before DRE issues a Public Report, and (b) the Association is an obligee under a bond or other arrangement (a "**Bond**") required by DRE to secure performance of Declarant's commitment to complete such Improvements, then the following provisions of this Section will apply:

12.3.1. **Consideration by the Board.** The Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond concerning any such Improvement for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for that Improvement in the "Planned Construction Statement" appended to the Bond. If the Association has given an extension in writing for the completion of any Association Property Improvement, then the Board shall be directed to consider and vote on the aforesaid question if a Notice of Completion has not been filed within thirty (30) days after the expiration of the extension.

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

12.4. **DISPUTE WITH DECLARANT PARTIES.** The following dispute resolution procedure is implemented for the Community with the intent to avoid costly and potentially lengthy traditional court proceedings. Any dispute between the Association or any Owners, on the one hand, and the Declarant, or any director, officer, partner, shareholder, member, employee, representative, contractor, subcontractor, design professional or agent of the Declarant (each, a "**Declarant Party**," and collectively the "**Declarant Parties**"), on the other hand, is a "Dispute" that shall be resolved in accordance with the following alternative dispute resolution procedures, if the Dispute:

Arises under this Declaration or otherwise relates to the Community;

Involves neither Association Property completion bonds, nor the collection of delinquent Assessments from Declarant;

Does not involve an amount in controversy that is subject to the Small Claims Act (California Civil Procedure Sections 116.110, *et seq.*);

Concerns matters that are not resolved under any written limited warranty (including any Express Limited Warranty, as defined below, provided by Declarant); and

Is not a Right to Repair Law Claim (as defined below).

Each Dispute shall be submitted for resolution under the binding arbitration procedure described in Section 12.4.2.

Any claim or controversy which is governed by the Right to Repair Law at California Civil Code Sections 895 through 945.5 (a "**Right to Repair Law Claim**") shall first be subjected to the "non-adversarial procedures" set forth in California Civil Code Sections 910 through 938. If a Right to Repair Law Claim remains unresolved after resort to the statutory non-adversarial procedures, or if a Declarant Party does not, or cannot comply with the requirements of the Right to Repair Law, then the Right to Repair Law Claim may be submitted for resolution under the binding arbitration procedures in Section 12.4.2 below.

Notwithstanding the foregoing, any and all claims or Disputes of any kind arising from or related to issues under a written limited warranty issued to a Claimant by Declarant or any Respondent (for example, the Builder's Limited Warranty or the Fit and Finish Warranty (collectively, "**Express Limited Warranty**")) shall be submitted to the final dispute resolution procedure contained in the Express Limited Warranty, which written dispute resolution procedure is incorporated by reference herein as though fully set forth. If any Dispute involves claims in addition to claims under the Express Limited Warranty, those claims of the Dispute shall be governed by binding arbitration pursuant to Section 12.4.2.

12.4.1. **Definitions.** For purposes of this Section 12.4, the following terms shall have the following meanings:

- (a) **Claimant.** Claimant means a Person with a Dispute.
- (b) **Party or Parties.** Party means each party to a Dispute. Parties mean the parties, collectively, to a Dispute.
- (c) **Person.** Person means any natural individual or legal entity recognized under California law.
- (d) **Respondent.** Respondent means the Party to whom a Dispute is directed.

12.4.2. **Binding Arbitration.** If a Party has a Dispute that does not constitute a Right to Repair Law Claim, or if a Right to Repair Law Claim remains unresolved after resort to the statutory non-adversarial procedures described in Chapter 4 of the Right to Repair Law, then any of the Parties may submit the Dispute to mandatory and binding arbitration governed by the Federal Arbitration Act and the California Arbitration Act (to the extent it is consistent with the Federal Arbitration Act), and conducted subject to the following procedures:

- (a) **Interpretation of Scope of Procedures.** These arbitration procedures shall be deemed to be a self-executing arbitration agreement. Any Dispute concerning the interpretation or the enforceability of these procedures, including their revocability or voidability for any cause, any challenges to the enforcement or the validity of these procedures or the scope of arbitrable issues under these procedures, and any defense relating to the enforcement of these procedures, including waiver, estoppel or laches, shall be decided by an arbitrator in accordance with these procedures and not by a court of law.

(b) **Selection of Arbitrator.** The Dispute or Right to Repair Law Claim (as applicable) shall be submitted to binding arbitration by and pursuant to the rules of JAMS (Judicial Arbitration and Mediation Services) in effect at the time of the initiation of the arbitration. In the event JAMS is for any reason unwilling or unable to serve as the arbitration service, the Parties shall select another reputable arbitration service. If the Parties are unable to agree on an alternative service, then either Party may petition any court of competent jurisdiction in the County to appoint such an alternative service, which shall be binding on the Parties. The rules and procedures of such alternative arbitration service in effect at the time the request for arbitration is submitted shall be followed.

(c) **General Arbitration Provisions.**

(i) The Parties agree and acknowledge that Disputes and Right to Repair Law Claims involve and concern interstate commerce and are governed by the provisions of the federal arbitration act (9 U.S.C. §1, *et seq.*) in effect and as the same may from time to time be amended, to the exclusion of any different or inconsistent state or local law, ordinance, regulation, or judicial rule. Accordingly, any and all Disputes and Right to Repair Law Claims (as applicable) shall be arbitrated – which arbitration shall be mandatory and binding – pursuant to the Federal Arbitration Act.

(ii) To the extent that any state or local law, ordinance, regulation, or judicial rule shall be inconsistent with any provision of the rules of the arbitration service under which the arbitration proceeding shall be conducted, the latter rules shall govern the conduct of the proceeding.

(iii) These arbitration procedures shall inure to the benefit of, and be enforceable by, Declarant's subcontractors, agents, vendors, suppliers, design professionals, insurers and any other Respondent or other Person whom Claimant contends is responsible for any alleged defect in or to the Phase or any improvement or appurtenance thereto.

(iv) In the event any Dispute or Right to Repair Law Claim (as applicable) is submitted to arbitration, each Party shall bear its own attorneys' fees and costs (including expert costs) for the arbitration.

(v) The arbitrator shall be authorized to provide all recognized remedies available in law or in equity for any cause of action that is the basis of the arbitration. The decision of the arbitrator shall be final and binding; provided, however, that the arbitrator shall not have the power to commit errors of law or legal reasoning, and the award may be vacated or corrected for any such error on appeal to a court of competent jurisdiction in the County. Any application to confirm, vacate, modify, or correct an award rendered by the arbitrator shall be filed in any court of competent jurisdiction in the County.

(vi) The participation by any Party in any judicial proceeding concerning these arbitration procedures or any matter arbitrable hereunder shall not be asserted or accepted as a reason to delay, to refuse to participate in, or to refuse to enforce these arbitration procedures.

(vii) The fees to initiate the arbitration shall be advanced by Declarant and subsequent fees and costs of the arbitration and the arbitrator shall be borne equally by the Parties to the arbitration; provided, however, that the fees and costs of the arbitration and the arbitrator shall ultimately be borne as determined by the arbitrator. Attorney's fees and costs shall be borne as provided above.

(viii) The arbitrator appointed to serve shall be a neutral and impartial individual.

(ix) The venue of the arbitration shall be in the County unless the Parties agree in writing to another location.

(x) If any provision of these arbitration procedures is determined to be unenforceable or to have been waived, the remaining provisions shall be deemed to be severable therefrom and enforceable according to their terms.

(d) EFFECT OF ARBITRATION AGREEMENT. BY TAKING TITLE TO ALL OR ANY PORTION OF THE COMMUNITY, EACH OWNER AND THE ASSOCIATION IS DEEMED TO AGREE TO HAVE ANY DISPUTE INCLUDING ANY RIGHT TO REPAIR LAW CLAIM, ARISING OUT OF THE MATTERS INCLUDED IN THIS ARBITRATION PROVISION, DECIDED BY NEUTRAL ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT (TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT). ACKNOWLEDGEMENT OF THE FOREGOING IS A CONDITION TO CONVEYANCE OF TITLE TO ANY PORTION OF THE PHASE TO SUCH PARTY. BY TAKING TITLE TO ANY PORTION OF THE COMMUNITY SUBJECT TO THIS SECTION 12.4, A PARTY IS DEEMED TO HAVE AGREED TO GIVE UP ANY RIGHTS SUCH PARTY MIGHT POSSESS TO HAVE ANY DISPUTES OR RIGHT TO REPAIR LAW CLAIMS SUBJECT HERETO LITIGATED IN A COURT OR JURY TRIAL, AS WELL AS THEIR RESPECTIVE JUDICIAL RIGHTS TO DISCOVERY AND APPEAL. IF ANY SUCH PARTY REFUSES TO SUBMIT TO ARBITRATION AFTER TAKING TITLE TO ANY PORTION OF THE COMMUNITY AND AGREEING, IN CONNECTION THEREWITH, TO THE FOREGOING PROVISIONS, SUCH PARTY MAY BE COMPELLED TO ARBITRATE UNDER THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT (TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT). BY EXECUTING ANY GRANT DEED OR OTHER INSTRUMENT CONVEYING ANY PORTION OF THE COMMUNITY, THE GRANTEE THEREIN SHALL BE DEEMED TO ACKNOWLEDGE THAT ITS AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

12.4.3. **Court Trial without a Jury.** If the arbitration provision in Section 12.4.2 is held not to apply, or is held invalid, void or unenforceable for any reason, then all Disputes and Right to Repair Law Claims (as applicable) shall be tried before a judge in a court of competent jurisdiction in the County in which this Phase is located without a jury. The judge in such court of competent jurisdiction shall have the power to grant all legal and equitable remedies and award compensatory damages. Declarant and each Owner shall use the procedures

established in this Section 12.4 to resolve all Disputes and Right to Repair Law Claims (as applicable) including Right to Repair Law Claims, and waive their rights to resolve such Disputes or Right to Repair Law Claims (as applicable) in any other manner.

DECLARANT AND EACH OWNER ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AND RIGHT TO REPAIR LAW CLAIMS AS PROVIDED IN THIS SECTION 12.4, THEY ARE WAIVING AND COVENANTING NOT TO ASSERT THEIR CONSTITUTIONAL RIGHT TO TRIAL BY JURY OF DISPUTES OR RIGHT TO REPAIR LAW CLAIMS (AS APPLICABLE), DISPUTES RELATING TO DESIGN AND CONSTRUCTION DEFECTS, MISREPRESENTATION, OR THE FAILURE OF ANY DECLARANT PARTY TO DISCLOSE MATERIAL FACTS.

The foregoing waiver of jury trial shall be binding upon the successors and assigns of Declarant and each Owner of all or any portion of the Community and upon all persons and entities asserting rights or claims or otherwise acting on behalf of any such Party or their successors and assigns. This Section 12.4 may not be amended without Declarant's prior written consent.

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

12.4.5. Covenant Regarding Proceeds. If any Owner prevails in a Dispute or Right to Repair Law Claim (as applicable), and the judgment thereon or settlement terms thereof includes a monetary award, then the proceeds of the award shall be first applied to the remediation of the condition that gave rise to the Dispute or Right to Repair Law Claim (as applicable).

12.4.6. Amendments. This Section 12.4 may not be amended without the written consent of Declarant.

ARTICLE 13 DURATION AND AMENDMENT

13.1. DURATION. The initial term of this Declaration shall be sixty (60) years.

13.2. TERMINATION AND AMENDMENT.

13.2.1. Amendment Approval. Notice of the subject matter of a proposed amendment to this Declaration or an "extraordinary action" (defined below) in reasonably detailed form must be included in the notice of any Association meeting or election at which a proposed amendment is to be considered. To be effective, a proposed amendment (other than an amendment by Declarant or by the Board, as described in Sections 13.2.6 or 13.2.7 respectively) or an extraordinary action must be (a) adopted by the vote, in person or by proxy, or written consent of Owners representing not less than (1) sixty-seven percent (67%) of the voting power

of each Class of the Association and (2) sixty-seven percent (67%) of the Association's voting power represented by Owners other than Declarant, provided that the specified percentage of the Association's voting power necessary to amend a specific provision of this Declaration may not be less than the percentage of affirmative votes prescribed for action to be taken under the provision that is the subject of the proposed amendment or extraordinary action, and (b) approved by the requisite percentage of First Mortgagees of matters described in Sections 13.2.2(a) and 13.2.2(b) below, and (2) termination of the Declaration as described in Section 13.2.4. In addition to the foregoing, until the conversion of the Class B membership to Class A, all material amendments and extraordinary actions must have the approval of VA, if VA has guaranteed any Mortgages secured by Condominiums in the Community. Any such amendment shall be subject to County approval as set forth in Section 17.1.

