

VILLAGE SQUARE  
DECLARATION  
OF  
RESTRICTIONS (CC&Rs)

THIS DECLARATION OF RESTRICTIONS (CC&Rs) is executed by SUMMERHILL VILLAGE SQUARE, LLC, a California limited liability company (the "Declarant") with reference to the following facts:

- A. Declarant is constructing a residential condominium development in multiple phases located on certain real property in San Jose, California, more particularly described as lot 10 on the subdivision map entitled "Tract 9884 Village Square" filed in the records of Santa Clara County, California, on April 11, 2007, in Book 812 of Maps at pages 49 through 51. The first phase consists of Condominium Units 90 through 95 shown on the Condominium Plan recorded on August 9th, 2007 as Document No. 154452 in the records of Santa Clara County, California.
- B. Declarant desires to impose certain restrictions on the condominiums in the development that will benefit and bind each condominium, and each owner and successive owner thereto, as covenants running with the land and equitable servitudes, to grant and describe certain easements that will be appurtenant to the condominiums, and to establish a condominium project within the meaning of Civil Code section 1351(f).
- C. The property in the first phase and the property that may be annexed as described in Exhibit A will benefit and be bound by the provisions of **Section 2.16** of this Declaration on the recordation of this Declaration and the conveyance by Declarant of title to a Condominium in Phase 1 to a third party. The other restrictions, rights and duties described herein will benefit and bind the Condominiums in Phase 1 on the date Declarant first transfers title to a Condominium in Phase 1 to a third party and each subsequent phase on the recordation of a declaration of annexation annexing that phase into the development.

**DECLARANT DECLARES AS FOLLOWS:**

ARTICLE 1 - Definitions

Unless the context indicates otherwise, the following terms shall have the following definitions:

- 1.1 Architectural Committee or Committee. The Architectural Committee described in Section 7.1.
- 1.2 Articles. The Articles of Incorporation of the Association and any amendments thereto.

1.3 Association. Village Square of San Jose Owners Association, a California nonprofit mutual benefit corporation.

1.4 Association Common Area. The real property owned by the Association. The Association Common Area in Phase 1 consists of all of the real property within Lot 10 shown on the Map and the Improvements thereon except the Condominium Building and the Units within the Building. The Association Common Area includes the land, private streets, walkways, parking spaces, and airspace outside the Condominium Building. The Association Common Area also includes any additional association property subsequently annexed into the Development as described in **Article 14** and conveyed to the Association.

1.5 Board. The Board of Directors of the Association.

1.6 Building Common Area. The element of a Condominium that is owned in undivided interests in common, consisting of the airspace, land and Improvements within the Condominium Building described in **Section 1.10** but excluding the Units located therein. The Building Common Area for each Condominium Building is separate and distinct so that the Owner of an undivided interest in the Common Area owns an undivided interest only in the Building Common Area of the Condominium Building in which the Owner's Unit is located and in no other Condominium Building. The Building Common Area of each Condominium Building includes the foundations; structural beams; columns; exterior walls and trim; windows; roofs; exterior doors; bearing walls; sprinklers; sprinkler pipes and vents (including portions that protrude into the Unit); exterior staircases; fireplaces, chimneys and flues (if any); life safety systems; reservoirs; tanks; pumps; meters; ducts; flues; chutes; conduits; pipes; plumbing; wires; and other utilities (except the fixtures located within the boundaries of a Unit); and all other Improvements permanently affixed to the Condominium Building except the Improvements located within the boundaries of a Unit as described in **Section 1.28**. The Building Common Area also includes any additional common area that is subsequently annexed into the Development as described in **Article 14**.

1.7 Bylaws. The Bylaws of the Association and any amendments thereto.

1.8 Common Area. The Association Common Area and Building Common Area.

1.9 Condominium. A fee (perpetual) estate in real property as defined in Civil Code section 1351(f) consisting of two elements: (i) a separate interest in space, called a "Unit" as described in **Section 1.28**, and (ii) an undivided interest in common in the Building Common Area of the Condominium Building in which the Unit is located as described in **Section 1.6**. Condominium includes both the Live/Work Condominiums and the Residential Only Condominiums.

1.10 Condominium Building. The building, land, airspace and all other Improvements located within the three-dimensional condominium building envelope identified as "BCAP" followed by the number of the building on the Plan, including any Improvement permanently affixed to the building structure regardless of whether the Improvement is located in whole or in part outside the Condominium Building envelope. The Condominium Building does not include the land, the airspace or any other Improvements situated outside the Condominium Building envelope as shown on the Plan unless the Improvement (such as a deck) is permanently affixed to the building located within the envelope. These items are part of the Association Common Area as described in **Section 1.4**. Each Condominium Building separately numbered as a Condominium Building on the Condominium Plans is a separate Condominium Building.

1.11 Condominium Plan or Plans. The condominium plans for the Development that were prepared in accordance with the requirements of Civil Code section 1351(e) and that were recorded on August 9th, 2007 as Document No. 1764952 in the records of Santa Clara County, California. The Condominium Plans also include any additional condominium plans that are recorded against any property that is annexed into the Development as described in **Article 14**. A Condominium Plan for a Condominium Building is a separate and distinct condominium plan regardless of whether the plans for two or more Condominium Buildings are recorded in a single document.

1.12 Declarant. SummerHill Village Square, LLC, a California limited liability company, or any successor or assign that assumes in writing all or a portion of the rights and duties of the Declarant hereunder. There may be more than one Declarant.

1.13 Declaration. This Declaration of Restrictions (CC&Rs) and any amendments or corrections thereto.

1.14 Development. The residential development that is constructed on the Property and made subject to this Declaration, including the Condominiums and all other Improvements thereon.

1.15 Exclusive Use Common Area. The portion or portions of the Common Area described in Section 2.12 subject to rights for the exclusive use of one or more, but fewer than all, of the Owners.

1.16 Governing Documents. This Declaration, the Articles of Incorporation, the Bylaws and the Rules, provided that the Claims Procedures attached as Exhibit C is not a part of the Governing Documents.

1.17 Improvements. Any fixtures affixed to any Property in the Development within the meaning of Civil Code section 660.

1.18 Live/Work Condominiums. The Live/Work Condominiums in Phase 1 are Condominium Units 90 through 95 shown on the Condominium Plans. Live/Work Condominiums also shall include any additional Live/Work Condominiums subsequently annexed into the Development as described in Article 14.

1.19 Map. The subdivision map entitled "Tract 9884 Village Square" filed for record in Santa Clara County, California, on April 11, 2007, in Book 812 of Maps at pages 49 through 51 and including any subsequently-recorded amended final maps, parcel maps, certificates of correction, lot-line adjustments, and/or records of survey. "Map" also shall mean any other recorded subdivision maps describing property that may be subsequently annexed into the Development as described in Article 14.

1.20 Member. A member of the Association.

1.21 Mortgage. A recorded mortgage or deed of trust against one or more Condominiums in the Development.

1.22 Mortgagee. A mortgagee under a Mortgage or a beneficiary under a deed of trust recorded against a Condominium in the Development.

1.23 Owner. The owner or owners of the fee (perpetual) estate of a Condominium in the Development.

1.24 Person. Any natural person, partnership, trust, corporation, limited liability company, or other legal entity.

1.25 Property. Lot 10 shown on the Map, together with all Improvements thereon and any additional land, together with all Improvements thereon, that is subsequently annexed into the Development as described in Article 14.

1.26 Residential Only Condominium. Each Condominium shown on the Condominium Plans that is not a Live/Work Condominium described in Section 1.18.

1.27 Rules. Rules or regulations adopted by the Board from time to time pursuant to the authority of Section 5.6.2.

1.28 Unit. The element of a Condominium that is owned separately, consisting of a separate interest in space, the boundaries of which are described as the area designated "unit" in the Condominium Plan. The dimensions of the Unit are measured from the interior unfinished perimeter walls and ceilings, floor, windows, window frames, and perimeter doors and door frames, provided that the Unit includes the wall boards, sheet rock, paint on the interior surfaces, wallpaper, paneling, outlets, stain, tile, hardwood floors, carpet and other ceiling, floor or wall finishes. The Unit does not include the structural component of any bearing wall or other structure member necessary to the support or structural rigidity of any portion of the Common Area. The Unit includes all Improvements and personal property situated within its boundaries, including, but not limited to, interior walls (except interior bearing walls), appliances, cabinets, interior doors,

and all electrical, heating, plumbing and other utility fixtures. The Unit includes the garage space. Any utility fixtures that are located partially within the Unit and partially in the Common Area, such as electrical outlets, and that exclusively serve the Unit are part of the Unit. Areas within a dropped ceiling, duct or utility chase that traverses a Unit and that contain utilities that serve another Condominium or two or more Condominiums are Building Common Areas and not part of the Unit. In interpreting deeds and plans, the existing physical boundaries of the Unit or Unit reconstructed in substantial accordance with the original plan shall be conclusively presumed to be its boundaries, rather than the description expressed in the Condominium Plan or any other recorded document, regardless of variances between boundaries shown on the Condominium Plan or in any other recorded document and those of the Building and regardless of settling or lateral movement of the Building.

## ARTICLE 2 - Property Rights and Easements

2.1 Type of Development. This Development is a condominium project within the meaning of Civil Code section 1351(f) and consists of six Condominiums in the first phase. If all the subsequent phases are annexed into the Development as described in **Article 14**, the Development may consist of 95 Condominiums, including 11 Live/Work Condominiums and 84 Residential Only Condominiums. Declarant has no obligation to annex any subsequent phase into the Development.

Notwithstanding the foregoing, the Condominiums in the first phase and the property that may be annexed as described in Exhibit A are subject to the provisions of **Section 2.16**.

2.2 Condominium. Each Owner owns a fee (perpetual) estate in a Condominium consisting of a separate interest in a Unit as defined in **Section 1.28** and an undivided equal interest in common in the Building Common Area described in **Section 1.6** of the Condominium Building in which the Owner's Unit is located. No Owner shall have any interest in any Condominium Building other than the Condominium Building in which the Owner's Unit is located. In addition, each Owner is a Member of the Association. The Association owns the fee (perpetual) estate in the Association Common Area.

The Unit and the Building Common Area appurtenant thereto may not be separated. Any transfer of a Unit automatically shall transfer the Building Common Area appurtenant thereto regardless of whether the instrument of transfer describes the Building Common Area. Any conveyance, encumbrance, judicial sale, or other transfer (voluntary or involuntary) of an interest in the Building Common Area shall be void unless the Unit appurtenant thereto is also transferred.

2.3 Common Area Rights. Each Owner or tenant and their family members and guests have nonexclusive rights to use, enjoy, ingress and egress in, to and throughout the Common Area and any improvements thereon, subject to the provisions of **Section 2.9** and the Exclusive Use Common Area rights as described in **Section 2.12**. The Association Common Area is subject to the easements reserved in this Declaration and on the Map.

2.4 Encroachment Easement. Each Condominium, or portion thereof, and the Association Common Area as the dominant tenement has an easement over any other Condominium, or portion thereof, or Association Common Area as the servient tenement for the purpose of accommodating any encroachment of roof overhangs, porches, decks, staircases, windows, chimneys or other Condominium Building Improvements resulting from the original construction of the Improvements, settlement or shifting of structures, or minor construction changes during the course of construction, and any encroachment authorized under **Section 2.10**. The extent of the encroachment easement shall be the location of the encroaching structure as originally constructed by Declarant. If a structure is partially or totally destroyed, the structure may be repaired or rebuilt in accordance with the original plans, including the replacement of any encroaching improvement.

2.5 Utility Easement. Each Condominium as the servient tenement is subject to an easement in favor of each other Condominium as the dominant tenement for the installation, retention, maintenance, repair and replacement of any utility chases, shafts, vents, ducts, lines and equipment (the "Utility Facilities")



that traverse the Unit of the servient tenement and provide utility service to the dominant tenement, including, but not limited to, gas, electricity, water, sanitary sewer, drainage, cable television, telephone and other similar utility services. The location of the easement is the location of the Utility Facilities installed as a part of the original construction of the Unit or as subsequently installed with the consent of the Owner of the servient tenement. The easement right granted hereunder includes access to the Unit as may be necessary to inspect, maintain, repair, replace and/or upgrade the Utility Facilities. The occupants of the servient tenement shall not take any action that would in any manner interfere with the operation of the Utility Facilities. The easement is intended to ensure public health and safety by providing for necessary access to all areas of the Development for the purpose of maintenance and repair of utilities necessary for each of the individual Condominiums and the entire Development. This Section 2.5 and the easements described herein, may not be amended or removed without the prior written consent of the City of San Jose and shall survive the earlier termination of any other provision or provisions in this Declaration.

2.6 Condominium Building Easements. The Condominium Building envelopes shown on the Plans extend outside the exterior walls of the residential building situated within the envelope. Each Condominium as the servient tenement is subject to an easement in favor of each other Condominium as the dominant tenement for non-exclusive access and use of any walkways situated within the envelope and outside the residence and for the right to inspect, retain, maintain, repair and/or replace any utilities that serve the dominant tenement and are situated within the envelope and outside the residential structure and not below or above the residential structure. The location of the easements is the location of the walkways and utilities installed by or on behalf of Declarant as a part of the original construction of the improvements within the Development.

2.7 Other Easements and Rights. Each Condominium and the Association Common Area are entitled to the benefit and/or subject to the burdens of any easements, rights-of-way, or dedications as may be granted or reserved on the Map, any deed to the Condominium or Association Common Area, or in any other appropriate public record, including, but not limited to, the covenant of easements, emergency access easements, public service easements, private storm drain easements, and storm drain easements shown on the Map and identified as "C.O.E., E.A.E., P.S.E., P.S.D.E., and S.D.E" on the Map.

2.8 Appurtenant Rights. Each right or easement described in this Article 2 is a right or easement that is appurtenant to the Condominium or Association Common Area; and any transfer of the Condominium or Association Common Area automatically transfers the easement appurtenant thereto regardless of whether the instrument of transfer describes the right or the easement.

2.9 Reservation of Rights. Notwithstanding any property rights, including easements, described herein, each Condominium and the Association Common Area, as the case may be, are subject to each of the following:

(i) the right of Declarant or its agents to enter on any portion of the Development to construct and sell the Improvements that Declarant intends to construct on the Property, to make repairs, and to correct any construction problems thereon, provided that such entry does not unreasonably interfere with the use or occupancy of any occupied Condominium unless authorized by its Owner, which authorization shall not be unreasonably withheld;

(ii) the right of the Association's agents to enter any Condominium to cure any violation or breach of this Declaration or the Bylaws or the Rules, provided that at least 30 days' prior written notice of such violation or breach (except in the cases of emergency) has been given to the Owner and provided that within the 30-day period such Owner has not acted to cure such violation or breach;

(iii) the right of the Association's agents to enter any Condominium to perform its obligations and duties under this Declaration, including the obligations and the duties with respect to maintenance or repair of any Condominium; and

(iv) the rights reserved in Sections 2.10, 2.12, 9.9 and 13.10.

2.10 Authority Over Common Area. The Board or Declarant (as long as Declarant owns 25% or more of the Condominiums in the Development) shall have the power and the right in the name of the

Association and all of the Owners as their attorney-in-fact to grant, convey or otherwise transfer to any Owner or any other Person fee title, easements, leasehold estates, exclusive use easements or rights, licenses, lot-line adjustments, rights-of-way and/or dedications in, on, over or under the Common Area or other property interests in order to: (i) construct, erect, operate, maintain or replace lines, cables, wires, conduits or other devices for electricity, cable television, internet services, fiber optics and other telecommunication equipment, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any similar public or quasi-public Improvements or facilities; (ii) accommodate any encroachment that in the sole discretion of the Board or Declarant does not unreasonably interfere with the use and enjoyment of the Common Area; or (iii) accomplish any other purpose that in the sole discretion of the Board or Declarant is in the interest of the Association and its Members and does not unreasonably interfere with the use and enjoyment of the Common Area. Each Owner in accepting a deed to a Condominium expressly consents to such action and authorizes and appoints the Association and Declarant (as long as Declarant owns 25% or more of the Condominiums in the Development) as attorney-in-fact of such Owner to execute and deliver all documents and interests to accomplish the action, including, but not limited to, grant deeds, easements, subdivision maps, and lot-line adjustments. Notwithstanding anything herein to the contrary, in no event shall the Board or Declarant: (i) take any action authorized hereunder that would permanently and unreasonably interfere with the use, occupancy and enjoyment by any Owner of his or her Condominium or any Exclusive Use Common Area without the prior written consent of that Owner; or (ii) grant exclusive use of any portion of the Common Area to any Owner without the affirmative vote of a majority of the Members present in person or by proxy at a duly held meeting, unless Member approval is not required as described in Civil Code section 1363.07. If Member approval is required, the Board in placing the measure before the Members shall describe whether the Association will receive a monetary consideration for the grant and whether the Association or the transferee is responsible for providing insurance coverage for the Exclusive Use Common Area and shall comply with the secret balloting requirements of Civil Code section 1363.03(b). Furthermore, the conveyance of fee title to any portion of the Common Area as authorized in this **Section 2.10** (other than conveyances made as a part of lot-line adjustments) shall require the consent of a majority of the total voting power of the Association other than Declarant and such consent of the Mortgagees as may be required by **Article 10**.

2.11 **Delegation of Use Rights.** An Owner's family members who occupy the Condominium or any guests and any such Persons as may be permitted by the Rules may use and enjoy any Common Area Improvements. All such use shall be subject to restrictions contained in this Declaration and the Rules. If an Owner rents his or her Condominium, the Owner, members of the Owner's family, and the Owner's guest shall not be entitled to use any Common Area Improvements other than such use as is directly related to the Owner's rights and duties as a landlord. Such rights may be enjoyed by the tenant and the tenant's family members and guests during the term of the rental agreement.

Any Owner who rents his or her Condominium must comply with the requirements of **Section 3.2**.

2.12 **Exclusive Use Common Area.** Portions of the Common Area are set aside for the exclusive use of the occupants of certain Units and constitute Exclusive Use Common Area decks or porches. The location of the decks and porches are shown on the Condominium Plans with the letter "D" or "P" followed by a number and are set aside for the exclusive use of the occupants of the Unit with the same number.

Except as described herein, no other portion of the Common Area is Exclusive Use Common Area. Exclusive Use Common Area rights are appurtenant to the Condominium to which the rights are assigned and may not be separated therefrom. Any transfer of the Condominium automatically transfers the exclusive use rights appurtenant thereto regardless of whether the instrument of transfer describes the Exclusive Use Common Area rights.

2.13 **Restrictions on Partition.** Except as authorized in **Sections 2.10, 9.7 and 9.9**, the Common Area shall remain undivided, and there shall be no judicial partition thereof except as may be authorized by Civil Code section 1359 or any successor statute thereto.

Any proceeds or property resulting from a partition shall be distributed to and among the respective Owners and their Mortgagees as their interests appear in proportion to the ratio that the fair market value of each Owner's Condominium bears to the fair market value of all Owners' Condominiums as of the date

immediately preceding the date of the event giving rise to the right of the Owners to partition the Common Area.

2.14 Conveyance of Association Common Area. The Association Common Area in each phase shall be conveyed to the Association on or before the date the Declarant first conveys title to a Condominium in that phase. The Association Common Area as the servient tenement is subject to an easement in favor of each Condominium as the dominant tenement for ingress and egress over the private streets and walkways situated on the servient tenement, for support from the land under and adjacent to each Condominium Building, for access to and use of the Exclusive Use Common Areas located therein, for access to and use of (including the right to install, maintain, repair or replace) any utility or related lines and equipment installed within, on or over the servient tenement in order to provide utility or related service to the dominant tenement, including water, electricity, telephone, gas, cable television, fiber optic cable and other telecommunications equipment, and sanitary sewer or storm drainage lines and equipment, and for access to and use of the Association Common Area by Declarant and its subcontractors and agents to construct, maintain and sell the Condominiums and all related Improvements in the subsequent phases and the easements described in **Section 2.16.2**. The rights retained by Declarant and its subcontractors and agents include the right to restrict access to any portion of the Association Common Area that is undergoing construction or development activity for safety or other reasons by the construction of fences or other barriers, or by the adoption of such other measures that restrict access to authorized personnel only, and the right to use portions of the Association Common Area as a staging or storage areas for materials and equipment to be used in connection with the construction of Improvements within the Development and to restrict access thereto by means of a fence or otherwise. The Board may adopt Rules regulating the use of the Association Common Area, provided such Rules do not interfere with the exercise of the foregoing easement rights and are consistent with the restrictions contained in this Declaration. Subject to the provisions of **Section 2.16.2**, the easements reserved herein that run to the benefit of any dominant tenement shall become effective automatically on annexation of the dominant tenement into the Development.

2.15 Construction Activity. Each Owner acknowledges that: (i) the construction of the Development may occur over an extended period of time; (ii) the quiet use and enjoyment of the Owner's Condominium may be disturbed as a result of the noise, dust, vibrations and other effects of construction activities; and (iii) the disturbance may continue until the completion of the construction of the Development.

2.16 Phasing.

2.16.1 Additional Phases. The property that may be annexed into the Development as a part of a subsequent phase is described in Exhibit A attached hereto. Declarant reserves the right to determine the number of phases, the number of condominiums in a phase, and the building types in a phase. Declarant makes no representation or warranty that any subsequent phase will be annexed into the Development and has no obligation to annex any subsequent phase into the Development. All phases shall benefit and be bound by the provisions of this **Section 2.16** on recordation of this Declaration and the conveyance by Declarant of the first Condominium in Phase 1. The other restrictions, rights and duties described herein shall benefit and bind Phase 1 on recordation of this Declaration and the conveyance by Declarant of the first Condominium in Phase 1 and each subsequent phase on the recordation of a declaration of annexation annexing that phase into the Development as described in **Article 14**.

2.16.2 Reservation of Easements. Declarant reserves easements over the Association Common Area as the servient tenements in favor of the property described in Exhibit A as the dominant tenements for ingress and egress over the private streets and walkways situated on the servient tenements; for support from the land under and adjacent to each residential structure; for access to and use of (including the right to install, maintain, repair or replace) any utility lines, equipment installed within, on or over the servient tenements in order to provide utility or related service to the dominant tenements, including water, electricity, telephone, gas, telecommunications, sanitary sewer or storm drainage lines or equipment; for support for any building or other structures located thereon; and for such access over the private streets as may be reasonably necessary to construct, maintain, repair and replace any Improvements and landscaping within the dominant tenements.

2.16.3 Allocation of Maintenance and Repair Costs. If any subsequent phase is developed and used for residential or other purposes, the easement rights reserved in **Section 2.16.2** above are

exercised, and the phase has not been annexed and assessments commenced against the Condominiums in that phase, the Owner of the property in that phase shall pay an equitable share of the cost of the maintenance, repair, replacement and insurance of any Improvements located on or within the Common Area that are used by the Owner or occupants of the property in that phase. The Owner shall remit to the Association its share of the costs within 30 days after receipt of demand for same. If Owner fails to pay its share when due, the Association may bring an action in any court of competent jurisdiction to recover the cost, together with interest thereon at the rate of 12% per annum, but in no event greater than the maximum rate authorized by law. In such action, the prevailing party shall be entitled to recover costs and attorneys' fees. The Owner's obligations hereunder shall terminate at such time as the phase is annexed into the Development (if annexed) and assessments are commenced against the Condominiums in the phase.