13.2.2. Mortgagee Consent. In addition to the consents required by Section 13.2.1, a Mortgagee Majority must approve any material amendment to this Declaration, any Declaration of Annexation and any Supplemental Declaration or extraordinary action, as defined below:

(a) **Material Amendments.** Material amendments consist of any amendment adding, deleting or modifying any provision concerning any of the following:

- (i) Assessment basis or Assessment liens;
- (ii) Any method of imposing or determining any charges to be levied against an Owner;
- (iii) Any scheme of regulation or enforcement or standards for maintenance, architectural design or exterior appearance of Improvements on the Condominiums (as applicable);
- (iv) The addition, annexation or withdrawal of land to or from the Community;
- (v) Voting rights;
- (vi) Increases in Assessments that raise the existing Assessment by more than 25%, Assessment liens or the priority of Assessment liens;
- (vii) Reductions in reserves for maintenance, repair and replacement of the Association Property;
- (viii) Responsibility for maintenance and repairs;
- (ix) Reallocation of interest in the Condominium Common Area, reallocation of liability for Common Expenses, or reallocation of rights to the use of Association Property;
- (x) Redefinition of any Unit boundaries

versa;

(xi) Convertibility of Units into Association Property or vice versa;

(xii) Any amendment relating to (i) the insurance provisions in Article 8, (ii) the application of insurance proceeds in Article 9, or (iii) the disposition of any money received in any taking under condemnation proceedings.

(xiii) Imposing restrictions on leasing or sale of Units;

(xiv) Restoration or repair of the Community (after damage or partial condemnation) in a manner other than that specified in this Declaration; or

(xv) Any amendment to a provision which is for the express benefit of Mortgagees, including:

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

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

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

(d) Any amendment which would or could result in partition or subdivision of a Condominium in any manner inconsistent with this Declaration.

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

(b) **Extraordinary Actions.** Extraordinary actions consist of the following:

(i) Merging or consolidating the Association (other than with another non-profit entity formed for purposes similar to the Association);

(ii) Abandoning, partitioning, encumbering, mortgaging, conveying, selling, or otherwise transferring or relocating the boundaries of Association Property (except for granting easements which are not inconsistent with or which do not interfere with the intended Association Property use, dedicating Association Property as required by a public authority; limited boundary-line adjustments made in accordance with the provisions of this Declaration, or transferring Association Property pursuant to a merger or consolidation with a non-profit entity formed for purpose similar to the Association;

(iii) Making capital expenditures (other than for repair or replacement of existing Improvements) during any period of 12 consecutive months costing more than 20 percent of the annual operating Budget;

(iv) Expansion or contraction of the Community or the addition, annexation or deannexation of real property to or from the Community which increases the overall land area of the Community or the number of Units by more than 10%; or

(v) Any decision by the Association to establish self-management if professional management had been required previously by the Governing Documents or by a Mortgagee majority or a majority vote of the Owners.

13.2.3. Amendment of Right to Repair Law Provisions. Neither this Section 13.2.3 nor Sections 1.1.51, 1.1.74, 1.1.75, 2.2.4, 3.27, 4.2.7, 4.5, 12.1.7, 12.4, 13.2.6, 13.2.7 or 15.7 may be amended without the prior written approval of Declarant until the expiration of all applicable statutes of limitation or repose for the filing of a complaint or suit or other legal remedies against Declarant or its affiliates under the Right to Repair Law (including tolling periods).

13.2.4. Termination Approval. Termination of this Declaration requires approval of (a) a Mortgagee Majority pursuant to Section 13.2.1, (b) the Owners as provided in Section 13.2.1, and (c) Declarant (until the expiration of all applicable statutes of limitation or repose for the filing of a complaint or suit or other legal remedies against Declarant or its affiliates under the Right to Repair Law). Any such termination requires the prior written approval of the County Assistant TMLA Director.

13.2.5. Certificate. A copy of each amendment must be certified by at least two (2) Association officers. The amendment becomes effective when a Certificate of Amendment is Recorded. The certificate, signed and sworn to by two (2) Association officers that the requisite number of Owners and Mortgagees have approved the amendment, when Recorded, is conclusive evidence of that fact. The Association shall keep in its files for at least four (4) years the record of all such approvals. The certificate reflecting any termination or amendment which requires the written consent of any of the First Mortgagees must include a certification that the requisite approval of such First Mortgagees was obtained or deemed given in accordance with Section 11.2.3.

13.2.6. Amendment or Termination by Declarant.

(a) **Before First Closing.** Notwithstanding any other provisions in this Article, (i) Declarant may unilaterally amend or terminate this Declaration for any purpose, until the first Close of Escrow in the Community, and (ii) Declarant may unilaterally amend or terminate a Declaration of Annexation or Supplemental Declaration for any purpose, until the first Close of Escrow in the real property affected by the Declaration of Annexation or Supplemental Declaration to be amended or terminated. Amendment or termination shall not be effective until Declarant has Recorded in the Official Records an instrument signed and acknowledged by Declarant.

(b) **Minor Corrections.** Notwithstanding any other provisions of this Article, Declarant (as long as Declarant owns any portion of the Community or the Annexable Area) may unilaterally amend this Declaration, a Declaration of Annexation or a Supplemental Declaration by Recording a written instrument signed by Declarant to: (1) conform this Declaration, the Declaration of Annexation or the Supplemental Declaration to the rules, regulations or requirements of FHFA, VA, FHA, DRE, Fannie Mae, Ginnie Mae, Freddie Mac or the County, (2) amend, replace or substitute any exhibit to correct typographical or engineering errors, (3) include any exhibit that was inadvertently omitted at the time of Recording, (4) comply with any County, State or Federal laws or regulations, (5) correct typographical errors, (6) supplement this Declaration with provisions which pertain to rights and obligations of Declarant, the Association or Owners arising under the Right to Repair Law, (7) re-Phase any portion of the Community, and (8) change any exhibit or portion of an exhibit to conform to as-built conditions.

Nothing in this Section 13.2.6 may be amended or terminated without the prior written approval of Declarant.

13.2.7. Minor Corrections by the Board. The Board may amend this Declaration, or a Declaration of Annexation or Supplemental Declaration for the reasons stated in clauses (2), (3), (4), (5) or (8) of Section 13.2.6(b) by Recording a written instrument signed by two officers of the Association certifying that the Board approved the amendment for the purposes described therein. However, until the end of all applicable statutes of limitation or repose for the filing of a complaint or suit or other legal remedies against Declarant or its affiliates under the Right to Repair Law (including tolling periods), the Board must obtain the prior written approval of Declarant to any amendment approved by the Board, or any other amendment by the Board or Association that affects the rights of Declarant under the Right to Repair Law, this Declaration or any Supplemental Declaration or Declaration of Annexation, or for any amendment by the Board concerning matters discussed in Articles 3 or 15.

ARTICLE 14 GENERAL PROVISIONS

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

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

14.3. NOTICES. Except as otherwise provided in this Declaration, notice to be given to an Owner must be in writing and may be delivered personally to the Owner. Personal delivery

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

14.4. **CONSTRUCTIVE NOTICE AND ACCEPTANCE.** Every Person who owns, occupies or acquires any right, title, estate or interest in or to any Condominium or other portion of the Community consents and agrees to every limit, restriction, easement, reservation, condition and covenant contained in this Declaration, whether or not any reference to these restrictions is in the instrument by which such Person acquired an interest in the Community. As soon as practicable before sale or transfer of title to a Condominium or other separate interest in the Community or execution of a real property sales contract therefor, the Owner of the Condominium or other separate interest shall provide to the purchaser copies of the Governing Documents listed in California Civil Code Section 4525.

ARTICLE 15 DECLARANT'S RIGHTS AND RESERVATIONS

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

15.1. **CONSTRUCTION RIGHTS.** Until Declarant no longer owns any portion of the Community or the Annexable Area, Declarant has the right, without obtaining the approval of the Association, to (a) subdivide or re-subdivide the portions of the Community owned by Declarant, (b) complete or modify Improvements in the Association Property, or in any portion of the Community or Annexable Area that is owned or leased solely or partially by Declarant, (c) alter Improvements and Declarant's construction plans and designs, (d) modify Declarant's development plan for the Community and the Annexable Area, including designating and redesignating Phases, reshaping the Condominiums and Association Property, and constructing dwellings of larger or smaller sizes, values, and of different types, (e) modify, extend, postpone or terminate the annexation of any or all of the Annexable Area, or the completion of the Community, for any purpose, including changed economic conditions, changes in Declarant's business plans or other factors determined by Declarant in its sole discretion, and (f) construct additional or different Improvements, all as Declarant considers advisable in the course of development of the Community. Declarant may temporarily erect barriers, close off and restrict access to portions of the Association Property as reasonably necessary to allow Declarant to exercise the rights reserved in this Section so long as an Owner's access to that Owner's Condominium is not eliminated. For so long as FHA is insuring or VA is guaranteeing

Mortgages in the Community, such changes must be approved by either FHA or VA, as applicable.

15.2. SALES AND MARKETING RIGHTS. Declarant shall have the following rights related to sales and marketing, all of which may be exercised unilaterally by Declarant in Declarant's sole discretion. The rights reserved in this Section will terminate on the date of the last Close of Escrow for sale of a Condominium in the Community and Annexable Area.

15.2.1. Marketing and Sales Facilities. Declarant's rights under this Declaration include the right to install and maintain such structures, displays, signs, billboards, flags and sales offices in the Community, and the right to use any land, Units or mobile homes owned or leased by Declarant in the Community as model home complexes, design centers, welcome centers, home-finding centers, real estate sales offices or leasing offices, all as may be reasonably necessary to conduct the business of completing construction, marketing and disposing of the Community and the Annexable Area by sale, resale, lease or otherwise. Furthermore, nothing in the Governing Documents shall be deemed to limit, and no Owner, nor the Association shall interfere with the rights of prospective purchasers, sales agents, or Declarant to use any and all portions of the Association Property for access to the marketing and sales facilities of Declarant. The exercise of the foregoing reserved rights shall be exercised in a way not to unreasonably interfere with the use and enjoyment thereof by the Owners or their Families, tenants and invitees of an Owner's Condominium or the Association Property, and such reserved rights shall automatically terminate on the date of the last Close of Escrow for the sale of a Condominium in the Community or Annexable Area, at which time Declarant shall remove the temporary structures and/or restore any permanent structures used by Declarant to their intended residential or Association Property use and appearance.

15.2.2. Use of Recreational Facilities. Declarant reserves for its benefit, the right to use and occupy portions of the recreational facilities as necessary to the promotion and advertising of the Community and the marketing of Condominiums in the Community, including visits and special events for prospective or new purchasers. The reservation of such rights shall be effective until the last Close of Escrow for a Condominium in the Community and Annexable Territory. The right to use and occupy the recreational facilities shall be in accordance with reasonable terms of a lease, license, permit, or other written agreement entered into with the Association for such purpose; provided, however, that Declarant may not make any use or occupancy of any portion of the recreational facilities that would unreasonably interfere with the use and enjoyment thereof by the Owners of Condominiums in the Community, and their Families, tenants and invitees.

15.2.3. Use of Association Property. Declarant and its prospective purchasers of Condominiums are entitled to the nonexclusive use of the Association Property without further cost for access, ingress, egress, use or enjoyment, to (a) show the Community to prospective purchasers, (b) dispose of the Community as provided in this Declaration, and (c) develop and sell the Annexable Area. Declarant, its employees, agents and prospective purchasers are also entitled to the nonexclusive use of Private Streets, drives and walkways for ingress, egress and vehicle parking as necessary in connection with the marketing and sale of the Condominiums. Neither Declarant, nor its employees, agents nor prospective purchasers shall

make any use of the Association Property that will unreasonably interfere with the use and enjoyment thereof by the Owners.

15.3. CREATING ADDITIONAL EASEMENTS. At any time before the Close of Escrow for a Condominium, Declarant reserves the unilateral right to establish on that Condominium additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others as Declarant determines are reasonably necessary to the proper development and disposal of the Community and Annexable Area.

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

15.5. DEVELOPER EXEMPTION. Declarant is exempt from the application of Article 2 of this Declaration and from all other restrictions on the use and enjoyment of real property and all maintenance covenants that are established for Owners under this Declaration, or in a Declaration of Annexation, a Supplemental Declaration or in any other Governing Documents, except to the extent that a particular provision expressly includes Declarant among the parties covered thereby.

15.6. ASSIGNMENT OF RIGHTS. Declarant may assign any or all of its rights and exemptions under this Article 15, and any other Declarant rights, exemptions, appointment powers, veto powers or easements in the Governing Documents to any successor in interest to any portion of Declarant's interest in the Community by a Recorded written assignment.

15.7. AMENDMENT TO ARTICLE. No amendment may be made to this Article without the prior written approval of Declarant for so long as Declarant owns any portion of the Community or the Annexable Area.