If there are any disputes regarding the Owner's allocable share of the cost, the dispute shall be submitted to mediation and, if necessary binding arbitration, to the Judicial Arbitration and Mediation Services (JAMS), any successor thereto or any other alternative dispute resolution provider acceptable to the parties for resolution. If the mediation is unsuccessful, the dispute shall be resolved by binding arbitration in accordance with JAMS' commercial rules. The mediation and arbitration shall be held in the county where the Development is located. The parties shall be entitled to the discovery rights provided by Code of Civil Procedure section 1283.05. The arbitrator may award costs and attorneys' fees to the prevailing party. The arbitrator's decision shall be binding on the parties and may be enforced in any court of competent jurisdiction. If the Owner fails to initiate mediation within the 30-day period after receipt of written demand from the Association for payment of the Owner's share of the cost, it shall be presumed conclusively that the Owner has waived its mediation and arbitration rights with respect to that demand, and the Association may commence legal action to collect the Owner's share of the costs.

2.17 Noise Transmissions. The Development has been designed to meet the acoustical building code standards in effect at the time the Development was constructed. The standards establish minimum performance criteria and do not eliminate all noise transmissions. Occupants will hear noise from within their Units and from other Units and noises from outside the Condominium Building, including, but not limited to, noise from music, television sets, stereo and other audio equipment, foot traffic from other units, plumbing fixture operations, trash disposals, truck traffic, sirens and other street noises and aircraft noise, including noise from aircraft taking off and landing at San Jose International Airport.

2.18 Affordable Housing Program. Certain Condominiums in the Development participate in an affordable housing program operated by the City of San Jose. The participating Condominiums are subject to certain resale and rental restrictions. The restrictions are set forth in the grant deeds to these Condominiums or other appropriately-recorded documents.

2.19 Conditions of Governmental Land Use Approvals. All property subject to this Declaration is subject to the following Land Use Approvals which include, but are not limited to, the Approved Tentative Subdivision Map No. PT06-078 ("Tentative Map"), the map entitled "Tract 9884 Village Square" recorded on April 11, 2007 in Book 812 of Maps at pages 49 through 51, in the Office of the Santa Clara County Recorder ("Final Map") and Planned Development Permit No. PD PD06-042 ("PDP") issued by the City of San Jose, California, as may be modified from time to time (collectively, the "Land Use Approvals"). The Property that is the subject to the covenants, conditions and restrictions in this Declaration is required to comply with all of the Land Use Approvals, including but not limited to:

(i) Provision of reciprocal utility easements upon all areas of the Development, excepting the airspace of each Unit, in order to serve the entire Development, which is required to be recorded concurrently with the Final Map;

(ii) Continuing compliance with the City of San Jose's minimum parking requirements;

and

(iii) Provision of reciprocal easements for ingress and egress, utilities, parking and emergency access and maintenance thereof in the locations indicated on the Final Map for the Development.

## ARTICLE 3 - Restrictions

3.1 Permitted Uses. The Development contains Live/Work Condominiums and Residential Only Condominiums. Each Live/Work Condominium is subject to the use restrictions in **Section 3.1.1** and each Residential Only Condominium is subject to the use restrictions in **Section 3.1.2**.

3.1.1 Live/Work Condominium. Except as otherwise provided herein, each Live/Work Condominium may be used for administrative and business offices, professional offices, artist studios and such other use authorized under the applicable San Jose live/work ordinance. All required business licenses and permits must be obtained and maintained in effect. The use shall be conducted in strict compliance with all applicable laws and ordinances, including the City's applicable live/work ordinance. The current live/work ordinance limits business hours from 7:00 a.m. to 10:00 p.m. No live/work use shall create a public or private nuisance. All signage shall comply with the live/work signage program approved for the Development. The commercial use must be conducted entirely within the Unit and must be operated by the residents of the Unit.

3.1.2 Residential Only Condominiums. Each Residential Only Condominium shall be used for residential purposes only; and no part of the Residential Only Condominium shall be used or caused, allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other nonresidential purpose. Notwithstanding the foregoing, Owners or occupants of the Residential Only Condominiums may use a room or rooms in the residence as an office, provided that the primary use of the Residential Only Condominium is as a residence, no advertising or signage is used in any manner in connection with the office use, no customers, clients or patients enter the Residential Only Condominium on any regular basis, and the use is in compliance with all local ordinances. The Board shall have the authority to adopt Rules regarding the use of offices within the Development in order to maintain the residential characteristics of the Development. The use of Residential Only Condominiums by the Declarant or its designees as models and sales and construction offices for purposes of developing, improving and selling the Condominiums in the Development shall not be a violation of this restriction, provided that such use shall terminate no later than three years after the date of recordation of this Declaration or any declaration of annexation annexing property in any additional phase into this Development, whichever occurs first.

3.2 Renting. Subject to the rental and resale restrictions imposed on the Condominiums participating in the Affordable Housing Program described in **Section 2.18**, the Owner may rent his or her Condominium provided each of the following conditions is satisfied:

- (i) the agreement must be in writing;
- (ii) the rental agreement must contain a provision that the rental agreement is subject to this Declaration, the Bylaws and the Rules and that any violation of any of the foregoing shall be a default under the rental agreement; and
- (iii) before commencement of the rental agreement, the Owner shall provide the Association with the names of the tenants and each family member who will reside in the Condominium and the address and telephone number of the Owner.

Any Owner that rents his or her Condominium shall keep the Association informed at all times of the Owner's address and telephone number. Any rental agreement shall be subject to this Declaration, the Bylaws and the Rules; and any breach of any of the foregoing shall constitute a breach by the Owner and also a default under the rental agreement, regardless of whether it so provides in the rental agreement. If any tenant breaches any restriction contained in this Declaration, the Bylaws or the Rules, the Owner, on demand from the Association, immediately shall take such steps as may be necessary to correct the breach, including, if necessary, eviction of the tenant.

3.3 Nuisance. No activity shall be conducted in any Unit or Common Area that constitutes a nuisance or unreasonably interferes with the use or quiet enjoyment of the occupants of any other Condominium.

3.4 Vehicle and Parking Restrictions. No mobile home, camper or recreational vehicle, boat, truck or similar equipment shall be parked within the Development. For purposes herein, "truck" does not include a pickup truck that does not exceed one ton or a sports utility vehicle. In addition, trucks may park on a temporary basis for delivery or pickup purposes.

Occupants shall park their vehicles in their garages so that unassigned Association Common Area parking spaces are available primarily for guest parking. No garage space may be converted into any use that would prevent its use to be available at all times to park the number of vehicles the garage was designed to contain. The Board may adopt Rules regulating parking in the unassigned spaces, including regulations that prohibit occupants from parking in all or parts of these areas, so that the spaces are available exclusively for guest parking.

3.5 Towing Authority. Any vehicle wrongfully parked within the Development may be towed in compliance with the requirements and procedures of Vehicle Code section 22658 or any successor statute thereto.

3.6 Animals. Normal and customary household pets may be maintained within the Development in compliance with all local ordinances and the following conditions:

- (i) no animal shall be maintained for any commercial purposes;
- (ii) the use of the Common Area by animals shall be subject to such Rules as may be adopted by the Board;
- (iii) the owner of the animal immediately shall clean up after his or her animal; and
- (iv) the Owner shall be responsible for any damage to any Common Area caused by any animal maintained within the Owner's Condominium.

The Board, after notice and a hearing, may require the permanent removal from the Development of any animal that the Board, in its discretion, determines is a nuisance, a danger to the health or safety of any occupant, or otherwise interferes with the quiet use and enjoyment of occupants of any Condominium. The Board may find that an animal is a nuisance if the animal or the animal's owner continue to violate the Rules regulating animals after receipt of a demand from the Board to comply with the Rules.

3.7 Television or Radio Equipment. No television, video or radio poles, antennae, satellite dishes, cables or other transmission and/or reception fixtures or personal property (individually and collectively the "Antenna Equipment") shall be installed or maintained on any Condominium except as follows:

- (i) Antenna Equipment that is one meter or less in length or diameter or diagonal measurement, provided that the location, color and screening requirements shall be in accordance with any guidelines imposed by the Architectural Committee, which guidelines shall comply with applicable State and federal laws regulating restrictions on Antenna Equipment; and
- (ii) Antenna Equipment not covered under subparagraph (i) above, the installation of which is approved in advance by the Architectural Committee in accordance with the procedures described in **Article 7**.

Under no circumstances shall any Antenna Equipment be installed within any Association Common Area or the exterior of any Condominium building, including any exterior wall, railing, deck or floor without the prior written approval of the Board.

Nothing herein shall be construed to restrict in any manner Declarant's or the Board's right to authorize a cable television franchisee or other provider of similar services to provide cable television, satellite dish, radio or other similar services to the Development.

3.8 Signs. Subject to the provisions of **Section 13.10**, the posting or displaying of any signs within the Development is subject to each of the following:

3.8.1 Non-Commercial Signs: The Association may not prohibit posting or displaying of non-commercial signs, posters, flags or banners on or in an Owner's Unit, except as required for the protection of public health or safety or if the posting or display would violate any local, state or federal law. For purposes herein, a non-commercial sign, poster, flag or banner may be made of paper, cardboard, cloth, plastic or fabric and may be posted or displayed from the yard, window, door, balcony or outside wall of the separate interest but may not be made of lights, roofing, siding, paving materials, flora or balloons or any other similar building, landscaping or decorative component or include the painting of architectural surfaces. No non-commercial sign and poster in excess of nine square feet in size or non-commercial flag or banner in excess of 15 square feet in size shall be permitted anywhere in the development without the prior written approval of the Board.

3.8.2 Commercial Signs: Except as otherwise expressly authorized by law and subject to the authorized live/work signage described in **Section 3.1.1** and to the provisions of **Section 13.10**, no commercial signs of any nature shall be posted or displayed anywhere within the Development without the prior written consent of the Board and pursuant to such guidelines as may be adopted by the Board which guidelines shall be in compliance with all applicable laws.

3.9 Clothesline. No exterior clothesline shall be erected or maintained on any Condominium; and there shall be no exterior drying or laundering of clothes on any balcony, patio, porch or other outside area of any Condominium.

3.10 Window Coverings. The interior surfaces of all windows shall be covered with normal and customary window coverings such as curtains, drapes, shutters or blinds. The exterior side of window coverings shall be white or off-white unless approved otherwise in writing by the Architectural Committee.

3.11 Automobile Maintenance. There shall be no maintenance (other than vehicle washing and cleanup) or repairs performed on any automobile except within an enclosed garage or except for any emergency repairs that are necessary in order to remove the vehicle to a proper repair facility.

3.12 Alterations, Modifications or Additions. There shall be no alterations, modifications or additions made to any Condominium or any Improvement thereon except in compliance with the provisions of **Article 7**.

3.13 Compliance with Law. No Owner shall permit anything to be done or kept in his or her Condominium that violates any law, ordinance, statute, rule or regulation of any local, county, state or federal agency. Nothing shall be done or kept in any Condominium that might increase the rate of or cause the cancellation of any insurance maintained by the Association.

3.14 Drilling. No drilling, mining, or quarrying operation shall be conducted anywhere within the Development at anytime.

3.15 Sound Transmissions. No Unit shall be altered in any manner that would increase sound transmissions, resonances or reverberations to any adjoining or other Unit, including, but not limited to, the replacement, modification or penetration of any flooring or floor covering, ceiling or wall or the penetration of any wall, floor or ceiling that increases sound transmissions, resonances or reverberations to any other Unit except as authorized by the Architectural Committee (for example, hardwood floors may be installed that do not have the same sound attenuation capabilities of carpeted floors as long as the floors meet the acoustical standards required by the Architectural Committee).

Owners shall not rigidly attach any source of sound or vibration to walls that separate Units. This includes all audio speakers including monitor and flat screens that may have speakers built-in to the design. In addition, sources of vibration, such as motors shall not be attached to a wall that separates Units when an audible noise can be heard, at any level, in the adjacent unit. All flat screens or monitors shall have independent speakers that can be placed within the room without contacting the wall. Owners desiring to mount a monitor, flat screen, or speaker to a wall that separates Units must complete the installation by submitting a detailed plan to the Architectural Committee showing vibration isolation and performances that are achievable to control noise between Units. With approval, systems must be installed to prevent audible noise, at any level, in the adjacent Unit. Systems that do not achieve this level of isolation must be removed

from the separating wall. No hobbies or related activities shall be conducted in any Unit that involves the use of power tools.

The Architectural Committee shall not grant approval to any floor or wall modification unless the modification includes an appropriate level of acoustical separation designed and approved by a qualified acoustical consultant to ensure that the modifications will not increase the sound transmissions, resonances or reverberations to any other Unit.

3.16 Barbecue Restriction. No charcoal or wood burning barbecue shall be used within any Exclusive Use Common Area deck or porch at any time. Only propane or gas operated barbecues are allowed.

3.17 Attics. Furnaces for the Condominiums are located in the attics. Attics were not designed for any other use, including storage, and shall not be used for any other use.

3.18 Tree Removal Restriction. No tree larger than 56 inches in circumference at a height of 24 inches above the natural grade slope shall be removed without a tree removal permit issued by the City of San Jose.

3.19 Gate Restrictions. Appropriate gates shall be installed and maintained within Common Area Lot B to prevent non-emergency vehicles from entering or exiting the Development from Yosemite Avenue. No entry gates may be installed at the entrance of the Development from West San Carlos Street. No gates shall be installed across the paseos.

3.20 Exterior Wall Attachments. No Owner or occupant or any agent thereof shall attach anything to any exterior wall, eave, railing, column or other exterior component of any Condominium Building, including plant hooks, satellite dishes, or wind chimes and shall not drill into or otherwise disturb any exterior wall, eave, railing, column or other exterior components.

#### ARTICLE 4 - Maintenance and Repair Obligations

4.1 Owner's Maintenance and Repair Obligations. Each Owner shall maintain his or her Unit and all Improvements therein in good condition and repair at all times, including, but not limited to, interior doors and walls (including exterior surfaces of bearing walls located within the Unit), floors, cabinets, appliances, and all electrical, heating, plumbing and other utility fixtures situated within the Unit or partially within the Unit and partially within the Common Area and exclusively serving the Unit, such as electrical outlets. Each Owner, at that Owner's cost, shall periodically clean, maintain, repair and replace any windows, doors, and screens and screen doors that serve the Owner's Unit, including repair or replacement of any windows, doors and screens or screen doors (including garage doors and garage door opening equipment) that serve the Owner's Unit. Each Owner shall maintain and repair (including bulb replacement) any exterior door or patio lighting fixtures that are connected into the Unit's electrical system.

If damage to any of the foregoing is covered by insurance maintained by the Association and not covered under any policy the Owner is required to maintain, the Association, on request from the Owner, may submit an appropriate claim if the claim exceeds the deductible and shall remit any available insurance proceeds to the Owner on receipt of satisfactory evidence that the proceeds are or will be used for repair. Any deductible amount shall be borne by the Owner. The Board in lieu of submitting a claim may provide the funds that would otherwise be paid under the policy from other funds available to the Association. Each Owner shall maintain any Exclusive Use Common Areas appurtenant to that Owner's Condominium in a neat, clean and sanitary condition at all times.

Each Owner shall be responsible for maintaining the waterproof membrane on the deck surface within the Exclusive Use Common Area deck appurtenant to the Owner's Condominium. Maintenance must include periodic inspection of the deck surface for evidence of leaks and the immediate repair of any deck surface



that is damaged or penetrated in any manner. Owner must take appropriate precautions to prevent the membrane from being penetrated by sharp objects.

Exterior lights have been installed above the garage to illuminate the alley. The fixtures are wired into the individual Units. Each Owner shall be responsible for the maintenance, repair and replacement of the fixture and for ensuring that electricity is provided to the fixture at all times. The Association shall be responsible for replacing the bulbs in the fixtures.

Each Owner shall be responsible for maintaining and repairing any HVAC system equipment that serves the Owner's Unit, wherever located, (including the furnace in the attic adjacent to the Unit) provided that the Owner may not disturb or modify any Common Area Improvement in any manner without the prior written consent of the Board.

Each Owner shall maintain, repair and replace any smoke detectors located in the Owner's Unit. The Association shall maintain any automatic fire sprinkler heads located in any Unit, provided that each Owner immediately shall notify the Association of any problems with any automatic sprinkler heads located in the Owner's Unit.

Except for the HVAC system, which is maintained by the Owner, any electrical wiring, plumbing pipes, drains, flues, heating ducts or other utility equipment that exclusively serves one Unit but is located in the Common Area shall be maintained and repaired by the Association; however, the maintenance, repair and/or replacement costs shall be paid by the Owner of the Unit. If the Owner fails to pay the cost, the Association may levy a reimbursement assessment against the Owner's Condominium. If the utility equipment serves two or more Units, the costs shall be borne by the Association. If the maintenance, repair and/or replacement involves equipment, a portion of which exclusively benefits one Unit and a portion of which benefits two or more Units, the Board shall allocate the cost between the Unit Owner and the Association in a fair and equitable manner.

If any Owner fails to maintain his or her Unit or Exclusive Use Common Area as required herein, the Association, after notice and hearing as described in the Bylaws, may, but is not obligated to, enter the Condominium or Exclusive Use Common Area and perform the necessary maintenance and repair. The Association may levy a reimbursement assessment against the Condominium in the manner described in **Section 6.5**.

In order to reduce the potential for water damage (including mold growth) within the Unit, each Owner shall perform each of the following steps: (i) periodically inspect the Unit for water leaks, other evidence of water intrusion (such as condensation on the windows or walls, water stains or other types of water damage) and for the presence of molds, fungi and their spores (collectively "Mold"); (ii) if any water leaks, water intrusion and/or Mold are detected, immediately take appropriate corrective steps to repair the leak and/or reduce water intrusion and repair any resulting water damage (including the removal of any Mold); (iii) maintain proper ventilation (particularly in the bathrooms) and humidity levels to reduce the risk of water damage (including Mold growth); (iv) periodically inspect refrigerator condensation pans, air conditioners (if applicable) and any other water-retaining appliances to ensure they are properly functioning and not leaking water or otherwise creating water damage to the Unit (including Mold growth); (v) periodically inspect carpeting or similar types of floor covering in bathrooms that may be conducive to Mold growth; (vi) replace heating and air conditioning filters not less frequently than quarterly or as recommended by the manufacturer; and (vii) take such other prudent steps as may be appropriate to prevent water leaks and water intrusion and to repair all leaks, sources of water intrusion and water damage (including Mold growth) within the Unit.

In addition to the foregoing, each Owner shall comply with each of the following in performing the Owner's maintenance obligations: (i) the Guidelines described in **Section 4.6** and (ii) commonly-accepted homeowners' maintenance obligations.

**4.2 Owner's Landscaping Obligations.** Each Owner shall maintain the landscaping within any Exclusive Use Common Area porch or patio appurtenant to the Owner's Condominium in a healthy and weed-free condition and shall be responsible for the periodic pruning of any trees and the removal of any diseased or overgrown trees or any trees with root systems that are damaging any Common Area Improvement.

Maintenance shall include regular fertilization, irrigation, pruning and other prudent landscaping practices. Lawns shall be kept neatly mown and trees neatly trimmed and pruned at all times.

4.3 Association's Maintenance, Repair and Landscaping Obligations. Except for the Common Area Improvements maintained by each Owner as described in Section 4.1, the Association shall maintain in good condition and repair at all times the Common Area Improvements, including, but not limited to, foundations, siding, trim, roofs, decks, exterior staircases, private streets, clustered mailboxes, walkways, parking spaces, and landscaping (except landscaping within the Exclusive Use Common Area porches).

The onsite stormwater treatment measure, including swales, retention ponds, media filters and drainage system, shall be maintained in compliance with the Stormwater Maintenance Plan attached as Exhibit B to this Declaration. Maintenance shall include an annual inspection of the stormwater treatment facilities on or before the commencement of the rainy season (October 15<sup>th</sup>) and immediate commencement of any maintenance steps necessary to retain the stormwater facilities in proper operating condition, including cleaning and removal of debris from swales and storm drains. The Association shall maintain a stormwater facilities maintenance and inspection file which shall be made available to the City of San Jose upon request.

Concrete ladder pads have been installed in various locations throughout the Development for the purpose of providing the fire department with a base to support ladders in the event of an emergency. The Association shall maintain and repair the pads and shall ensure the pads are accessible at all times for access and use by emergency personnel.

Unless otherwise maintained or repaired by a governmental entity or public or private utility company, the Association shall maintain in good condition and repair all utilities and sanitary sewer and storm drainage facilities situated within the Common Area, including, but not limited to, meters, distribution lines, catch basins, storage tanks, wires, ducts, flues, pumps, boilers and pipes, but excluding any utility equipment and fixtures located within a Unit or partially within the Common Area and within the Unit, such as electrical outlets.

The Association shall have the Common Area periodically inspected for construction material destroying pests and organisms and shall take appropriate corrective measures therefor.

All landscaping to be maintained by the Association shall be maintained in a healthy and weed-free environment. Maintenance shall include regular fertilization, mowing, irrigation, pruning, elimination of pests or diseases, and other prudent landscaping practices. All lawns shall be kept neatly mown and trees neatly trimmed and pruned at all times. The Association immediately shall remove and replace all dying or dead vegetation. The Association shall take appropriate steps to maintain the irrigation of the landscaping and to prevent damage resulting from misdirected and/or excessive watering.

In order to reduce the potential for water damage (including mold growth), the Association shall perform each of the following steps: (i) periodically inspect all portions of the Building Common Area and other areas maintained by the Association that are accessible from areas maintained by the Association for water leaks, other evidence of water intrusion (such as condensation on windows or walls, water stains or other types of water damage) and for the presence of molds, fungi and their spores (collectively "Mold"); (ii) if any water leaks, water intrusion and/or Mold are detected, immediately take appropriate corrective steps to repair the leak and/or reduce water intrusion and repair any resulting water damage (including the removal of any Mold); (iii) maintain proper ventilation within enclosed areas and humidity levels to reduce the risk of water damage (including Mold growth); (iv) periodically inspect any water-retaining equipment to ensure that they are properly functioning and not leaking water or otherwise creating water damage (including Mold growth) to the Building Common Area; and (v) take such other prudent steps as may be appropriate to prevent water leaks and water intrusion and to repair all leaks, sources of water intrusion and water damage (including Mold growth).

If the Association requires access to a Unit in order to inspect, maintain, repair or replace any Common Area Improvements maintained by the Association, including the Utility Facilities described in Section 2.5, the Association shall provide the Unit occupants with such prior notice as is reasonable under the circumstances and no less than 96 hours' prior notice except in the event of an emergency. Owners must cooperate with the Association in providing the necessary access. Any Owner failing to cooperate shall be liable for any costs incurred by the Association in rescheduling inspections and any other costs incurred by

the Association in maintaining or repairing Improvements that could have been avoided had timely access been granted. The Association may levy a reimbursement assessment as authorized in **Section 6.5** to recover its costs.

In addition to the foregoing, the Association shall comply with each of the following in performing the Association's maintenance obligations: (i) the Guidelines described in **Section 4.6** and (ii) commonly-accepted homeowners' maintenance obligations.