15.8. POWER OF ATTORNEY. Each Owner of a Condominium in the Community, by accepting a deed to a Condominium, shall be deemed to have (a) agreed and acknowledged that the Owners own no interest in the Annexable Area, (b) agreed and acknowledged that the Annexable Area may be developed, if at all, by Declarant in its sole and absolute discretion, in accordance with Declarant's development plans, and (c) constituted and irrevocably appointed Declarant, for so long as Declarant owns all or any portion of the Annexable Area, as his attorney-in-fact, for the Owner and each of the Owner's Mortgagees, optionees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, and thereby to have conveyed a power of attorney coupled with an interest to Declarant as the Owner's attorney-in-fact to prepare, execute, acknowledge and Record any instrument for all or any portion of the Annexable Area, or any amendment to or restatement of the Condominium Plan, as Declarant deems to be reasonably necessary to correct errors, to conform to as-built conditions, or to bring the Condominium Plan into compliance with any

County, State or Federal law or regulations. However, nothing set forth herein shall be deemed or construed as an agreement by Declarant that any Owner shall be entitled to any participation in or discretion over the preparation and Recordation of an instrument for all or any portion of the Annexable Area. The acceptance or creation of any Mortgage or other encumbrance, whether or not voluntary, created in good faith, or given for value, shall be accepted or created subject to each of the power of attorney provisions in this Section.

15.9. PARTICIPATION IN ASSOCIATION. The Association shall provide Declarant with written notice of the transfer of any Condominium and all notices and other documents to which a Mortgagee is entitled pursuant to this Declaration, provided that Declarant shall not be required to make written request for such notices and other documents. Commencing on the date on which Declarant no longer has a representative on the Board, the Association shall provide Declarant with written notice of all meetings of the Board that any Owner is entitled to attend (each, an *"Open Meeting"*) as if Declarant were an Owner, and Declarant shall be entitled to have a representative (*"Declarant's Representative"*) present at all Open Meetings. However, the Board has the power to withhold information from the Declarant's Representative and to exclude the Declarant's Representative from any Open Meeting or portion thereof if, in the good faith judgment of the Board, access to such information or attendance at the Open Meeting would adversely affect the attorney-client privilege between the Association and its counsel or if, in the good faith judgment of the Board, access to such information or attendance at an Open Meeting would not be in the best interest of the Association or the Owners. The Declarant's Representative shall not be entitled to attend executive sessions of the Board. The Declarant's Representative will attend any Open Meeting it is permitted to attend in an observer capacity only, and it shall not have any right to vote on matters coming before the Board or Owners. Declarant's Representative shall be entitled to receive copies of the minutes of all Open Meetings. The Declarant's rights to receive written notice of meetings and to have a Declarant's Representative present at such meeting shall continue until the later of the date that is ten (10) years after the first Close of Escrow in the Community, or the expiration date of all applicable statutes of limitations or repose for the filing of a complaint or suit or other legal remedies against Declarant under the Right to Repair Law (including any tolling periods).

15.10. DECLARANT APPROVAL OF ACTIONS.

15.10.1. General Rights. Until Declarant no longer owns a portion of the Community or the Annexable Area, Declarant's prior written approval is required for any amendment to the Governing Documents which would impair or diminish Declarant's right to complete the Community or the Annexable Area or sell or lease Condominiums therein.

15.10.2. Limit on Actions. Until the end of all applicable statutes of limitations or repose for the filing of a complaint or suit or other legal remedies against Declarant under the Right to Repair Law (including any tolling periods), the following actions, before being undertaken by the Association, must first be approved in writing by Declarant:

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

(b) The annexation to the Community of real property other than the Annexable Area pursuant to Section 16.2;

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

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

(e) Any modification or termination of any provision of the Governing Documents benefiting Declarant.

15.11. **MARKETING NAME.** The Community shall be marketed under the general name "Sausalito." Declarant may change the marketing name of the Community or designate a different marketing name for any Phase at any time in Declarant's sole discretion. Declarant shall notify DRE of any change in or addition to the marketing name or names of the Community or any Phase.

ARTICLE 16 ANNEXATION OF ADDITIONAL PROPERTY

Additional real property may be annexed to the Community and become subject to this Declaration by any of the following methods:

16.1. **ADDITIONS BY DECLARANT.** Declarant may add the Annexable Area to the Community and bring such added area under the general plan of this Declaration without the approval of the Association, the Board, or Owners, as long as Declarant owns any portion of the Annexable Area. No amendment may be made to this Section 16.1 without the prior written approval of Declarant. Until the conversion of the Class B membership to Class A, no amendment may be made to this Section 16.1 without the prior written approval of Declarant.

16.2. **OTHER ADDITIONS.** Additional real property may be annexed to the Community and brought under the general plan of this Declaration upon the approval by vote or written consent of Members entitled to exercise no less than two-thirds (2/3) of the Association's voting power.

16.3. **ADDED AREA RIGHTS AND OBLIGATIONS.** When a Declaration of Annexation containing the provisions required by Section 16.4 is Recorded, all provisions in this Declaration will apply to the real property described in such Declaration of Annexation (the "**Added Area**") in the same manner as if the real property were originally covered by this Declaration. Thereafter, the rights, powers and responsibilities of the Owners, lessees and occupants of Condominiums in the Added Area, as well as in the property originally subject to this Declaration, will be the same as if the Added Area were originally covered by this Declaration. After the first day of the month following the first Close of Escrow in the Added Area, the Owners of Condominiums in the Added Area shall share in the payment of Assessments to the Association to meet Common Expenses of the Community. Voting rights attributable to the Condominiums in the Added Area may not be exercised until Annual Assessments have commenced on such Condominiums.

16.4. DECLARATION OF ANNEXATION. The additions authorized under Sections 16.1 and 16.2 must be made by Recording a Declaration of Annexation against the real property to be added to the coverage of this Declaration. The Declaration of Annexation must (a) reference by instrument number this Declaration and the date of its Recordation, (b) describe with specificity the Added Area, (c) state that this Declaration shall apply to the Added Area and (d) describe the land use designations in the Added Area. The Declaration of Annexation for any addition under Section 16.1 must be signed by Declarant. The Declaration of Annexation for any addition under Section 16.2 must be signed by at least two (2) officers of the Association to certify that the Owner approval required under Section 16.2 was obtained. On Recordation of the Declaration of Annexation, the Added Area will be annexed to and constitute a part of the Community and it will become subject to this Declaration. Subject to Section 16.3, the Owners of Condominiums in the Added Area will automatically acquire Membership in the Association. No Declaration of Annexation or Supplemental Declaration may revoke the covenants, conditions, restrictions, reservation of easements, or equitable servitudes in this Declaration as the same pertain to the real property originally covered by this Declaration. Any such annexation requires the prior written approval of the County Assistant TMLA Director.

16.5. DE-ANNEXATION AND AMENDMENT. In addition to the rights to amend or terminate a Declaration of Annexation granted elsewhere in this Declaration or in a Declaration of Annexation, Declarant may also amend a Declaration of Annexation for purposes other than those described in Section 13.2.6 or delete all or a portion of a Phase from coverage of this Declaration and the Association's jurisdiction so long as Declarant is the owner of all of such Phase and provided that (a) an amending instrument or a Notice of Deletion of Territory, as applicable, is Recorded in the same manner as the applicable Declaration of Annexation was Recorded, (b) Declarant has not exercised any Association vote concerning any portion of such Phase, (c) Assessments have not yet commenced concerning any portion of such Phase, (d) Close of Escrow has not occurred for the sale of any Condominium in such Phase, and (e) the Association has not made any expenditures or incurred any obligations concerning any portion of such Phase. No amendment may be made to this Section 16.5 without the prior written approval of Declarant.

ARTICLE 17 COUNTY-REQUIRED PROVISIONS

17.1. COUNTY-REQUIRED PROVISIONS. Notwithstanding any provisions in this Declaration to the contrary, the following provisions shall apply:

17.1.1. The property owners' association established herein shall manage and continuously maintain the 'common area', more particularly described on Exhibit 'H', attached hereto, and shall not sell or transfer the 'common area' or any part thereof, absent the prior written consent of the County Assistant TMLA Director.

17.1.2. The property owners' association shall have the right to assess the owners of each individual lot or unit for the reasonable cost of maintaining such area, and shall have the right to lien the property of any such owner who defaults in the payment of a maintenance assessment. An assessment lien, once created, shall be prior to all other liens recorded subsequent to the notice of assessment or other document creating the assessment lien.

17.1.3. The Community Association shall have the right to assess the Owners of each individual Lot for the reasonable cost of maintaining such Community Common Area, and shall have the right to lien the property of any such Owner who defaults in the payment of a maintenance assessment. An assessment lien, once created, shall be prior to all other liens recorded subsequent to the notice of assessment or other document creating the assessment lien.

17.1.4. This Declaration shall not be terminated, 'substantially' amended, or property deannexed therefrom absent the prior written consent of the County Assistant TMLA Director. A proposed amendment shall be considered 'substantial' if it affects the extent, usage, or maintenance of the 'common area' established pursuant to the Declaration.

17.1.5. In the event of any conflict between this Declaration and the Articles of Incorporation, the Bylaws, or the property owners' association Rules and Regulations, if any, this Declaration shall control.

[SIGNATURES ON NEXT PAGE]

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

This Declaration is dated for identification purposes September 12, 2018.

WOODSIDE 05S LP,
a California limited partnership

By: WDS GP, Inc.,
a California corporation
Its General Partner

By: 

Print Name: CHRISTOPHER STANICEK

Title: ASSISTANT SECRETARY

By: _____

Print Name: _____

Title: _____

Declarant

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF Riverside

On Sept 12, 2018, before me, Rochelle M. Sromalla, Notary Public
(here insert name and title of the officer)

personally appeared Christopher Stanicek

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

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

WITNESS my hand and official seal.

Rochelle M. Sromalla
Signature

(Seal)



EXHIBIT A

LEGAL DESCRIPTION OF ANNEXABLE AREA

All that certain real property located in the unincorporated area of Riverside County, State of California more particularly described as follows:

All of Lot 1 of Tract No. 37169, as shown on a subdivision map Filed in Book _____, at Pages _____ to _____, inclusive, of Maps, in the Office of the Riverside County Recorder; excepting Phase 1 therefrom.

EXHIBIT B

ARTICLES OF INCORPORATION OF THE ASSOCIATION

4188490

ARTICLES OF INCORPORATION
OF
SAUSALITO COMMUNITY ASSOCIATION

FILED
Secretary of State
State of California

AUG 29 2018

2ca

ONE: The name of this corporation is Sausalito Community Association (the "Corporation").

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

THREE: The Corporation's initial agent for service of process is Michael Jagels, whose business address is 11870 Pierce Street, Suite 250, Riverside, CA 92505.

FOUR: The Corporation's street and mailing address is 11870 Pierce Street, Suite 250, Riverside, CA 92505.

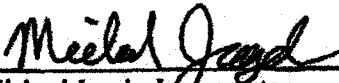
FIVE: The Corporation is organized and operated exclusively as a homeowner's association within the meaning of Section 23701t of the California Revenue and Taxation Code and Section 528 of the Internal Revenue Code, and it shall have and exercise any and all powers, rights and privileges which a corporation organized under the California Nonprofit Mutual Benefit Corporation Law may now or hereafter have or exercise, provided that the Corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purpose of the Corporation, which is to operate a homeowners association and to manage a common interest development under the Davis-Stirling Common Interest Development Act. The Corporation does not have a corporate office. The common interest development is near the intersection of Grant Street and Magnolia Avenue, Home Gardens, California 92879-0000.

SIX: The classes of Membership and the voting and other rights and privileges of Members are set forth in the Bylaws. So long as two classes of Membership make up the voting power of the Corporation, the amendment of these Articles of Incorporation shall require the assent (by vote or written consent) of (i) a bare majority of the Board of Directors of the Corporation, and (ii) Members representing a bare majority of the voting power of each class of Members. After conversion of the Class B Membership to Class A Membership, the amendment of these Articles of Incorporation shall require the assent (by vote or written consent) of (i) a bare majority of the Board of Directors of the Corporation, (ii) Members representing a bare majority of the total voting power of the Members, and (iii) Members representing a bare majority of the voting power of the Members other than the subdivider of the Community. Notwithstanding the foregoing, the percentage of voting power required to amend a specific clause of these Articles shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

4188490

SEVEN: The Corporation has no managing agent.

The undersigned, who is the incorporator of the Corporation, has executed these Articles of Incorporation on August 29, 2018.



Michael Jagels, Incorporator



I hereby certify that the foregoing
transcript of 2 page(s)
is a full, true and correct copy of the
original record in the custody of the
California Secretary of State's office.