**Notwithstanding anything herein to the contrary, the Association shall have no responsibility to maintain, repair or insure any condominium building until that building and the condominiums therein have been annexed into the Development as described in Article 14 and until assessments have commenced against the condominiums and the structure has received a certificate of occupancy or equivalent permit has been issued by the local governmental entity.**

4.4 Trash Removal. Each Owner shall be responsible for the removal of all the trash and refuse from that Owner's Condominium. Each Owner shall engage a trash removal service for the periodic removal of trash from the Owner's Condominium unless the Board approves some other arrangement in writing. All trash or refuse shall be kept only in sanitary containers, which shall be kept in the areas within the garage or otherwise screened from view from any other Condominium except on trash collection day if curbside service is provided. Trash containers shall be placed outside for curbside service no earlier than the evening before trash collection day and shall be retrieved no later than the evening of trash collection day. The Board may adopt Rules regulating the areas where containers may be stored and areas for curbside service.

4.5 Maintenance Responsibility List. Attached to this Declaration as Appendix I is a list that identifies whether the Association or the Condominium Owner is responsible for the maintenance and repair of certain items located in or in close proximity to a Unit. The purpose of this List is to identify the specific items maintained either by the Association or the Owner as described in **Section 4.1 and 4.3**. It is not intended to change the allocations. The Board from time to time may update Appendix I by recording an amended Appendix I in the records of Santa Clara County, California. The consent of the Members is not required as long as the allocation of the maintenance and repair responsibilities as reflected in the amended Appendix I is consistent with the allocation responsibilities described in **Sections 4.1 and 4.3**.

4.6 Inspection and Maintenance Guidelines and Schedules. Declarant shall provide each Owner and the Association with inspection and maintenance guidelines and schedules, including manufacturers' guidelines and schedules, for the inspection and maintenance of certain Improvements and personal property situated within the Development (collectively the "Guidelines"). Each Owner and the Association shall retain the Guidelines and shall take all appropriate steps to implement and comply with the Guidelines as required herein. Each Owner, on the transfer of the Owner's Condominium, shall deliver the Guidelines or complete copies thereof to the transferee on or before title is transferred. Replacement copies of the original Guidelines prepared by Declarant may be obtained from Declarant as described in Section 4 of the Claims Procedure described in Exhibit C attached to this Declaration. Declarant may charge a reasonable fee for providing replacement copies.

The Board periodically and at least once every three years shall review and update the Guidelines for Improvements maintained by the Association, which may be done in conjunction with the preparation of the reserves study described in **Section 6.3**. The Board shall retain copies of the Guidelines, including all revisions, and shall provide copies of Guidelines pertaining to Improvements maintained by the Owner to any new Owner within the Development within 60 days of the date of the transfer of title to the new Owner.

4.7 Cooperation and Access. Each Owner and occupant shall fully cooperate with the agents of the Association in the performance of the Association's maintenance and repair obligations described in **Section 4.3** above. Such cooperation shall include, but is not limited to, immediate notification to the Board or its managing agent of any maintenance or repair problems for which the Association is responsible and access to the Owner or occupant's Condominium and Exclusive Use Common Area as may be necessary to inspect and, if appropriate, to perform any necessary maintenance or repairs.

4.8 Reimbursement. If the Association incurs any maintenance or repair costs because of the willful or negligent act or omission of any Owner or occupant or their family members, guests, agents or pets

(including, but not limited to, any damage to the Common Area caused by a water leak or overflow from the Owner's Unit), the Association shall charge the cost to the Owner of the Condominium responsible for the costs and may levy a reimbursement assessment as described in Section 6.5. The Owner immediately shall pay the charge or reimbursement assessment to the Association, together with interest thereon at the rate of 12% per annum, but not in excess of the maximum rate authorized by law. If the Owner disputes the charge, the Owner shall be entitled to notice and a hearing as provided in Section 5.6.4. The Association shall not charge the Owner to the extent that the cost is met through insurance maintained by the Association, provided that any deductible amount shall be paid by the Owner.

4.9 Declarant Inspection Rights. Declarant reserves the right during the period commencing on the date Declarant transfers title to the last Condominium in the Development and terminating on the 11<sup>th</sup> anniversary date thereof to have access no less than two times per year to all portions of the Development maintained by the Association by Declarant's agents for purposes of inspecting the Improvements maintained by the Association, including, but not limited to: roofing system, flashing, caulking, structural components, life safety systems, windows, central boiler, elevators, and electrical and plumbing systems. The Association shall provide Declarant's agent with access to the Development to conduct the inspections no later than 10 calendar days after receiving request for such access.

On completion of each inspection, a report shall be prepared regarding the quality of the maintenance and, if applicable, recommendations for maintenance, repair or replacement. A copy of the report shall be provided to the Association. If the report contains maintenance, repair or replacement recommendations, the Association shall implement the recommendations within the recommended time frame set forth in the report.

Nothing herein establishes any obligation on Declarant or any agent of the Declarant to conduct inspections or provide reports. In addition, the extent of the inspection shall be at the sole discretion of the Declarant. Declarant assumes no duty or liability to inspect all the Common Area Improvements maintained by the Association and assumes no duties or liabilities in connection with Declarant's failure to uncover any defect, damage or maintenance or repair omission by the Association during any inspection conducted by Declarant.

## ARTICLE 5 - The Association

5.1 Formation of the Association. The Association is a nonprofit mutual benefit corporation formed under the laws of the State of California. The Association shall commence operations no later than the date that assessments commence. Pending the commencement of the Association's operations, Declarant shall perform the duties and shall have the rights of the Association as described herein.

5.2 Governing Body. The governing body of the Association shall be the Board. It shall be the responsibility of the Board to ensure that the Association exercises its rights and performs its duties as described within this Declaration, the Articles, the Bylaws and any amendments thereto.

The Board shall adopt Rules in accordance with procedures required by Civil Code sections 1357.100 through 1357.150 regarding the elections to the Board and related matters that satisfy the requirements set forth in Civil Code section 1363.03.

5.3 Membership. Each Owner shall automatically be a Member of the Association. If there is more than one fee title Owner of a Condominium, each Owner shall be a Member. The holder of a security interest in a Condominium shall not be a Member of the Association except and until that holder obtains both the legal and equitable interest in the Condominium. Membership shall be appurtenant to the Condominium and may not be separated therefrom. Any transfer of an Owner's interest in a Condominium (other than a security interest), by operation of law or otherwise, automatically transfers the membership to the Owner's successor in interest. No Owner may resign or revoke his or her membership for any reason.

5.4 Membership Classes and Voting Rights. The Association shall have the following two classes of voting memberships:

5.4.1 Class A. Class A Members are all Owners except the Declarant. Class A Members shall be entitled to one vote for each Condominium in which he or she owns an interest. If more than one Owner owns an interest in a Condominium, only one vote may be cast with respect to that Condominium.

5.4.2 Class B. The Class B Member shall be the Declarant, who shall be entitled to three votes for each Condominium owned by the Declarant. Class B membership shall cease and be irreversibly converted to Class A on the first to occur of the following:

(a) the second anniversary of the first conveyance of a Condominium in the most recent phase of the Development; or

(b) the fourth anniversary of the first conveyance of a Condominium in the Development.

Voting rights shall vest at the time that assessments are levied against the Owner's Condominium.

Except as set forth below, all matters requiring the approval of the Members shall be approved if: (i) approved by a majority of the votes cast either in person or by proxy at a duly-held regular or special meeting at which a quorum was present; (ii) approved by a majority of the written ballots cast in compliance with the requirements of Corporations Code section 7513 or any successor statute thereto; or (iii) approved by unanimous written consent of all the Members. Notwithstanding the foregoing, approval by the Members shall be subject to each of the following:

(1) Two Membership Classes. As long as two classes of voting membership exist, any action by the Association that requires approval by the Members shall require approval by the members of each class.

(2) Single Membership Class/Declarant-Owned Condominiums. If one class of voting membership exists and Declarant owns any Condominiums, any action by the Association that requires approval by the Members shall require approval by the Members including Declarant's vote(s) and approval by the Members excluding Declarant's votes.

(3) Greater Than a Majority. If, under the terms of this Declaration, a particular action requires approval by more than a majority, the action shall be approved by the Members only if the required percentage of votes approves the action.

(4) Completion Bond and Section 896 Claims. Votes of the Declarant shall be excluded as provided in Sections 5.11 and 5.14 of this Declaration.

(5) Amendments. Member approval requirements for any amendments to this Declaration, the Articles or Bylaws shall comply with the amendment requirements set forth in the applicable document.

(6) Legal Requirements. If the voting requirements and/or procedures conflict with any applicable statutory requirements, the statutory requirements shall control.

5.5 Joint Ownership Votes. The vote that is attributed to each Condominium may not be cast on a fractional basis. If the Condominium has more than one Owner and the Owners are unable to agree as to how the vote shall be cast, the vote shall be forfeited on the matter in question. Any vote cast by an Owner for any Condominium is presumed conclusively to be the vote cast by all the Owners of that Condominium. If more than one Owner casts a vote attributed to a Condominium on any matter on which only one vote could be cast for that Condominium, the votes cast by such Owners shall be counted as one vote if the votes are the same; and if the votes are different, the vote cast by such Owners shall not be counted and shall be forfeited.

5.6 Powers of the Association. The Association shall have all the powers of a nonprofit mutual benefit corporation organized under the general nonprofit mutual benefit corporation laws of California, subject only to such limitations on the exercise of these powers as are set forth in the Articles, Bylaws and this

Declaration. The Association shall have the power to do any lawful thing that may be authorized, required or permitted to be done by the Association under this Declaration, the Articles and the Bylaws and to do and perform any act that may be necessary or proper for or incidental to the exercise of any of the express powers of the Association, including, without limitation, each of the following:

5.6.1 Levying Assessments: The Board shall establish, fix and levy assessments against the Condominiums and collect and enforce payment of such assessments in accordance with the provisions of **Article 6** of this Declaration.

5.6.2 Adopting Rules: The Board may adopt, amend and repeal Rules as it considers appropriate. Rules shall apply generally to the management and operation of the Development and/or the conduct of the business and affairs of the Association and may regulate the use and enjoyment of the Common Area, the use of any commonly-metered utilities that are paid by the Association and such other matters as are authorized in this Declaration. The Rules shall satisfy the requirements of Civil Code section 1357.110 and, to the extent applicable, the procedural requirements for the adoption, amendment or repeal of the Rules as set forth in Civil Code section 1357.130 and for the reversal of Rules as set forth in Civil Code section 1357.140. A copy of the Rules as adopted, amended or repealed shall be mailed or otherwise delivered to each Owner; and a copy shall be posted in a conspicuous place within the Development if an appropriate space is available for such posting. If any provision of this Declaration, the Articles or the Bylaws is inconsistent with or materially alters any Rules, this Declaration, the Articles and the Bylaws shall control to the extent of any such inconsistencies. Members shall have the same access to the Rules as they have to the accounting books and records of the Association.

Any Rules adopted by the Board shall apply to all Owners or occupants in a uniform and nondiscriminatory manner. The Board may adopt a Rule as the result of an act or omission of any Owner or occupant or their family members or guests or a Rule that does not directly affect all Owners or occupants in the same manner as long as the Rule applies to all Owners or occupants.

5.6.3 Borrowing Money: The Board may borrow money to meet any anticipated or unanticipated cost of the Association and, subject to the provisions of **Section 5.12(tx)**, may mortgage, encumber or pledge Association assets (including, but not limited to, assessments) as security for such borrowing.