AUG 30 2018

Handwritten initials, possibly 'AP', in black ink.

Date: _____

Handwritten signature of Alex Padilla in black ink.

ALEX PADILLA, Secretary of State

EXHIBIT C

BYLAWS OF THE ASSOCIATION

**BYLAWS
OF
SAUSALITO COMMUNITY ASSOCIATION**

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OF
SAUSALITO COMMUNITY ASSOCIATION

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BYLAWS
OF
SAUSALITO COMMUNITY ASSOCIATION

ARTICLE I
PLAN OF OWNERSHIP

1.1 **DEFINITIONS AND INTERPRETATION.** Unless otherwise provided in these Bylaws, the capitalized terms used in these Bylaws have the meanings they are given in the Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Sausalito ("**Declaration**"), which was Recorded in the Official Records of the County against the Community. These Bylaws shall be interpreted in accordance with Section 1.2 of the Declaration. Capitalized terms not defined herein shall have the meaning provided in the Declaration.

1.2 **NAME AND PRINCIPAL OFFICE.** The name of the Association is Sausalito Community Association. The principal office of the Association, if any, shall be located in the County or such other location as the Board may designate.

1.3 **APPLICATION.** These Bylaws apply to the residential condominium project known as Sausalito ("**Community**"), which is located in the County. All Persons who use the facilities of the Community in any manner are subject to the terms and provisions of these Bylaws, the Declaration, and the other Governing Documents of the Community. Use of any Condominium in the Community signifies acceptance and ratification of these Bylaws.

ARTICLE II
BOARD OF DIRECTORS

2.1 **NUMBER OF DIRECTORS.**

2.1.1 **Interim Directors.** Until the first annual meeting of the Owners, the Association's property, business and affairs shall be governed and managed by a Board of Directors composed of three (3) persons appointed by Declarant to serve as interim Directors until Directors are elected at the first annual meeting of the Owners.

2.1.2 **Elected Directors.** The Association's property, business and affairs shall be governed and managed by a Board of Directors composed of no fewer than three (3) nor more than five (5) persons elected at the first annual meeting. Beginning with the first annual meeting of the Owners, the initial authorized number of Directors will be fixed at three (3). The authorized number of Directors may be adjusted within the range stated above with the approval of the Board from time to time without having to amend these Bylaws. The size of the Board may be increased beyond five (5) Directors by duly adopted amendment to these Bylaws.

2.2 **QUALIFICATIONS FOR HOLDING OFFICE.** Each Director, except for those initially appointed by Declarant to serve as interim Directors until the first annual meeting, must be: (a) a resident Owner who meets the candidacy and incumbency requirements in

Sections 2.2.1 and 2.2.2 below; (b) as long as Declarant owns any portion of the Community, an employee or agent of Declarant. Directors elected by Declarant under clause (b) above need not be an Owner.

2.2.1 Candidacy Requirements for Owners. Owners who meet the following criteria are qualified to be nominated and elected to the Board of Directors:

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

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

(c) The Owner must not be related by blood or marriage to or reside in the same household with any other Board member.

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

(a) Not be absent from more than three (3) consecutive regularly scheduled meetings of the Board;

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

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

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

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

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

(g) Be at all times an Owner in good standing;

(h) Refuse any type of gain, such as money, services, products, gifts or gratuities of a significant value, as determined by a majority vote of the Directors who meet all of the required qualifications to serve as such, which gain is offered in relation to the

Owner's service as a Director. In addition, the Owner must disclose such offers at an open meeting of the Board. Compensation for services duly approved by the Board and unrelated to duties as a Director or Officer of the Association, and reimbursement of expenses associated with services to the Association, do not constitute prohibited gain within the meaning of this subsection; and

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

2.3 ELECTION.

2.3.1 **General Procedure.** On the date of the first annual meeting of the Owners, the offices of the three interim Directors shall be deemed to be vacant, and the Members of the Association (including Declarant) shall elect new Directors to fill all Board seats. At each annual meeting thereafter (as described in Section 4.2), new Directors shall be elected to fill vacancies on the Board. If an annual meeting is not held, or all vacancies on the Board are not filled at the annual meeting, vacancies may be filled in accordance with the procedure for filling vacancies set forth in Section 2.5. The Board of Directors or a nominating committee established by the Board of Directors may propose the nomination of candidates. Any Owner may nominate any other Owner or himself or herself by submitting written notice of the nomination to the Board or its nominating committee.

2.3.2 **Voting.** Voting shall be by secret written ballot in accordance with the procedure described in California Civil Code Section 5100, *et seq.* An Owner may cumulate his votes for any candidate for the Board in any election in which more than two (2) Directors are to be elected if (a) the candidate's name has been placed in nomination before the voting takes place, and (b) the Owner has given notice at the meeting before the voting of such Owner's intent to cumulate votes. If an Owner cumulates his votes, such Owner may cast a number of votes equal to the Owner's share of the voting power multiplied by the number of Directors to be elected. If any one Owner has given this notice, all Owners may cumulate their votes for candidates in nomination.

2.3.3 **Special Election Requirement.** So long as either (a) Declarant is entitled to exercise its Class B Vote, or (b) Declarant is entitled to exercise a majority of the Association's voting power, at least one (1) of the members of the Board must be elected solely by the votes of Owners other than Declarant.

2.4 **TERM OF OFFICE.** Each Director shall hold office until the earlier to occur of (a) the end of the Director's term of office after a successor has been elected, or (b) his death, resignation, removal or judicial adjudication of mental incompetence. In addition to the foregoing, the term of any agents or employees of Declarant, who are serving as Directors shall end when Declarant no longer owns any portion of the Community or Annexable Area. At the first annual meeting, and at any future election in which all Board seats are to be filled, the term of office of the two (2) Directors receiving the highest number of votes shall be three (3) years and the term of office of the Director receiving the next highest number of votes shall be two (2) years.

At any future election in which all Board seats are to be filled, the term of office of each Director elected to fill a vacancy created by expiration of a Director's term of office shall be two (2) years. The term of office of each Director elected or appointed to the Board for any other reason shall be the balance of the unserved term. Any person serving as a Director may be reelected. There is no limit on the number of terms which a Director may serve.

2.5 VACANCIES.

2.5.1 **Resignation.** Any Director may resign from the Board at any time by giving written notice of resignation to the Board.

2.5.2 **Deemed Vacancies.** A vacancy on the Board is deemed to exist in case of death, resignation, removal or judicial adjudication of mental incompetence of any Director or if the Owners fail to elect the full number of authorized Directors at any meeting at which a Directors election is to take place.

2.5.3 **Declared Vacancies.** The Board by majority vote of the Directors who meet all of the requirements for incumbent directors in Section 2.2.2 above, and any Directors who are agents or employees of Declarant, may declare vacant one or more Director seats for cause pursuant to Section 2.6.3 below.

2.5.4 **Employees and Agents of Declarant.** Notwithstanding anything in these Bylaws to the contrary, the office of any Director who is an employee or other agent of the Declarant shall be deemed to be vacant on the earliest to occur of the date on which the Director resigns from the Board, ceases to be an employee or agent of Declarant, or the date on which the Board receives notice from Declarant that the Director has been replaced by Declarant under Section 2.5.5, or has ceased to be an employee or agent of Declarant. Furthermore, on the date on which Declarant no longer owns any portion of the Community or Annexable Area, the offices of any Directors who are non-Owner agents of Declarant serving under Section 2.2(b) shall be deemed vacant, and the vacancies filled in accordance with Section 2.5.5 by the Board or by the Owners.

2.5.5 **Replacement.** Vacancies in elected seats on the Board caused by death, resignation, or any other reason besides the removal of a Director by the Board or by the Owners may be filled by either (a) a vote of a majority of the remaining Directors, even though they may constitute less than a quorum, or (b) by vote of the Owners. Any vacancy caused by the removal of a Director must be filled by a vote of the Owners. Provided, however, that notwithstanding the foregoing or anything else to the contrary in these Bylaws, vacancies arising for any reason in the seats of any Directors who are serving as agents of Declarant may be replaced solely by Declarant with a replacement Director to serve out the unserved term. This right may be executed until the earlier of the expiration of the term or the date on which Declarant no longer owns any portion of the Community or Annexable Area.

2.6 REMOVAL OF DIRECTORS.

2.6.1 **Generally.** At any meeting of the Owners, any individual Director or the entire Board may be removed before the expiration of their terms of office with or without cause as follows: (a) as long as fewer than fifty (50) Condominiums are included in the

Community, by the vote of Owners representing a majority of the Association's total voting power (including votes attributable to Declarant), and (b) once fifty (50) or more Condominiums are included in the Community, by the vote of Owners representing a majority of a quorum of Owners.

However, if the entire Board is not removed as a group pursuant to a single vote, no individual Director may be removed if the number of votes cast against removal would be sufficient to elect such Director if voted cumulatively at an election at which the same total number of votes were cast and the entire number of Directors authorized at the time of the Director's most recent election were then being elected. Any Director whose removal has been proposed by the Owners must be given an opportunity to be heard at the meeting. If any Directors are removed, new Directors may be elected at the same meeting.

2.6.2 Restrictions on Removal Powers. Notwithstanding anything in these Bylaws to the contrary concerning the removal of Directors, any Director elected to office solely by the votes of Owners other than Declarant pursuant to Section 2.3.3 may be removed only by the vote of at least a simple majority of the Association's voting power represented by Owners other than Declarant or by the Board pursuant to Section 2.6.3. Provided, however, that for so long as Declarant owns any portion of the Community or Annexable Area, any Directors who are agents or employees of Declarant may only be removed by Declarant.

2.6.3 Removal by Board for Failure to Qualify. Except as provided in Section 0, the Board by a majority vote of the Directors who meet the applicable qualifications to serve as a Director in Section 2.2 above, may declare vacant the office of any Director who is not an agent or employee of Declarant, if the Director fails or ceases to meet any one or more of the qualifications then applicable to the Director under Section 2.2 above. So long as Declarant owns any portion of the Community or Annexable Area, any Directors who are agents or employees of Declarant may only be removed by Declarant.

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

2.8 MEETINGS OF THE BOARD. Except in certain emergency situations described below, the Directors may not take action on any item of business outside of a meeting.

2.8.1 Conduct of Meeting; Attendees. Any meeting of the Board may be conducted by teleconference at which a majority of the Directors are connected by electronic means, through audio or video or both, with at least one physical location so that the Members may attend and at least one Director, or other person designated by the Board, is present at that location, and so long as the requirements for attendance and participation of Directors and Members at the meeting under California Civil Code Section 4090 and the California

Corporations Code are met. In these cases, all Directors who participate in a meeting by any of these methods will be deemed to be present in person at the meeting.

2.8.2 **Regular Meetings.**

(a) **Time and Place.** Regular meetings may be held at such time and place fixed from time to time by resolution adopted by a majority of a quorum of the Directors. The meeting place shall ordinarily be within the Community unless in the judgment of the Board a larger meeting room is required than exists within the Community, in which case, the meeting room selected shall be as close as possible to the Community, but the Board may elect to hold a meeting at the Manager's corporate offices if such location is determined to be reasonable in the Board's business judgment.

(b) **Frequency.** Regular meetings shall be conducted as frequently as the business of the Board justifies, but in no event may regular meetings be held any less frequently than quarterly.

(c) **Notice.** Each Director and the Members shall be given notice of the time and place of regular meetings of the Board not less than four (4) days before the date of the meeting, except in the case of an emergency meeting or a meeting that will be solely held in executive session (as described below).

2.8.3 **Special Meetings.** Special meetings may be called by the President or by any two (2) Directors other than the President. Notice of the time and place of special meetings of the Board shall be posted and communicated in the manner prescribed for regular meetings, but it shall be sent to all Directors not less than seventy-two (72) hours prior to the scheduled time of the special meeting. Such notice is not required to be sent to any Director who has signed a waiver of notice or a written consent to holding of the meeting. The notice shall specify the time and place of the meeting and the nature of any special business to be considered.

2.8.4 **Executive Sessions.** Any Member of the Association, and for a period of ten (10) years after the Close of Escrow for the sale of the last Condominium in the Community, Declarant, may attend meetings of the Board, except when the Board adjourns to executive session to consider litigation, matters relating to the formation of contracts with third parties, Member discipline, personnel matters, or to meet with a Member, upon the Member's request, regarding the Member's payment of Assessments, as specified in California Civil Code Section 5665. The Board shall meet in executive session, if requested by a Member who may be subject to a fine, penalty, or other form of discipline, and the Member shall be entitled to attend the executive session. Except as expressly permitted in this Section, only Directors, the Association's counsel and the Association's consultants may attend executive sessions. Except for an emergency meeting, Members shall be given notice of the time and place of a meeting that will be held solely in executive session at least two (2) days prior to the meeting, pursuant to the means of giving notice described below. Any matter discussed in executive session shall be generally noted in the minutes of the immediately following meeting that is open to the entire membership.

2.8.5 Emergency Meetings of the Board. If there are circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the Board and which of necessity make it impractical to provide notice to the Members, then an emergency meeting of the Board may be called by the President or any two other members of the Board without providing notice to the Members. Electronic transmissions may be used as a method of conducting an emergency meeting if all Directors consent in writing to that action and the written consents are filed with the minutes of the meeting. Written consent to conduct an emergency meeting may be transmitted electronically. Emergency meetings must comply with all applicable provisions of California Civil Code Section 4900, *et seq.*

2.8.6 Organizational Meeting for New Board. The first regular "organizational" meeting of a newly elected Board must be held within ten (10) days of election of the Board, at such place as is fixed and announced by the Directors at the meeting at which such Directors were elected, to organize, elect officers and transact other business. No prior notice of such meeting is required for the newly elected Directors so long as (a) a majority of the whole Board is present at the meeting of the Owners when the time and place for the organizational meeting are announced, and (b) the organizational meeting is held on the same day and at the same place as the meeting of the Owners at which the newly constituted Board was elected.

2.8.7 Other Meetings. Any congregation of a majority of the Directors at the same time and place, and any teleconference at which a majority of the Directors are connected at different locations by electronic means, through audio or video or both, to hear, discuss or deliberate on any item of business that is within the authority of the Board, shall constitute a meeting of the Board. All Owners and, for a period of ten (10) years after the Close of Escrow for the sale of the last Condominium in the Community, Declarant, shall have the right to attend any regular, special or other meeting of the Board, except an executive session as described above. Owners who are not Directors may not participate in any deliberation or discussion at such meetings unless authorized by a vote of a majority of a quorum of the Board. However, at each Board meeting, except for executive sessions, the Board must set aside time for Owners to speak, subject to reasonable limits imposed by the Board.

2.8.8 Form of Notice to Owners. Notice of a meeting of the Board shall be given by posting in a prominent place or places in the Association Property and by mail to any Member who requested notification of meetings by mail at the address requested by the Member. Notice may also be given by mail, by delivery to each Condominium, by newsletter or similar means of communication, or, with the consent of the Member, by electronic means. Notice of a meeting need not be given to any Director who has signed a waiver of notice or written consent to holding of the meeting.

2.8.9 Waiver of Notice. Before or after any meeting of the Board, any Director may, in writing, waive personal notice of such meeting. Attendance by a Director at any Board meeting waives the requirement of personal notice. If all Directors are present at a Board meeting, no notice to Directors is required and any business may be transacted at such meeting. The transactions of any Board meeting however called and noticed or wherever held, are valid as though had at a meeting duly held after regular call and notice, if (a) a quorum is present, (b) notice to the Owners of such meeting was posted as provided in Sections 2.8.2 and

2.8.3, and (c) either before or after the meeting, each of the Directors not present signs a written waiver of notice, a consent to holding such meeting, or an approval of the minutes thereof. The Secretary shall file all such waivers, consents and approvals with the Association's records or make them a part of the minutes of the meeting.

2.8.10 Quorum and Adjournment. Except as otherwise expressly provided in these Bylaws, at all meetings of the Board, a majority of the Directors constitutes a quorum for the transaction of business, and the acts of a majority of the Directors present at a meeting at which a quorum is present are the acts of the Board. At any meeting of the Board when less than a quorum is present, the majority of those present may adjourn the meeting to another time. At any such reconvened meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice if a quorum is present.

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

2.10 GENERAL POWERS AND DUTIES. Subject to the limits described in Section 2.11, the Declaration and under applicable law governing homeowners associations, the Association has the general powers of a nonprofit mutual benefit corporation organized under California law, to the extent necessary to administer its affairs. All the Association's powers shall be exercised by the Board except those powers specifically reserved to the Owners. The powers and duties of the Association include the following:

2.10.1 Enforcement. The power and duty to enforce applicable provisions of the Governing Documents, and the power to initiate and execute disciplinary proceedings against Members for violations of the Governing Documents in accordance with procedures set forth in the Governing Documents. Such powers include the power to impose sanctions and fines against Owners for violations of the Governing Documents.

2.10.2 Payment of Taxes. Payment of taxes and assessments which are, or could become, a lien on any property owned by the Association or portion thereof.

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

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

2.10.5 Obtaining Goods and Services. Subject to the limitations on contracts set forth in Section 2.11.3 below, the power to contract for goods and services for the

Association Property or for the Association, including (a) contracts for maintenance, landscaping and common utilities services, (b) contracts for materials and supplies necessary for the operation and maintenance of the Association Property, (c) contracts to obtain the services of personnel necessary to operate and manage the Community, including management, legal and accounting services, and (d) contracts to pay the cost of construction, maintenance, repair, removal and replacement of Improvements on the Association Property.

2.10.6 **Delegation.** The power but not the duty to delegate its powers to committees, officers and employees of the Association as authorized under the Governing Documents.

2.10.7 **Rules and Regulations.** The power and duty to formulate rules of operation of the Association Property.

2.10.8 **Budgets and Financial Reporting.** The power and duty to prepare budgets and financial statements for the Association as prescribed in the Governing Documents.

2.10.9 **Right of Entry.** The power to enter upon any privately-owned Condominium as necessary in connection with construction, maintenance or emergency repair for the benefit of the Association Property or the Owners in common.

2.10.10 **Filling Vacancies.** The power and duty to fill vacancies on the Board except for a vacancy created by the removal of a Director.

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

2.10.12 **Bylaws.** The power and duty to adopt these Bylaws.

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

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

2.10.15 **Agreements with Declarant.** The power but not the duty to negotiate and enter into agreements with Declarant subject to applicable restrictions in the Governing Documents.

2.10.16 **Principal Office, Place of Meetings, Seal.** The power but not the duty to move the Association's principal office from one location to another in the County; to designate any place in the County for holding any meetings of Owners consistent with the

provisions of Section 4.2.4; and to adopt and use a corporate seal and to alter the form of such seal.

2.10.17 Rules for Elections; Inspector of Elections. The power and duty to adopt rules governing elections in accordance with the procedures prescribed in California Civil Code Section 5105(a), and the power and duty to select an independent inspector of election in accordance with California Civil Code Section 5110.

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

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

2.11.2 Capital Improvement Expenditures. The power to incur expenditures for capital improvements to the Association Property. Approval from a majority of the Owners (excluding Declarant), representing a quorum of more than fifty percent (50%) of non-Declarant votes, must be obtained before the Association incurs, in any Fiscal Year, aggregate expenditures for capital improvements to the Association Property in excess of five percent (5%) of the Association's budgeted gross expenses for that Fiscal Year.

2.11.3 Certain Contracts. Notwithstanding anything in these Bylaws to the contrary, the Board is prohibited from taking any of the following actions, except with the assent, by vote at a meeting of the Association or by written ballot without a meeting pursuant to California Corporations Code Section 7513, of a simple majority of the Members, other than the Declarant, constituting a quorum consisting of more than fifty percent (50%) of the voting power of the Association residing in Members other than the Declarant:

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

(i) If FHA or VA are insuring loans in the Community, a management contract, the terms of which have been approved by the Federal Housing Administration or Veterans Administration.

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

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

(iv) Entering into agreements for "bulk service" cable television services and equipment or satellite dish television services and equipment or data services and equipment (or any combination of the foregoing) of not to exceed five (5) years duration provided that the supplier is not an entity in which Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

(v) Agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services of not to exceed five (5) years duration provided that the supplier or suppliers are not entities in which the subdivider has a direct or indirect ownership interest of 10 percent (10%) or more.

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

(vii) A contract reviewed by DRE.

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

(b) Incurring aggregate expenditures for capital improvements to the Association Property in any Fiscal Year in excess of five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year.

(c) Selling during any Fiscal Year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year.

(d) Paying compensation to members of the Board or to officers of the Association for services performed in the conduct of the Association's business provided, however, that the Board may cause a Director or officer to be reimbursed for expenses incurred in carrying on the business of the Association.

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

2.12.1 Budget. A pro forma operating Budget for each Fiscal Year containing the information required under California Civil Code Section 5300(b), and including at least the following information including costs and expenses covered by all Cost Centers must be distributed not less than thirty (30) nor more than ninety (90) days before the beginning of the Fiscal Year:

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

(b) A summary of the Association's reserves based on the most recent review or study conducted pursuant to California Civil Code Section 5550, which must be printed in bold type and include all of the following:

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

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

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

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

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

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

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

The Board may distribute a summary of each of the Budgets instead of the Budgets themselves, so long as the Board complies with the provisions of California Civil Code Section 5305.

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

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

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

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

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

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

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

If the report referred to in Section 2.12.2 is not prepared by an independent accountant, it must be accompanied by the certificate of an authorized Association officer stating that the statement was prepared from the Association's books and records without independent audit or review.

2.12.3 Insurance Information. The Association shall distribute to all Owners a summary of the Association's property, general liability, earthquake, flood and fidelity insurance policies (all as applicable) not less than thirty (30) nor more than ninety (90) days before the beginning of the Association's Fiscal Year, that includes all of the following information: (a) the name of the insurer, (b) the type of insurance, (c) the policy limits of coverage, and (d) the amount of the deductibles, if any.

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

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

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

"This summary of the association's policies of insurance provides only certain information, as required by 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."

2.12.4 **Enforcement Policies.** In addition to financial statements, the Board shall annually distribute not less than thirty (30) nor more than ninety (90) days before the beginning of the Association's Fiscal Year a statement of the Association's policies and practices in enforcing its lien rights or other legal remedies against Owners for defaults in the payment of Assessments, including the recording and foreclosing of liens against Condominiums.

2.12.5 **Assessment and Foreclosure Notice.**

(a) The Association shall distribute the written notice described in subsection (b) below to each Association member during the 30-90-day period immediately preceding the beginning of the Association's Fiscal Year. The notice shall be printed in at least 12-point type. An Association member may provide written notice of a secondary address to the Association by facsimile transmission or United States mail. If a secondary address is provided, the Association shall send any correspondence and legal notices required pursuant to these Bylaws both to the primary and the secondary address.

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

"NOTICE ASSESSMENTS AND FORECLOSURE

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

ASSESSMENTS AND FORECLOSURE

Assessments become delinquent 15 days after they are due, unless the governing documents provide for a longer time. The failure to pay association assessments may result in the loss of an owner's property through foreclosure. Foreclosure may occur either as a result of a court action, known as judicial foreclosure, or without court action, often referred to as nonjudicial foreclosure. For liens recorded on and after January 1, 2006, an association may not use judicial or nonjudicial foreclosure to enforce that lien if the amount

of the delinquent assessments or dues, exclusive of any accelerated assessments, late charges, fees, attorney's fees, interest, and costs of collection, is less than one thousand eight hundred dollars (\$1,800). For delinquent assessments or dues in excess of one thousand eight hundred dollars (\$1,800) or more than 12 months delinquent, an association may use judicial or nonjudicial foreclosure subject to the conditions set forth in Article 3 (commencing with Section 5700) of Chapter 8 of Part 5 of Division 4 of the Civil Code. When using judicial or nonjudicial foreclosure, the association records a lien on the owner's property. The owner's property may be sold to satisfy the lien if the amounts secured by the lien are not paid. (Sections 5700 through 5720, inclusive, of the Civil Code)

In a judicial or nonjudicial foreclosure, the association may recover assessments, reasonable costs of collection, reasonable attorney's fees, late charges, and interest. The association may not use nonjudicial foreclosure to collect fines or penalties, except for costs to repair common area damaged by a member or a member's guests, if the governing documents provide for this. (Section 5725 of the Civil Code)

The association must comply with the requirements of Article 2 (commencing with Section 5650) of Chapter 8 of Part 5 of Division 4 of the Civil Code when collecting delinquent assessments. If the association fails to follow these requirements, it may not record a lien on the owner's property until it has satisfied those requirements. Any additional costs that result from satisfying the requirements are the responsibility of the association. (Section 5675 of the Civil Code)

At least 30 days prior to recording a lien on an owner's separate interest, the association must provide the owner of record with certain documents by certified mail, including a description of its collection and lien enforcement procedures and the method of calculating the amount. It must also provide an itemized statement of the charges owed by the owner. An owner has a right to review the association's records to verify the debt. (Section 5660 of the Civil Code)

If a lien is recorded against an owner's property in error, the person who recorded the lien is required to record a lien release within 21 days, and to provide an owner certain documents in this regard. (Section 5685 of the Civil Code)

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

PAYMENTS

When an owner makes a payment, the owner may request a receipt, and the association is required to provide it. On the receipt, the association must indicate the date of payment and the person who received it. The association must inform owners of a mailing address for overnight payments. (Section 5655 of the Civil Code)

An owner may, but is not obligated to, pay under protest 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 by so doing, specifically reserve the right to contest the disputed charge or sum in court or otherwise.