5.6.4 Imposing Disciplinary Action: In addition to any other enforcement rights described in this Declaration and the Bylaws or as may be authorized by law and subject to the due process requirements imposed by this Declaration, the Bylaws or by law, the Board may take any of the following actions against any Person whose act or failure to act violates or threatens to violate any provisions of this Declaration, the Bylaws or Rules: (a) impose monetary penalties, including late charges and interest; (b) suspend voting rights in the Association; and (c) commence any legal or equitable action for damages, injunctive relief or both. Subject to the provisions of **Section 13.8**, the determination of whether to impose any of the foregoing sanctions shall be within the sole discretion of the Board. Any legal action may be brought in the name of the Association on its own behalf and on behalf of any Owner who consents; and, except as otherwise provided herein, the prevailing party in such action shall be entitled to recover costs and reasonable attorneys' fees. The Board, in its sole discretion, may resolve or settle any dispute, including any legal action in which the Association is a party, under such terms and conditions as it considers appropriate.

(i) If the Board adopts a policy imposing monetary penalties, including any fee on any Member for a violation of the governing documents or the Rules, including any monetary penalty relating to the activity of a guest or invitee of a Member, the Board shall adopt and distribute to each Member, by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed. The Board may change the schedule from time to time and shall distribute a notice of such changes to the Members in the same manner as the schedule of penalties.

(ii) The imposition of any disciplinary action, including, but not limited to, the imposition of monetary penalties or the suspension of use and/or voting privileges except as otherwise noted herein, shall be subject to the following procedures and requirements:

(a) Notice of Hearing: Prior to the time the Board meets to consider or impose discipline upon a Member, the Board shall notify the Member, by either personal delivery or first-class mail, at least 15 days prior to the meeting. The notice shall contain, at a minimum, the date, time and place of the meeting, the nature of the alleged violation for which the Member may be disciplined, and a statement that the Member has a right to attend and may address the Board at the meeting.

(b) Hearing: If requested by the Member, the Board shall conduct the disciplinary proceeding in executive session. The Member, the Member's legal counsel, and the Association's legal counsel shall be entitled to attend the executive session meeting. The Board may interview witnesses and other interested parties in executive session.

(c) Notice of Action Taken: If the Board elects to impose discipline on the Member, the Board shall notify the Member of the disciplinary action within ten days following the election to impose the disciplinary action.

(d) No Forfeiture: Under no circumstances may the Association cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of the Owner's Unit on account of the failure of the Owner to comply with the provisions of this Declaration, the Articles, Bylaws or Rules, except by judgment of a court or decision of an arbitrator or on account of a foreclosure or sale under power of sale for failure of the Owner to pay assessments duly levied by the Association.

(e) Assessment Charges: The provisions of this **Section 5.6.4** do not apply to charges imposed against a Member for reasonable late payment penalties or charges to reimburse the Association for loss of interest and for costs reasonably incurred (including attorneys' fees) in collecting delinquent assessments.

5.6.5 Delegating Duties: Except as may be limited by the Bylaws, the Board may delegate any of the Association's powers and duties to its employees, committees or agents, including a professional management agent.

5.6.6 Implementing Special Fees: The Board may implement special fees to reimburse the Association for special costs incurred as a result of actions taken by Owners.

5.6.7 Dispute Resolution Procedures: The Board shall implement dispute resolution procedures for disputes between the Association and a Member involving the rights, duties or liabilities under the Governing Documents, the Davis-Stirling Common Interest Development Act (Civil Code sections 1350-1376) or the Nonprofit Mutual Benefit Corporation Law (Corporations Code sections 7110-8910) that comply with the requirements of Civil Code sections 1363.810 through 1363.850.

5.7 Duties of the Association. In addition to the duties described in the Articles or Bylaws, or elsewhere in this Declaration, the Association shall have the duty to manage the Common Area; perform the maintenance as described in **Section 4.3**; prepare, periodically update, and comply with the maintenance and inspection guidelines described in **Section 4.6**; prepare and distribute financial statements, reports and the other documents and notices described in **Section 5.10**; enforce bonded obligations as described in **Section 5.11**; levy and collect assessments as described in **Article 6**; prepare when required the reserve studies described in **Section 6.3** and annually review and implement adjustments as required; and procure, maintain and review the insurance as described in **Article 8**. The Association shall perform such other acts as may be reasonably necessary to exercise its powers to perform its duties under any of the provisions of this Declaration, the Articles, Bylaws, Rules or Board resolutions.

5.8 Taxes and Assessments. The Association shall pay all real and personal property taxes and assessments and all other taxes levied against the Association, the Common Area or the personal property owned by the Association. Such taxes and assessments may be contested or compromised by the Association, provided that they are paid or that a bond insuring payment is posted before the sale or the disposition of any property to satisfy the payment of such taxes.

Until such time as real property taxes against the Property are segregated so that real property taxes are assessed against each Condominium (in addition to any supplemental tax assessments levied against

any Condominium), the non-segregated tax amount shall be allocated among all the Condominiums in the same manner that regular assessments are allocated as described in **Section 6.9** and if any portion of the regular assessments are prorated among the Condominiums, the non-segregated tax amount shall be allocated in the same manner. The Association shall take all appropriate steps to collect each Condominium's allocable share so that the non-segregated taxes may be paid in a timely and proper manner. The Association may levy a special assessment against the Condominiums to collect the non-segregated tax amount. Any Owner who breaches the Owner's duty to pay the Owner's allocable share in a timely and proper manner shall be liable for any penalties, interests, fees or other such costs incurred as a result of the breach.

5.9 Utility Service. The Association shall acquire, provide and pay for water, refuse and rubbish collection, electrical, and other necessary utility services for the Common Area and any commonly metered utility service to the Units.

5.10 Reporting and Notice Requirements. The Association shall prepare and distribute the documents described in this **Section 5.10**. The reporting requirements incorporate the requirements imposed on homeowners associations under the Davis-Stirling Common Interest Development Act ("Act") in effect as of January 1, 2007. If the reporting requirements in the Act are subsequently amended, the reporting requirements in the Act, as amended, shall apply.

5.10.1 Pro Forma Operating Budget. A pro forma operating budget for each fiscal year shall be distributed not less than 30 days nor more than 90 days before the beginning of the fiscal year consisting of at least the following:

(1) Estimated revenue and expenses on an accrual basis.

(2) A summary of the Association's reserves based on the most recent reserves review or study conducted pursuant to **Section 6.3**, based only on assets held in cash or cash equivalents, which shall be printed in bold type and shall include the following:

(A) the current estimated replacement cost, estimated remaining life and estimated useful life of each major component which the Association is obligated to maintain (collectively the "Major Components");

(B) as of the end of the fiscal year for which the study was prepared:

(i) the current estimate of cash reserves necessary to repair, replace, restore or maintain the Major Components;

(ii) the current amount of accumulated cash reserves actually set aside to repair, replace, restore or maintain the Major Components; and

(iii) if applicable, the amount of funds received from either a compensatory damage award or settlement to the Association from any Person for injuries to property, real or personal, arising out of any construction or design defects and the expenditure or disposition of funds, including the amounts expended for the direct and indirect costs of repair of construction or design defects. These amounts shall be reported at the end of the fiscal year for which the study is prepared as separate line items under cash reserves pursuant to **Section 5.10.1(2)(B)(II)**. In lieu of complying with the foregoing requirements, if the Association is obligated to issue a review of its financial statement pursuant to **Section 5.10.2** below, the Association may include in the review a statement containing all of the information required by this **Section 5.10.1(2)(B)(iii)**;

(C) the percentage that the amount in **Section 5.10.1(2)(B)(ii)** is to the amount in **Section 5.10.1(2)(B)(i)**; and

(D) the current deficiency in reserve funding expressed on a per Unit basis. The figure shall be calculated by subtracting the amount determined for purposes of **Section 5.10.1(2)(B)(ii)** from the amount determined for purposes of **Section 5.10.1(2)(B)(i)** and then dividing the result by the number of separate interests within the Association, except that if assessments vary by the size



or type of ownership interest, then the Association shall calculate the current deficiency in a manner that reflects the variation.

(3) A statement as to the following:

(A) whether the Board has determined to defer or not undertake repairs or replacement of any Major Component with a remaining life of 30 years or less, including a justification for the deferral or decision not to undertake the repairs or replacement;

(B) whether the Board, consistent with the reserve funding plan adopted pursuant to Civil Code section 1365.5(e), has determined or anticipates that the levy of one or more special assessments will be required to repair, replace or restore any Major Component or to provide adequate reserves therefor; and if so, the statement shall also set out the estimated amount, commencement date and duration of the assessment;

(C) the mechanism or mechanisms by which the Board will fund reserves to repair or replace major components, including assessments, borrowing, use of other assets, deferral of selected replacement or repair, or alternative mechanisms; and

(D) whether the Association has any loans with an original term of more than one year, including the payee, interest rate, amount outstanding, annual payment and when the loan is scheduled to be retired.

(4) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement or additions to the Major Components. The report shall include, but need not be limited to, reserve calculations made using the formula described in Civil Code section 1365.2.5(b)(4) and may not assume a rate of return on cash reserves in excess of 2 percent above the discount rate published by the Federal Reserve Bank of San Francisco at the time the calculation was made.

In lieu of the distribution of the pro forma operating budget, the Board may elect to distribute a summary of the budget to all its Members with a written notice in at least 10-point bold type on the front page of the summary that the budget is available at the Association's business office or another suitable location within the boundaries of the Development and that copies will be provided on request and at the expense of the Association. If any Member requests a copy of the pro forma operating budget to be mailed to the Member, the Association shall provide the copy to the Member by first-class mail at the expense of the Association, which copy shall be mailed within five days of the receipt of the request.

**5.10.2 Reserve Funding Plan Summary.** Commencing January 1, 2009, a summary of the reserve funding plan adopted by the Board, as specified in Civil Code section 1365.5(e)(4). The summary shall include notice to Members that the full reserve study plan is available upon request and the Association shall provide the full reserve plan to any Member upon request.

**5.10.3 Financial Statement Review.** A review of the financial statement of the Association shall be prepared in accordance with Generally Accepted Accounting Principles by a licensee of the California State Board of Accountancy for any fiscal year in which the gross income of the Association exceeds \$75,000. A copy of the review of the financial statement shall be distributed within 120 days after the close of each fiscal year.

**5.10.4 Policies and Practices Statement.** A statement of the Association's policies and practices in enforcing lien rights or other legal remedies for default in payment of assessments. A copy of this statement shall be distributed to each Owner and any Mortgagee no less than 30 days nor more than 90 days immediately preceding the beginning of each fiscal year.

**5.10.5 Governing Documents.** Copies of this Declaration, the Articles, Bylaws, Rules and other applicable documents as required by Civil Code section 1368(a) shall be provided any Owner within ten days of the mailing or delivery of a written request. The items required to be made available pursuant to this Section 5.10.5 may be maintained in electronic form and requesting parties shall have the option of receiving

them by electronic transmission or machine readable storage media if the Association maintains these items in electronic form. The Board may impose a fee to provide these materials but not to exceed the Association's reasonable costs in preparing and reproducing the material.

5.10.6 Minutes. A statement describing the Members' rights to obtain copies of the minutes of meetings of the Board, including a description of how and where these minutes may be obtained shall be distributed to the Members at the time the Pro Forma Operating Budget described in **Section 5.10.1** is distributed to the Members.

5.10.7 Dispute Resolution Summary. A dispute resolution summary shall be provided to the Members either at the time the Pro Forma Operating Budget described in **Section 5.10.1** is distributed to Members or in the manner set forth in Corporations Code section 5016 and shall include a description of the Association's internal dispute resolution procedures required by Civil Code section 1363.850 and the following statement:

Failure by any member of the Association to comply with the dispute resolution requirements of Civil Code section 1369.520 may result in the loss of your rights to sue the Association or another member of the Association regarding enforcement of the governing documents.

5.10.8 Insurance Summary. A summary of the Association's property, general liability, earthquake, flood and fidelity policies, if any (individually and collectively referred to as the "Policy" or "Policies"), shall be distributed to the Members not less than 30 days nor more than 90 days preceding the beginning of the Association's fiscal year. The summary shall include the following information on the Policies:

- (A) the name of the insurer;
- (B) the type of insurance;
- (C) the Policy limits of the insurance; and
- (D) the amount of deductibles, if any.

The Association, as soon as reasonably practical, shall notify its Members by first-class mail if any of the Policies have been cancelled and not immediately renewed or restored or if there is a significant change such as a reduction in coverage or limits or an increase in the deductible for any Policy. If the Association receives any notice of non-renewal of a Policy, the Association immediately shall notify its Members if replacement coverage will not be in effect by the date the existing coverage will lapse.

To the extent that the information required to be disclosed as described in this **Section 5.10.8** is specified in the insurance policy declaration page, the Association may meet its disclosure obligations by making copies of that page and distributing copies to all its Members.

The summary required in this **Section 5.10.8** shall contain, in at least 10-point boldface type, the following statement:

This summary of the Association's policies of insurance provides only certain information as required by subdivision (e) of section 1365 of the Civil Code and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance. Any Association member, upon request and reasonable notice, may 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.

5.10.9 Assessment/Foreclosure Notice. A written notice regarding assessments and foreclosures required by Civil Code section 1365.1(b) shall be distributed to each Member during the 60-day period immediately preceding the beginning of the Association's fiscal year. The notice shall be printed in at least 12-point type.

5.10.10 Architectural Approval/Dispute Resolution Procedure Notices. The Association shall annually provide the Members with notice of the requirements for approval by the Architectural Committee in accordance with the procedures described in **Article 7** for physical changes to the Condominiums. The notice shall describe the types of changes that require approval, shall include a copy of the procedure used to review and approve or disapprove a proposed change, and shall include a description of the dispute resolution procedures implemented by the Board as required under **Section 5.6.7**.

5.10.11 Secondary Notice Address. A Member may provide written notice by facsimile transmission or United States mail to the Association of a secondary address. If a secondary address is provided, the Association shall send any and all correspondence and legal notices required, pursuant to Civil Code sections 1365 through 1365.1, 1365.2, 1365.2.5 and 1365.5, to both the primary and the secondary address.

5.11 Enforcement of Bonded Obligations. If the Association is the obligee under a bond or other arrangement ("Bond") to secure performance of the commitment of the Declarant or a successor or assign to complete the Common Area Improvements not completed at the time the California Department of Real Estate issued a final subdivision report for the latest phase of the Development, the Board will consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any Improvement for which a notice of completion has not been filed by the later of: (i) 60 days after the completion date specified for that Improvement in the "planned construction statement" appended to the Bond; or (ii) 30 days after the expiration of any written extension given by the Association. If the Board fails to consider and vote on the action to enforce the obligations under the Bond, or if the Board decides not to initiate action to enforce the obligations under the Bond, then on receipt of a petition signed by Owners representing not less than 5% of the total voting power of the Association, the Board shall call a special meeting of Owners for the purpose of voting to override the decision of the Board not to initiate action or to compel the Board to take action to enforce the obligations under the Bond. The Board shall give written notice of the meeting to all Owners entitled to vote in the manner provided in this Declaration or in the Bylaws for notices of special meetings of Owners. The meeting shall be held not less than 35 days nor more than 45 days after receipt of the petition. At the meeting, the vote in person or by proxy by a majority of the Owners entitled to vote (other than Declarant) in favor of taking action to enforce the obligations under the Bond shall be considered the decision of the Association; and the Board shall implement this decision by initiating and pursuing appropriate action in the name of the Association.

Upon satisfaction of the Declarant's obligation to complete the Common Area Improvements, the Board shall acknowledge in writing that it approves the release of the bond and shall execute any other documents or instruments as may be necessary or advisable to effect the release of the Bond. The Board shall not condition its approval to release the Bond on the satisfaction of any condition other than the completion of the Common Area Improvements as described on the "planned construction statement". Any dispute between the Declarant and the Association regarding the release of the Bond shall be resolved in accordance with the Bond escrow instructions or, if these instructions are not operative for any reason, in accordance with the procedures of **Article 12**.

5.12 Limitations on Authority of the Board. The Association is prohibited from taking any of the following actions:

(i) except as otherwise provided in law, or order of the court, or an order pursuant to a final and binding arbitration decision, the Association shall not deny an Owner or occupant physical access

to his or her Unit, either by restricting access through the Common Areas to the Owner's Unit or by restricting access solely to the Owner's Unit;

(ii) the Association may not voluntarily assign or pledge the Association's right to collect payments or assessments or to enforce or foreclose a lien to a third party except when the assignment or pledge is made to a financial institution or lender chartered or licensed under federal or State law when acting within the scope of that charter or license as security for a loan obtained by the Association; however, the foregoing provision may not restrict the right or ability of the Association to assign any unpaid obligations of a former Member to a third party for purposes of collection;

(iii) adopt a Rule or regulation that arbitrarily or unreasonably restricts an Owner's ability to market the Owner's Condominium; or

(iv) establish an exclusive relationship with a real estate broker through which the sale or marketing of Condominiums is required to occur. This restriction does not apply to the sale or marketing of Common Areas owned by the Association.

Furthermore, the Board shall not take any of the following actions except with the consent, by vote at a meeting of the Association or by written ballot without a meeting pursuant to Corporations Code section 7513 or any successive statute thereto, of a simple majority of the Members other than Declarant constituting a quorum of more than 50% of the voting power of the Association residing in Members other than the Declarant:

(v) incur aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of 5% of the budgeted gross expenses of the Association for that fiscal year;

(vi) sell during any fiscal year property of the Association having an aggregate fair market value greater than 5% of the budgeted gross expenses of the Association for that fiscal year;

(vii) pay compensation to members of the Board or to officers of the Association for services performed in the conduct of the Association's business, provided that the Board may reimburse a member or officer for expenses incurred in carrying on the business of the Association;

(viii) enter into a contract with a third Person to furnish goods or services for the Common Area or the Association for a term longer than one year with the following exceptions:

(a) a management contract, the terms of which have been approved by the Federal Housing Administration or Veterans Administration;

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

(c) prepaid casualty or liability insurance policies not to exceed three years' duration, provided the policy permits for short rate cancellation by the insured;

(d) lease agreements for laundry room fixtures and equipment not to exceed five years' duration, provided the Declarant does not have a direct or indirect ownership interest of 10% or more in any lessor under such agreements;

(e) agreements for cable television services and equipment or satellite dish television services and equipment not exceeding five years in duration, provided the supplier is not an entity in which the Declarant has a direct or indirect ownership interest of 10% or more;

(f) agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services not exceeding five years' duration, provided that the supplier or suppliers are not entities in which the Declarant has a direct or indirect ownership interest of 10% or more; and

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

(ix) borrow money secured by any Association assets as authorized under **Section 5.6.3**.

5.13 Notice of Significant Legal Proceedings. Notwithstanding anything herein to the contrary, not later than 30 days prior to the filing of any civil action against the Declarant or other developer for alleged damage to the Common Area, alleged damage to the separate interests that the Association is obligated to maintain or repair, or alleged damage to the separate interests that arises out of, or is integrally related to, damage to the Common Area or separate interests that the Association is obligated to maintain or repair, the Board shall provide written notice to each Member of the Association. The notice shall specify the date and location of the meeting and both of the following:

(i) that a meeting will take place to discuss problems that may lead to the filing of a civil action; and

(ii) the options, including civil actions, that are available to address the problems.

If the Board in good faith determines that there is insufficient time to provide prior notice to the Members as required herein prior to the expiration of any applicable statute of limitations, the Board may take the necessary steps to commence the proceeding to preserve the rights of the Association, provided that as soon as is reasonably practical thereafter, and not later than 30 days following the commencement of the proceeding, the Board shall provide the Members with notice as required herein.

5.14 Civil Code Sections 896 and 897 Claims. The sole and exclusive authority to initiate claims on behalf of the Association in connection with Improvements or landscaping maintained by the Association for violations of the functionality standards set forth in Civil Code sections 896 and 897 shall rest with the Board members elected solely by Class A Members described in **Section 5.4.1** of this Declaration (the "Non-Declarant Directors"). Any Non-Declarant Director may at any time request a meeting for the purpose of discussing, inspecting, investigating and/or initiating any claims under Civil Code sections 896 or 897. Notice of the meeting shall be sent in the same manner as notice for special meetings of the Board. Any member of the Board appointed by Declarant or elected by votes cast by Declarant shall be entitled to attend the meeting but shall not be entitled to vote. The meeting shall be open for all Members of the Association unless the Non-Declarant Directors adjourn to an executive session as authorized by the Bylaws. The decision of a majority of the Non-Declarant Directors shall control. If the Non-Declarant Directors elect to initiate a claim, the authority to initiate a claim also shall require the approval of the votes cast by a majority of the Class A Members present in person or by proxy at a duly-held meeting. Any Non-Declarant Director may call a special meeting of the Members for this purpose. For purposes of this **Section 5.14**, if the Class B membership has been converted to Class A membership as described in **Section 5.4**, the quorum requirements shall be based on the total votes of the Class A Members other than the votes held by Declarant and the Declarant votes shall not count for approval or disapproval purposes. The claim is subject to the provisions and procedures set forth in **Article 12**. If requested by the Non-Declarant Directors, the Association shall provide the administrative support for the notice and conduct of its meetings and any meeting of the Members called to approve the initiation of a claim. In addition, the Association shall provide such reasonable financial support as may be necessary in order for the Non-Declarant Directors to inspect, investigate and/ or initiate the claim on behalf of the Association, subject to the applicable requirements and procedures set forth in **Sections 5.13, 5.6 and Article 12**. The provisions of this **Section 5.14** are effective automatically on the date the first Non-Declarant Director is elected to the Board.

5.15 Access to Association Records. The Association shall comply with the requirements of Civil Code section 1365.2 in making the "Association Records" and "Enhanced Association Records", as defined in Civil Code section 1365.2(a), available for copy and inspection unless exempt under the provisions of Civil Code section 1365.2(n).

5.16 Meeting Minutes. The Association shall provide the Declarant full and complete copies of the minutes of each Board and Member meeting until the 11<sup>th</sup> anniversary of the recording of this Declaration in

the records of Santa Clara County, California. The copies shall be provided within 30 days of the meeting and shall be sent to Declarant's principal place of business or such other address as the Declarant may direct.

#### ARTICLE 6 - Assessments

6.1 Obligations to Pay Assessments. The Owner of each Condominium is obligated to pay any assessments levied against that Owner's Condominium on or before the due date of the assessment. If there is more than one Owner of the Condominium, the obligation is joint and several. Each Owner on acceptance of a deed to a Condominium automatically personally assumes the obligation to pay any assessments against the Owner's Condominium (including, but not limited to, any portion of the annual regular assessment not yet due and payable) and agrees to allow the Association to enforce any assessment lien established hereunder by nonjudicial proceedings under the power of sale or by any other means authorized by law. The Owner shall be liable for the full assessment levied against that Owner's Condominium regardless of the Owner's possession or use of the Condominium, the Common Area or any services rendered by the Association. The Owner has no right or power to commit or omit any act, such as waiving the right to use the Common Area in an attempt to eliminate or reduce the assessments against that Owner's Condominium. An assessment shall be both a personal obligation of the Owners of the Condominium against which the assessment is levied and, on the recordation of a notice of delinquent assessment, a lien against the Condominium. Any Owner who transfers a Condominium shall remain personally liable for any unpaid assessments that accrued on or before the date of the transfer. No Owner shall be liable for any defaults of the Owner's predecessor in interest in the payment of any assessment that has accrued prior to the Owner taking title to the Property unless that Owner expressly assumes the obligation to cure the delinquent assessments. Notwithstanding the foregoing, any Owner who takes title to a Condominium on which a lien for a delinquent assessment has been established will take title subject to the lien and the Association's enforcement remedies as a result thereof unless the Owner takes title under a foreclosure or trustee sale resulting from a foreclosure or exercise of a power of sale under a Mortgage, deed of trust, or other lien recorded before the recordation of the notice of delinquent assessment and except as provided in **Section 10.3**.