An owner may dispute an assessment debt by submitting a written request for dispute resolution to the association as set forth in Article 2 (commencing with Section 5900) of Chapter 10 of Part 5 of Division 4 of the Civil Code. In addition, an association may not initiate a foreclosure without participating in alternative dispute resolution with a neutral third party as set forth in Article 3 (commencing with Section 5925) of Chapter 10 of Part 5 of Division 4 of the Civil Code, if so requested by the owner. Binding arbitration shall not be available if the association intends to initiate a judicial foreclosure.

An owner is not liable for charges, interest, and costs of collection, if it is established that the assessment was paid properly on time. (Section 5685 of the Civil Code)

MEETINGS AND PAYMENT PLANS

An owner of a separate interest that is not a time-share interest may request the association to consider a payment plan to satisfy a delinquent assessment. The association must inform owners of the standards for payment plans, if any exists. (Section 5665 of the Civil Code)

The board must meet with an owner who makes a proper written request for a meeting to discuss a payment plan when the owner has received a notice of a delinquent assessment. These payment plans must conform with the payment plan standards of the association, if they exist. (Section 5665 of the Civil Code)"

2.12.6 **Accounts.** On at least a quarterly basis, the Board shall: (a) cause to be completed and review a current reconciliation of the Association's operating and reserve accounts, (b) review the current Fiscal Year's actual reserve revenues and expenses compared to the applicable Budget for the then current Fiscal Year, (c) review the income and expense statement for the Association's operating and reserve accounts, (d) review the most current account statements prepared by the financial institutions where the Association keeps its operating and reserve accounts, and (e) fulfill any additional duties established by California Civil Code Section 5500. The signatures of either (1) two (2) Directors, or (2) one (1) Director and one (1) Association officer (who is not also a Director) are required for the withdrawal of money from the Association's reserve accounts. As used in this Subsection, the term "reserve accounts" means Budgeted funds that the Board has designated for use to defray the future repair and replacement of, or additions to, those major components of the Association Property which the Association is obligated to maintain.

2.12.7 **Reserve Study.** The Board shall cause a study of the reserve account requirements of the Community to be conducted in accordance with California Civil Code Section 5550, *et seq.* As used in this Subsection, "reserve account requirements" means the estimated funds which the Board has determined are required to be available at a specified point in time to repair, replace or restore those major components of the Association Property which the Association is obligated to maintain.

ARTICLE III OFFICERS

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

3.2 **ELECTION OF OFFICERS.** The Board shall annually elect the Association's officers at the first meeting of the Board to occur following the annual meeting of the Members. The Board shall adopt rules relating to the election of officers according to the procedures prescribed by California Civil Code Section 4340, *et seq.* Each officer shall hold his office at the pleasure of the Board, until he resigns or is removed, is otherwise found to be disqualified to serve or a successor is elected and qualified to serve.

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

3.4 **COMPENSATION.** No officer may receive any compensation for services performed in the conduct of the Association's business unless such compensation is approved by the vote or written consent of Owners representing at least a majority of the Association's voting

power; however (a) nothing in these Bylaws precludes any officer from serving the Association in some other capacity and receiving compensation therefor, and (b) any officer may be reimbursed for actual expenses incurred in the performance of Association duties. Appointment of any officer does not create contractual rights of compensation for services performed by such officer. No officer, employee or director of Declarant or any affiliate of Declarant may receive any compensation for service as an officer of the Association.

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

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

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

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

ARTICLE IV OWNERS

4.1 OWNER VOTING RIGHTS.

4.1.1 **Classes of Membership.** The Association has two (2) classes of Membership, as described in the Declaration. The Class A and Class B Memberships are voting Memberships.

4.1.2 **Interpretation.** Any provision of the Bylaws which requires the vote or written consent of a specified percentage of the Association's voting power (i.e., actions requiring more than merely the vote or written consent of a majority of a quorum), requires the approval of such specified percentage of all of the following: (a) the Class A Membership; (b) the Class B Membership (so long as a Class B Membership exists); (c) the Association's total voting power; and (d) the voting power represented by Owners other than Declarant. Whenever a reference is made in these Bylaws or the Declaration to the Association's voting power, it is a reference to the voting power of the Class A and Class B Memberships.

4.2 OWNER MEETINGS.

4.2.1 **First Annual Meeting.** The first annual meeting of Owners, whether regular or special, shall be held no later than the date that is six (6) months after the first Close of Escrow in the Community.

4.2.2 **Regular Meetings of Owners.** Regular meetings shall be held at least annually on or about the anniversary date of the first annual meeting. Each First Mortgagee may designate a representative to attend all annual meetings.

4.2.3 **Special Meetings of Owners.** The Board shall call a special meeting of the Owners (a) as directed by resolution of a majority of a quorum of the Board, (b) by request of the President of the Association, or (c) on receipt of a written request for a special meeting signed by Owners representing at least five percent (5%) of the Association's total voting power. The Secretary shall give written notice of any special meeting not less than ten (10) nor more than ninety (90) days before the date of the meeting at which members are required or permitted to take any action. The notice must state the date, time and place of the special meeting and the general nature of the business to be transacted. The special meeting must be held not less than thirty-five (35) nor more than ninety (90) days after adoption of such resolution or receipt of such request or petition. No business may be transacted at a special meeting except as stated in the notice. Each First Mortgagee may designate a representative to attend all special meetings.

4.2.4 **Place.** Meetings of the Owners shall be held in the Community, or such other suitable place as proximate to the Community as practical and convenient to the Owners, as designated by the Board.

4.2.5 **Adjourned Meetings.** If a quorum is not present at the time and place established for a meeting, a majority of the Owners who are present, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days after the original meeting date, at which meeting the quorum requirement is the presence in person or by

proxy of Owners holding at least twenty-five percent (25%) of the Association's voting power. Such an adjourned meeting may be held without the notice required by these Bylaws if notice thereof is given by announcement at the meeting at which such adjournment is taken.

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

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

4.2.8 Consent of Absentees; Waiver of Notice. The actions taken at any meeting of Owners held without regular call and notice, are valid as though taken at a meeting duly held after regular call and notice, if (a) a quorum is present either in person or by proxy, and (b) either before or after the meeting, each of the Owners not present in person or by proxy signs (1) a written waiver of notice, (2) a consent to the holding of such meeting, or (3) an approval of the minutes thereof. The Secretary shall file all such waivers, consents or approvals with the corporate records or make them a part of the minutes of the meeting. In addition, notice of such meeting shall be deemed given to any person who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

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

4.2.10 Majority of Quorum. Unless otherwise provided in the Governing Documents, any action which may be taken by the Association may be taken by a majority of a quorum of the Association's voting power.

4.2.11 Proxies. Votes may be cast in person or by proxy. Proxies must be in writing, comply in form with the requirements of California Civil Code Section 5130, and be

filed with the Secretary in advance of each meeting. Every proxy is revocable and automatically ceases to have any further legal effect after completion of the meeting for which the proxy was filed. Any form of proxy or written ballot distributed by any Person to the Owners must afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted on, except it is not mandatory that a candidate for election to the Board be named in the proxy or written ballot. The proxy or written ballot must provide that, when the Owner specifies a choice, the vote shall be cast in accordance with that choice. The proxy must also identify the person authorized to exercise the proxy and the length of time it will be valid. No proxy is valid concerning a vote on any matter described in California Corporations Code Section 7613(g) unless the general nature of the proposal was described in the proxy.

4.2.12 Notice. The Secretary shall send to each Owner of record, and to each first Mortgagee who has filed a written request for notice with the Secretary, a notice of each annual or special meeting. The notice must be sent by first-class mail, at least ten (10) but not more than forty-five (45) days before the meeting. The notice must state the purpose for the meeting as well as the day, hour and place where it is to be held. The notice may establish time limits for speakers and nominating procedures for the meeting. The notice must specify those matters the Board intends to present for action by the Owners, but, except as otherwise provided by law, any proper matter may be presented for action at the meeting. The notice of any meeting at which Directors are to be elected must include the names of all nominees when the notice is given to the Owners. The mailing of a notice, postage prepaid, in the manner provided in this Section, shall be considered notice served, forty-eight (48) hours after the notice has been deposited in a regular depository of the United States mail. Such notice must be posted in a conspicuous place on the Association Property and is deemed served on an Owner on posting if no address for such Owner has been then furnished the Secretary.

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

4.2.14 Matters Requiring Secret Ballot. Notwithstanding any other law or provision of the Governing Documents, an election regarding Assessments, selection of Board members, amendments to the Governing Documents, or the grant of exclusive use of Association Property under California Civil Code Section 4600 shall be held by secret ballot according to the procedures set forth in California Civil Code Section 5100 and Section 2.3.2 above.

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

any meeting of Owners. The record date so fixed must be not less than ten (10) nor more than sixty (60) days before the date of the meeting. If the Board does not fix a record date for determining Owners entitled to vote, Owners on the day of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.

4.4 **ACTION WITHOUT MEETING.** Except for election of Directors, any action which may be taken at a meeting of the Owners may be taken without a meeting by written ballot of the Owners, according to the provisions of California Civil Code Section 5115. Solicitations for ballots must specify (a) the number of responses needed to meet the quorum requirements, (b) the percentage of approvals necessary to approve the action, and (c) the time by which ballots must be received to be counted. The form of written ballot must afford an opportunity to specify a choice between approval and disapproval of each matter and must provide that, where the Owner specifies a choice, the vote shall be cast in accordance therewith. Receipt within the time period specified in the solicitation of (1) ballots which equal or exceed the quorum which would be required if the action were taken at a meeting, and (2) approvals which equal or exceed the number of votes which would be required for approval if the action were taken at a meeting at which the total number of votes cast was the same as the total number of ballots cast, constitutes approval by written ballot.

ARTICLE V AMENDMENTS

These Bylaws may be amended by the vote or written consent of Owners representing at least (a) a majority of the voting power of each class of the Owners, and (b) a majority of the Association's voting power represented by Owners other than Declarant; provided that the specified percentage of each class of Owners necessary to amend a specific provision of these Bylaws may not be less than the percentage of affirmative votes prescribed for action to be taken under that provision. These Bylaws may be amended by a majority of the entire Board, (1) at any time before the Close of Escrow for the sale of the first Condominium, or (2) if the amendment is within the Board's power to adopt without Owner approval pursuant to the California Corporations Code and either (a) the proposed amendment conforms the Bylaws to California law or the requirements of DRE, FHFA, FHA, VA, Fannie Mae, Ginnie Mae or Freddie Mac, or (b) the proposed amendment corrects a typographical error in the Bylaws. Any amendment to these Bylaws which materially affects the rights of Mortgagees as described in Article 11 or Section 13.2 of the Declaration must be approved by at least the percentage of Mortgagees specified in the applicable provision of Article 11 or Section 13.2 of the Declaration. If an amendment to these Bylaws materially affects matters listed in both Article 11 and Section 13.2 of the Declaration, then the amendment must be approved pursuant to the requirements of both Article 11 and Section 13.2 of the Declaration.

ARTICLE VI MISCELLANEOUS

6.1 **VOTE TO INITIATE RIGHT TO REPAIR LAW CLAIM.** Beginning on the date of the first annual meeting of the Owners, Declarant relinquishes control over the Association's ability to decide whether to initiate a Right to Repair Law Claim. This means that Declarant and Directors who are current employees or agents of Declarant or elected by a majority of votes cast by Declarant or elected by Declarant and all other Persons whose vote or

written consent is inconsistent with the intent of the preceding sentence, are prohibited from participating and voting in any decision of the Association or Owners to initiate a Right to Repair Law Claim.

6.2 CHECKS, DRAFTS AND DOCUMENTS. All checks, drafts, orders for payment of money, notes and other evidences of indebtedness issued in the name of or payable to the Association must be signed or endorsed in the manner and by the person or persons the Board designates by resolution, subject to the requirements of Section 2.12.6 for withdrawing money from the Association's reserve accounts.

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

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

6.5 AVAILABILITY OF ASSOCIATION DOCUMENTS.

6.5.1 Records To Be Maintained. The Association shall keep at its principal office (or at such other place in or near the Community as the Board may prescribe) the Governing Documents and the Association's records, as defined in California Civil Code Section 5200, *et seq.* (collectively, the "**Association Documents**"). The Association Documents shall be made available for inspection and copying by any Owner or the Owner's duly appointed representative for a purpose reasonably related to the Owner's interest as an Owner.

6.5.2 Inspection Rights. Subject to reasonable Rules and Regulations adopted from time to time by the Board, the Association shall make Association Documents available for the time periods and within the timeframes provided in California Civil Code Sections 5210 (a) and (b) for inspection and copying by an Association member, or the member's designated representative. The Association may bill the requesting member for the direct and actual cost of copying requested documents. The Association shall inform the member of the amount of the copying costs before copying the requested documents.

6.5.3 Manner of Inspection. The Association shall make the specified Association Documents available for inspection and copying in compliance with California Civil Code Sections 5205 and 5215. The inspection and copying rights provided in these Bylaws are subject to the rights and restrictions set forth in California Civil Code Sections 5205, *et seq.*

6.5.4 Limitation on Information Disclosed. The Association may withhold or redact information from the Association's Documents for any of the reasons as set forth in California Civil Code Section 5215.

6.5.5 **Distribution of Records on Sale or Transfer of Title.** No later than ten (10) days after the Association receives written request from any Owner, the Association shall provide to that Owner a copy of each of the documents listed in California Civil Code Section 4525 that have been requested by the Owner.

6.5.6 **Distribution of Budget, Minutes.** Owners must be notified in writing when the budget required in Section 2.12.1 is distributed or at the time of any general mailing to the entire Association Membership of their right to have copies of the minutes of meetings of the Board and how and where those minutes may be obtained.

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

6.7 **CHANGES IN APPLICABLE LAW.** Provisions of various laws, including the Davis-Stirling Common Interest Development Act, various provisions of the California Corporations Code, including the General Corporation Law at Section 100, the Nonprofit Corporation Law at Section 5000, *et seq.*, and the Nonprofit Mutual Benefit Corporation Law at Section 7000, *et seq.*, or the Federal Fair Housing Act codified at Title 42 United States Code, Section 3601, *et seq.*, may in the future be amended, in which case such amendment will be deemed to supplement or override applicable provisions of these Bylaws (as applicable).

ARTICLE VII NOTICE AND HEARING PROCEDURE

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

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

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

7.2.2 **Basis for Violation.** A reference to the specific provisions of the Governing Documents which the Respondent is alleged to have violated,

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

7.2.4 **Sanctions.** A list of sanctions which may be imposed at the hearing.

The date for the hearing may be not less than fifteen (15) days after the date the notice of hearing is mailed or delivered to the Respondent. The Respondent is entitled to attend the hearing, submit a statement of defense to the Board in advance of the hearing, or present a statement of defense and supporting witnesses at the hearing. If the Respondent does not attend the hearing, the Respondent waives these rights.

7.3 CONDUCT OF HEARING. The Board shall conduct the hearing in executive session (if so requested by the Respondent), and shall afford the Respondent a reasonable opportunity to be heard. Before a sanction will be effective, proof of notice and the invitation to be heard must be placed in the minutes of the meeting. Such proof is adequate if a copy of the notice together with a statement of the date and manner of delivery is entered by the Association officer or Board member who mailed or delivered such notice. The record of the meeting must contain a written statement of the results of the hearing and the sanction imposed (if any).

7.4 IMPOSITION OF SANCTIONS. After affording the Respondent an opportunity for a hearing before the Board, the Board may impose any one or more of the following sanctions: (a) levy a Special Assessment as authorized in the Declaration; (b) suspend or condition the Respondent's right to use any recreational facilities the Association owns, operates or maintains commencing on a date in the future selected by the Board; (c) suspend the Respondent's voting privileges established under the Declaration; (d) enter into a Condominium to perform maintenance which, according to the Declaration, is the responsibility of the Respondent; or (e) record a notice of noncompliance if allowed by law. Any suspension of Membership privileges may not be for a period of more than thirty (30) days for any non-continuing infraction, but in the case of a continuing infraction (including continuing failure to pay any Assessment after it becomes delinquent) may be imposed as long as the violation continues. Written notice of any sanctions to be imposed must be delivered to the Respondent personally, by any system or technology designed to record and communicate messages, facsimile, electronic mail, or other electronic means, by first class mail or certified mail return receipt requested, or any combination of the foregoing. No action against the Respondent arising from the alleged violation may take effect before five (5) days after the hearing. The Board shall not impose any sanction that will interfere with or prevent Declarant's exercise of any rights reserved in Article 15 of the Declaration.

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

[CERTIFICATE OF SECRETARY ON NEXT PAGE]

CERTIFICATE OF SECRETARY

I, the undersigned, certify that:

1. I am the duly elected and acting Secretary of Sausalito Community Association, a California nonprofit mutual benefit corporation (the "*Association*"); and

2. The foregoing Bylaws comprising 26 pages (including this page) constitute the Bylaws of the Association duly adopted by the Association Board of Directors on September 12, 2018.

I have signed this Certificate and affixed the seal of the Association effective on September 12, 2018.

Kory Liston
Kory Liston, Secretary

(SEAL)

EXHIBIT D

**APPROXIMATE DEPICTION OF ASSOCIATION MAINTENANCE AREAS
IN PHASE 1**

NONE IN PHASE 1

EXHIBIT E

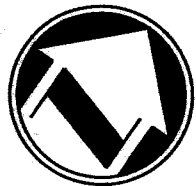
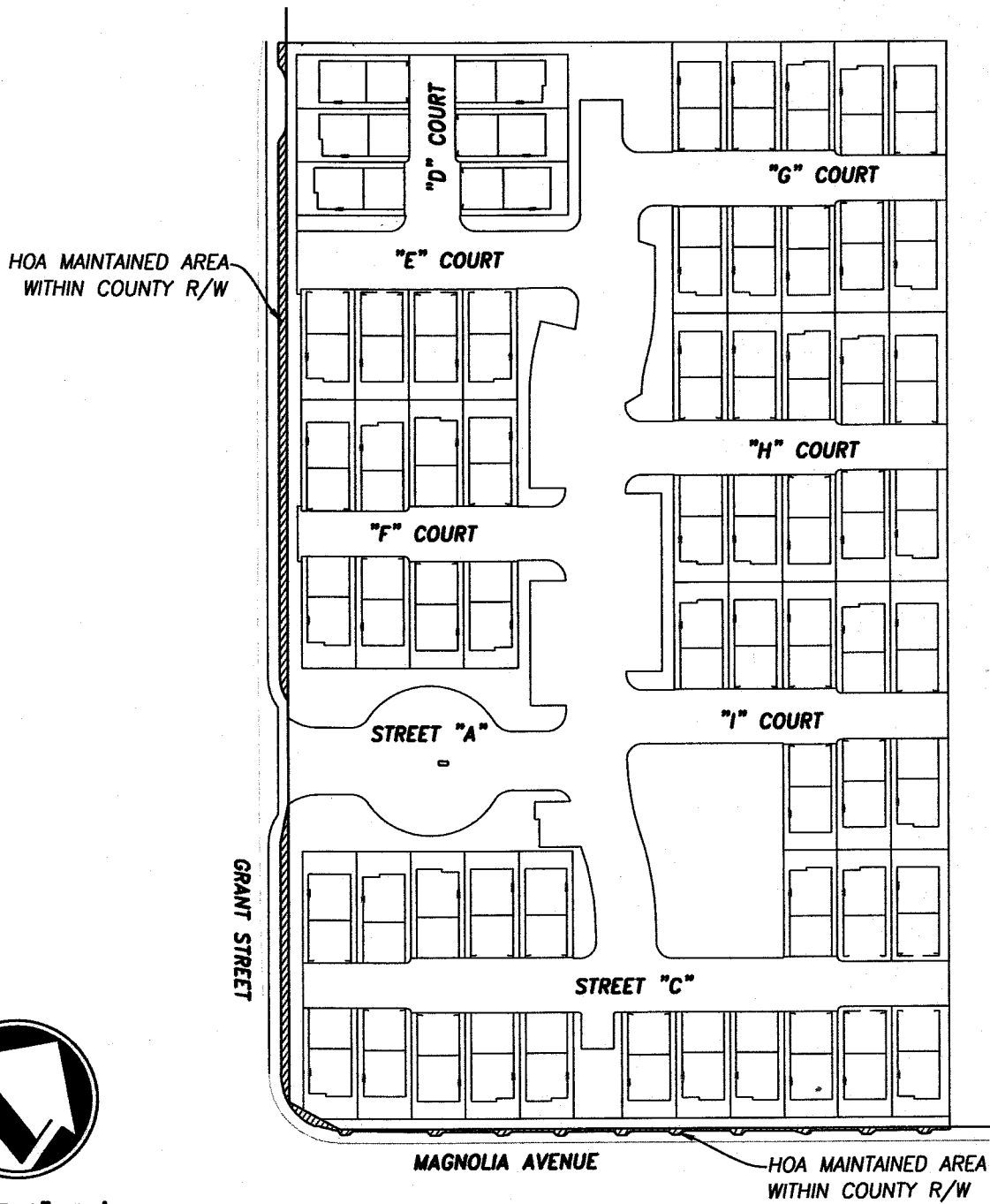
CROSS-UNIT DRAINAGE IMPROVEMENTS IN PHASE 1

NONE IN PHASE 1

EXHIBIT F

**APPROXIMATE LOCATION OF ASSOCIATION MAINTAINED AREAS WITHIN
COUNTY RIGHT-OF-WAY**

EXHIBIT F—DEPICTING APPROXIMATE LOCATION OF HOA MAINTAINED AREAS WITHING COUNTY RIGHT OF WAY



SCALE 1"=80'

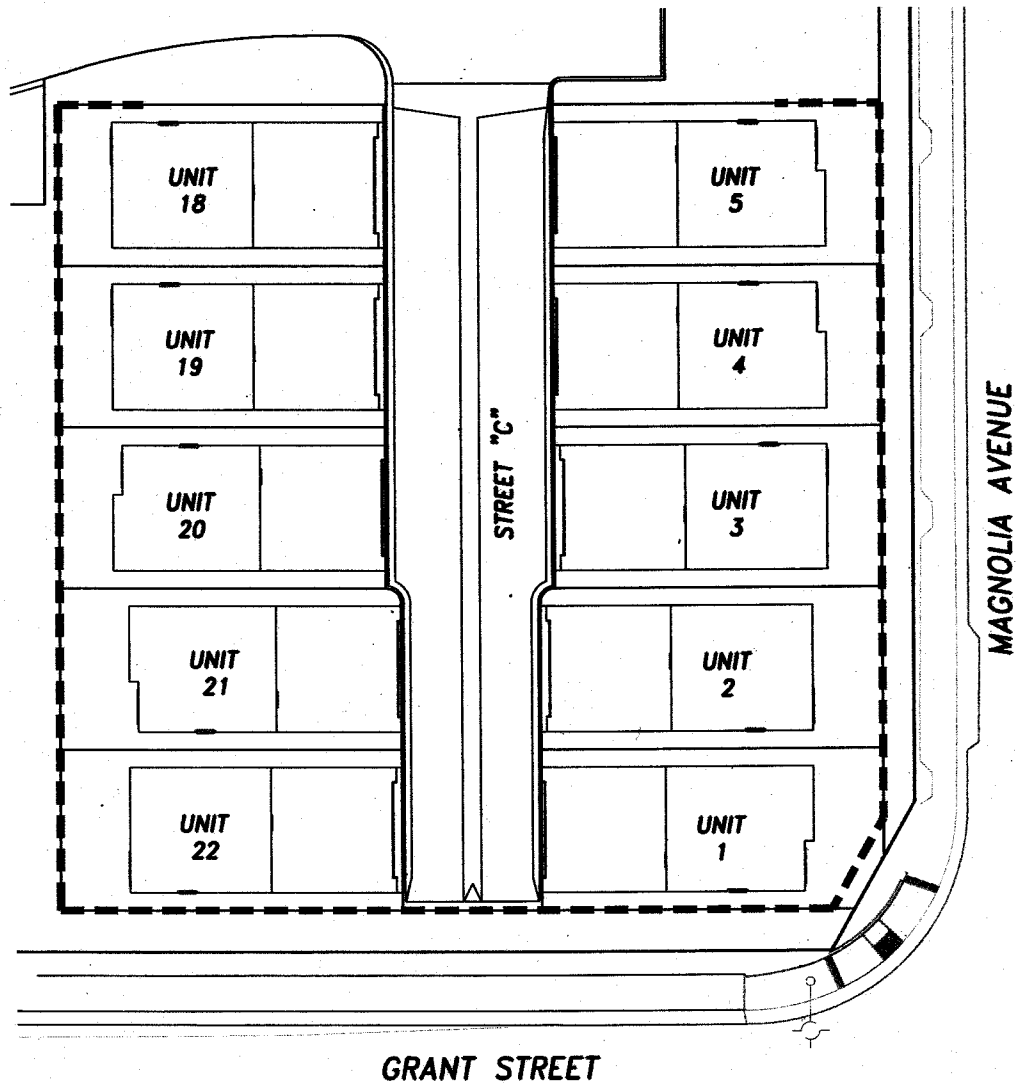
PLAN PREPARED BY:
adkan
ENGINEERS
Civil Engineering · Surveying · Planning
6879 Airport Drive, Riverside, CA 92504
Tel:(951) 688-0241 · Fax:(951) 688-0599

SAUSALITO
EXHIBIT F—DEPICTING APPROXIMATE LOCATION OF HOA
MAINTAINED AREAS WITHING COUNTY RIGHT OF WAY

EXHIBIT G

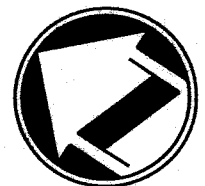
APPROXIMATE LOCATION OF COMMUNITY WALLS IN PHASE 1

EXHIBIT G—DEPICTING APPROXIMATE LOCATION OF COMMUNITY WALLS
SAUSALITO PHASE I UNITS 1-5 & 18-22



LEGEND

----- PHASE I
COMMUNITY WALLS



SCALE 1"=30'

PREPARED BY:
adkan
ENGINEERS
Civil Engineering · Surveying · Planning
6879 Airport Drive, Riverside, CA 92504
Tel:(951) 688-0241 · Fax:(951) 688-0599

SAUSALITO PHASE I
EXHIBIT G—DEPICTING APPROXIMATE LOCATION OF
COMMUNITY WALLS

EXHIBIT H
ASSOCIATION PROPERTY IN THE COMMUNITY

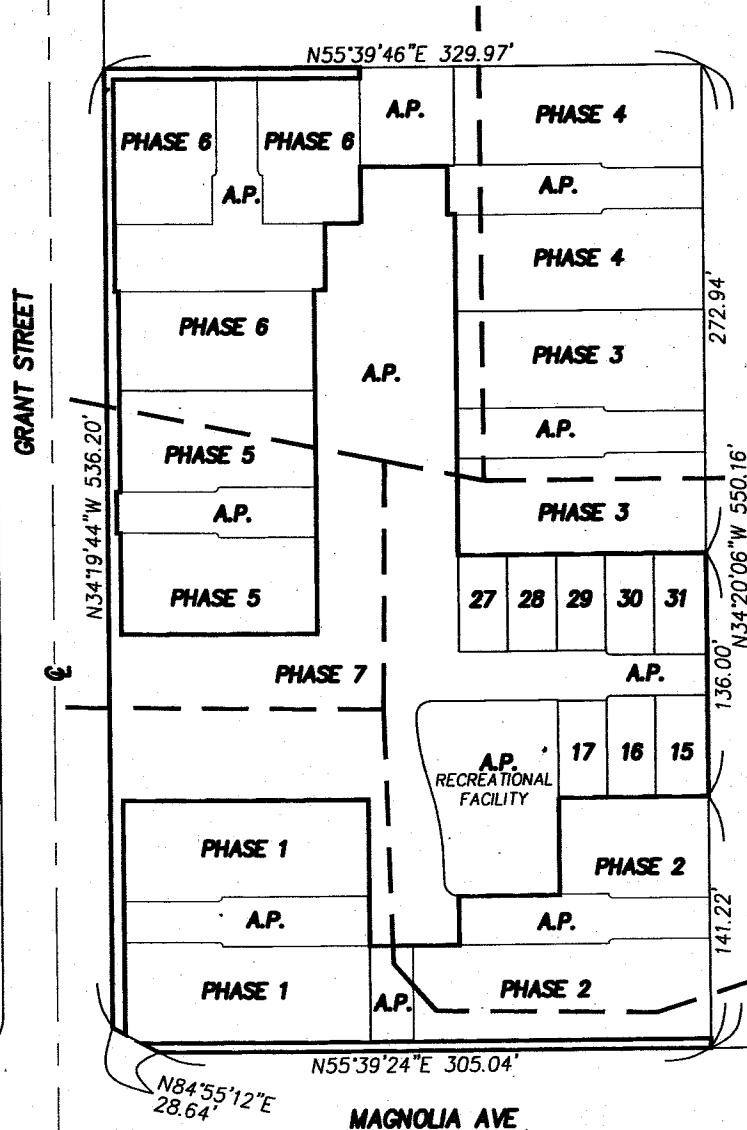
All of Lot 1 of said Tract No. 37169, excepting therefrom the Units and Condominium Common Area as shown and described in the Condominium Plans for Phases 1 through 7, to be Recorded in Official Records.

[SEE ATTACHED PLAT]

EXHIBIT H
ASSOCIATION PROPERTY
IN THE COMMUNITY



1"=100'



LEGEND

- PHASE BOUNDARY
- A.P. ASSOCIATION PROPERTY

PLAT PREPARED BY:

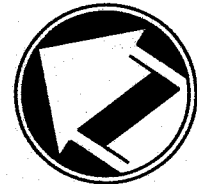
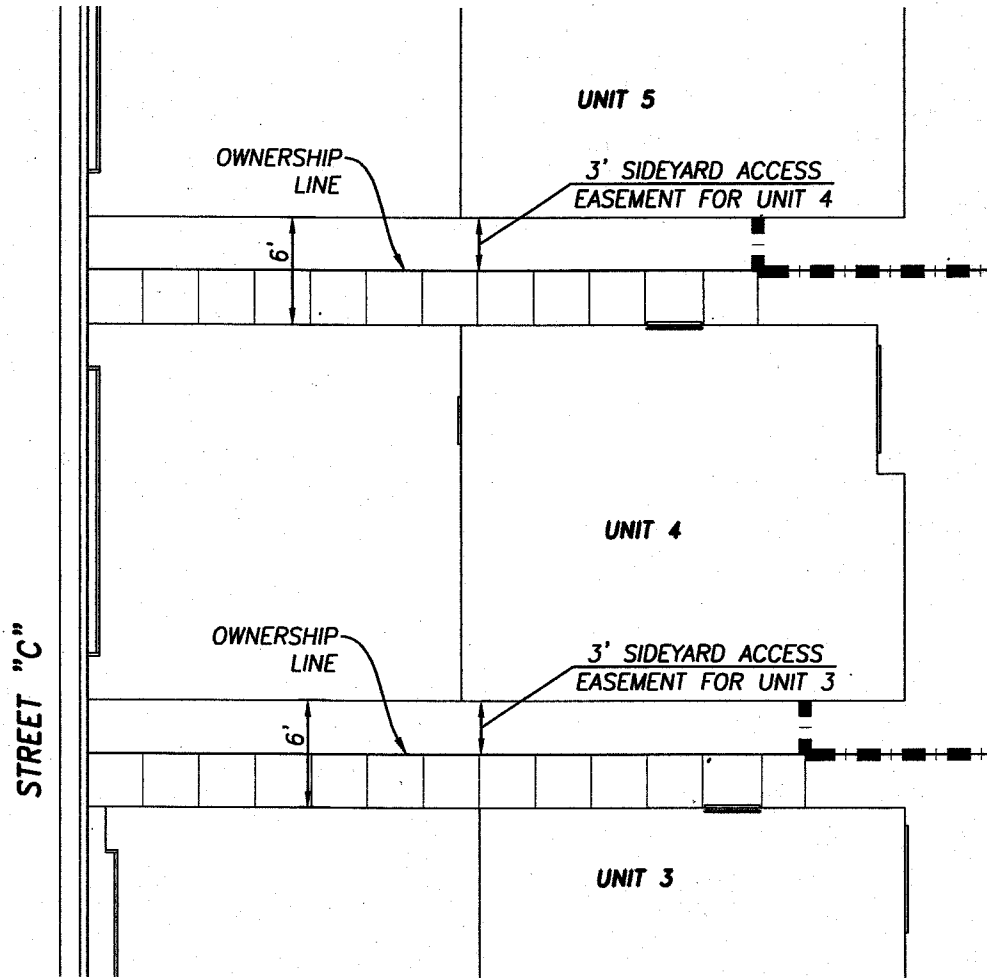
adkan
ENGINEERS

Civil Engineering • Surveying • Planning

6879 Airport Drive, Riverside, CA 92504
Tel: (951) 688-0241 • Fax: (951) 688-0599

EXHIBIT I
APPROXIMATE LOCATIONS OF SIDEYARD EASEMENTS IN PHASE 1

EXHIBIT I—DEPICTING TYPICAL APPROXIMATE LOCATION OF SIDEYARD
EASEMENTS SAUSALITO PHASE I UNITS 1-5 & 18-22



SCALE 1"=10'

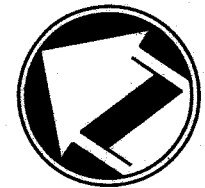
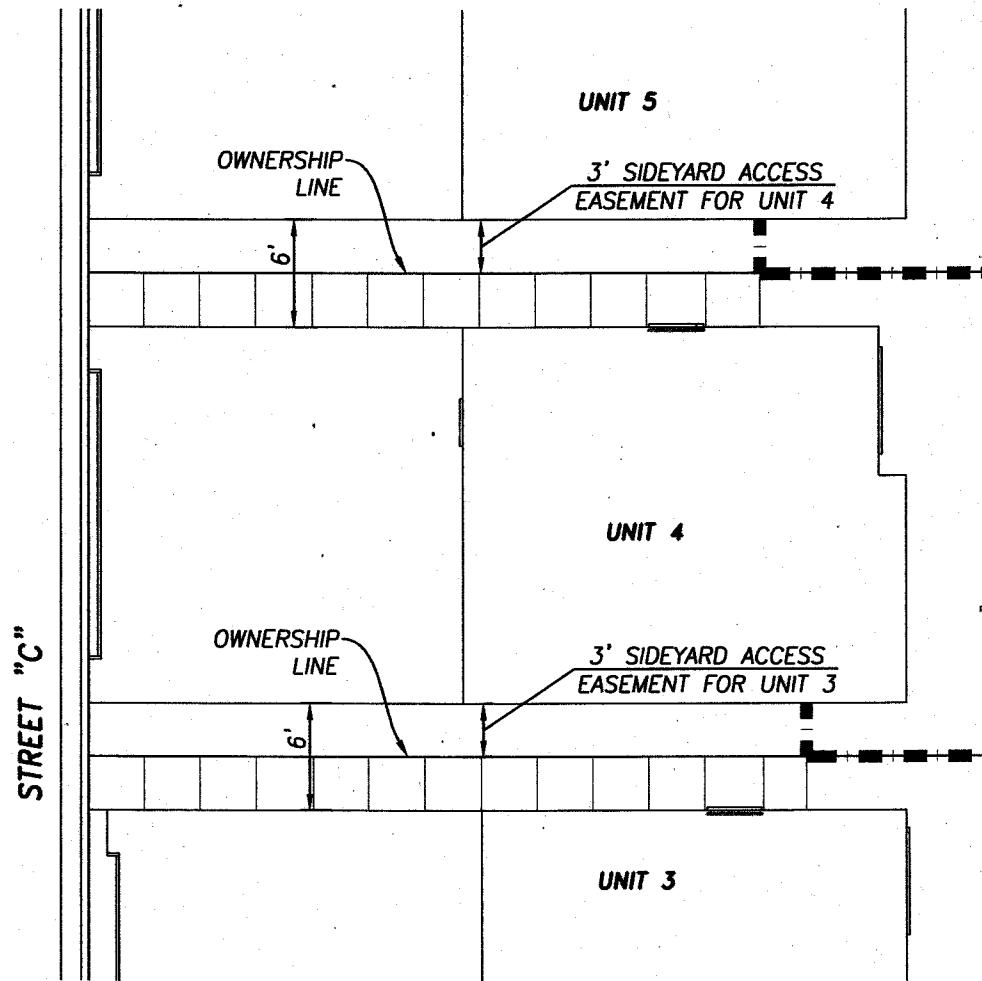
PLAN PREPARED BY:

adkan
ENGINEERS

Civil Engineering · Surveying · Planning
6879 Airport Drive, Riverside, CA 92504
Tel:(951) 688-0241 · Fax:(951) 688-0599

SAUSALITO PHASE I
EXHIBIT I—DEPICTING TYPICAL APPROXIMATE LOCATION OF
SIDEYARD EASEMENTS

EXHIBIT I—DEPICTING TYPICAL APPROXIMATE LOCATION OF SIDEYARD EASEMENTS SAUSALITO PHASE I UNITS 1-5 & 18-22



SCALE 1"=10'

PLAT PREPARED BY:

adkan
ENGINEERS

Civil Engineering · Surveying · Planning
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Tel: (951) 688-0241 · Fax: (951) 688-0599

SAUSALITO PHASE I
EXHIBIT I—DEPICTING TYPICAL APPROXIMATE LOCATION OF
SIDEYARD EASEMENTS