Declarant's obligation to pay regular assessments for Condominiums owned by Declarant may be reduced or abated pursuant to a maintenance or subsidy agreement between Declarant and the Association and approved by the California Department of Real Estate.

6.2 Annual Regular Assessment. Prior to the beginning of each fiscal year of the Association, the Board shall meet for the purpose of establishing the annual regular assessment for the forthcoming fiscal year. At such meeting, the Board shall review the preliminary pro forma operating budget prepared for the forthcoming fiscal year, any written comments received from Members and Mortgagees, and such other related information that has been made available to the Board. After making any adjustments that the Board considers appropriate and subject to such Member approval as may be required by **Section 6.6**, the Board will establish an annual regular assessment for the forthcoming fiscal year. Each annual regular assessment shall include a portion for reserves as described in **Section 6.3**.

If the Board for any reason fails to take the appropriate steps to establish the annual regular assessment for the next fiscal year, the annual regular assessment for the preceding fiscal year shall continue in effect subject to the Board's right at anytime during the next fiscal year to adjust the assessment pursuant to the procedures described herein.

6.3 Reserves, Reserve Accounts and Reserves Study. Each annual regular assessment shall include a portion for reserves in such amount as the Board in its discretion considers appropriate to meet the cost of the future repair, replacement or additions to the Major Components as described in **Section 5.10.1** that the Association is obligated to maintain and repair. For all purposes in this Declaration and in the Bylaws, reserve accounts shall mean: (i) the funds that the Board has identified for the foregoing purposes ("Regular Reserve Funds") and (ii) the funds received and not yet expended or disposed from either a compensatory damage award or settlement to the Association from any Person for injuries to property, real or personal arising from any construction or design defects (the "Construction Reserve Funds"). Construction Reserve Funds shall be separately itemized from funds designated as Regular Reserve Funds.

Reserve funds shall be deposited in a separate account; and the signatures of at least two persons, who shall either be members of the Board or one officer who is not a member of the Board and a member of the Board, shall be required to withdraw monies from the reserve account. Reserve funds may not be expended for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, Major Components that the Association is obligated to maintain.

Notwithstanding the foregoing, the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash-flow requirements or other expenses, provided the Board has made a written finding, recorded in the Board's minutes, explaining the reason that the transfer is needed and describing when and how the money will be repaid to the reserve fund. The transferred funds shall be restored to the reserve fund within one year of the date of the initial transfer, provided that the Board, on the making of a finding supported by documentation that a temporary delay is in the best interest of the Development, may delay temporarily the restoration. The Board shall exercise prudent fiscal management in maintaining the integrity of the reserve account and, if necessary, shall levy a special assessment to recover the full amount of the expended funds within the time limits required herein. This special assessment shall be subject to the assessment increase restrictions set forth in **Section 6.6** and Civil Code section 1366(b).

If the Board elects to use reserve funds or to temporarily transfer money from the reserve fund to pay for litigation, the Association shall notify the Members of that decision in the next available mailing to all Members pursuant to Corporations Code section 5016. The notice shall inform Members of the availability of an accounting of these expenses. The Board shall distribute a written accounting of this expense to the Members on at least a quarterly basis, with the first accounting to be delivered no later than the 30th day following the Board's decision to use reserve funds for litigation, either directly or through a transfer to operating funds. In any proposed litigation in which the amount in controversy is expected to exceed \$25,000, the first accounting shall include a description of expenses paid to date, a description of the principal terms and conditions of any contract with any Person providing services in connection with the litigation, including attorneys and expert witnesses, a good faith estimate of the total legal fees, expert fees and other litigation costs that may be incurred, and a sample disclosure that Members should provide prospective purchasers, lenders and other parties that have obtained or may obtain an interest in the Owner's Condominium regarding the litigation. In each subsequent accounting, the information required in the first accounting shall be appropriately updated.

At least once every three years, the Board shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the Major Components that the Association is obligated to repair, replace, restore or maintain as a part of a study of the reserve account requirements of the Development if the current replacement value of the Major Components is equal to or greater than one-half of the gross budget of the Association, excluding the Association's reserve account for that period. **The Board shall review this study annually and shall consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review.**

The study, at a minimum, shall include:

- (i) identification of the Major Components that the Association is obligated to repair, replace, restore, or maintain that, as of the date of the study, have a remaining useful life of less than 30 years;
- (ii) identification of the probable remaining useful life of the Major Components identified in subparagraph (i) as of the date of the study;
- (iii) an estimate of the cost of repair, replacement, restoration, or maintenance of the Major Components identified in subparagraph (i) during and at the end of its useful life;
- (iv) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the Major Components during and at the end of its useful life after subtracting total reserve funds as of the date of the study; and

(v) a reserve funding plan that indicates how the Association plans to fund the contribution identified in paragraph (iv) to meet the Association's obligations for the repair and replacement of all Major Components with an expected remaining life of 30 years or less, not including those components that the Board has determined will not be replaced or repaired. The plan shall include a schedule of the date and amount of any change in regular or special assessments that would be needed to sufficiently fund the reserve funding plan. The plans shall be adopted by the Board at an open meeting before the membership of the Association as described in Civil Code section 1363.05. If the Board determines that an assessment increase is necessary to fund the reserve funding plan, any increase shall be approved in a separate action of the Board that is consistent with the procedure described in Civil Code section 1366.

As used herein, "reserve accounts" has the meaning set forth in Civil Code section 1365.5(f) or any successor statute thereto.

6.4 Special Assessments. Subject to the restrictions described in **Section 6.6**, the Board may levy a special assessment if the Board in its discretion determines that the Association's available funds are or will become inadequate to meet the estimated expenses of the Association, including, but not limited to, expenses resulting from inadequate reserves, unanticipated delinquencies, costs of construction, unexpected repairs or replacements of capital improvements, inadequate insurance proceeds, or other unanticipated expenses. The Board may levy the entire special assessment immediately or levy it in installments over a period the Board considers appropriate.

6.5 Reimbursement Assessments. The Board shall have the authority to levy reimbursement assessments against one or more Condominium Owners to reimburse the Association for any costs incurred or to be incurred by the Association as the result of any act or omission of any Owner or occupant of any Condominium or their family members, guests, agents or pets. The levy shall not include any portion that is paid or will be paid by any insurer under a policy maintained by the Association. Payment of the deductible amount shall be the responsibility of the Owner and is subject to a reimbursement assessment. If the reimbursement assessment is levied and paid before all or any portion of the costs have been incurred by the Association and the amount paid exceeds the costs incurred, the Association promptly shall refund the excess to the Owner. If the costs exceed the amount, the Owner shall reimburse the Association within 30 days thereafter. If payment is not made when due, the payment shall be considered a delinquent assessment and the Association may enforce the delinquent assessment as described in **Section 6.10** subject to the non-judicial foreclosure restrictions described in this **Section 6.5**.

In addition to reimbursing the Association for costs necessary to repair any Common Area or other Property that is maintained by the Association, the Association may seek reimbursement for any costs incurred by the Association, including attorneys' fees, to bring the Owner or occupant or the Owner's Condominium into compliance with this Declaration, the Articles, Bylaws or Rules. A reimbursement assessment may not be levied against any Condominium until notice and hearing have been provided the Owner as described in **Section 5.6.4**, and under no circumstances may a reimbursement assessment (or a monetary penalty imposed by the Association as a disciplinary measure for violation of this Declaration or the Rules) become a lien against the Owner's Condominium that is enforceable by nonjudicial foreclosure proceedings under a power of sale. The foregoing restriction on enforcement is not applicable to late payment penalties or interest for delinquent assessments or charges imposed to reimburse the Association for loss of interest or for collection costs, including reasonable attorneys' fees, for delinquent assessments.

6.6 Assessment Increase Restrictions. The Association shall provide notice by personal delivery or by first-class mail to the Owners of any increase in the regular or special assessments not less than 30 days nor more than 60 days prior to the due date of the increased assessment.

The Board may not (i) impose an annual regular assessment for any fiscal year more than 20% above the annual regular assessment for the Association's preceding fiscal year or (ii) impose special assessments which in the aggregate exceed 5% of the budgeted gross expenses of the Association for that fiscal year without the approval of a majority of the votes of Owners at a meeting of the Members of the Association at which a quorum is present. For purposes of this **Section 6.6**, a "quorum" means more than 50% of the Owners, and the meeting must be conducted in accordance with Corporations Code sections 7510 through 7527 and 7613. The foregoing restrictions on assessment increases do not apply to increases necessary for emergency situations. An emergency situation is any one of the following:



- (i) an extraordinary expense required by an order of court;
- (ii) an extraordinary expense necessary to repair or maintain the Development or any part of it that the Association is responsible to maintain where a threat to personal safety on the Property is discovered; or
- (iii) an extraordinary expense necessary to repair or maintain the Development or any part of it that the Association is responsible to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget required under Civil Code section 1365, provided that before the imposition or collection of any assessment under this subparagraph the Board must pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process and shall distribute the resolution to the Members with the notice of the assessment.

If the Board fails to distribute the Pro Forma Operating Budget as required by **Section 5.10.1** for any fiscal year, the Association may not increase its annual regular assessment for that fiscal year, as authorized by Civil Code section 1366(b), unless the Board has obtained the approval of a majority of the votes of the Owners at a meeting of the Members at which a quorum was present. For the foregoing purposes, a quorum means more than 50% of the Owners of the Association; and the meeting must be conducted in accordance with Corporations Code sections 7510 through 7527 and 7613 or any successor statute thereto.

**6.7 Commencement of Regular Assessments.** Annual regular assessments shall commence for all Condominiums in a phase on the first day of the month coinciding with or immediately following the date of the first transfer of title of a Condominium in a phase by the Declarant to a purchaser under the authority of a final subdivision public report issued by the California Department of Real Estate or at an earlier date at the discretion of the Declarant. Annual regular assessments for each subsequent phase that has been annexed into the Development by the recordation of a declaration of annexation shall commence on the first day of the month coinciding with or immediately following the first to occur of either of the following: (i) the date that Declarant first transfers title to a Condominium in that phase to a purchaser under the authority of a final subdivision public report issued by the California Department of Real Estate; or (ii) the date that a Condominium in that phase is first occupied and used either by an Owner or by a tenant of the Owner. Owners shall be liable only for that portion of the annual regular assessment that becomes due and payable from and after the date assessments commence against the Owner's Condominium.

Notwithstanding anything herein to the contrary, if assessments are commenced against any Condominium, assessments shall commence automatically against all the Condominiums in the same Condominium Building.

Notwithstanding the foregoing, the sale of a Condominium in a phase that is not occupied and that is used as a model home will not commence assessments against the Condominiums in that phase. The subsequent sale of a Condominium in that phase not used as a model home will commence assessments against the Condominiums in that phase, including assessments against any model homes in that phase.

**6.8 Due Dates of Assessments.** Unless otherwise directed by the Board or unless accelerated as described herein, the annual regular assessment shall be collected in 12 equal monthly installments; and each installment shall be due and payable on the first day of each month. If any monthly installment is delinquent, the Board, at its election, may accelerate the remaining installment payments so that the entire remaining balance of the annual regular assessment is immediately due and payable. Special assessments shall be due on such date or dates as selected by the Board. Reimbursement assessments shall be due and payable ten days after the Owner receives the notice of the reimbursement assessment. The notice shall be deemed received on the date described in **Section 13.13**.

Any annual regular assessment installment (including any accelerated installments), special assessment or reimbursement assessment not paid within 15 days after the due date shall be delinquent, shall bear interest at the rate of 12% per annum from 30 days after the due date until paid, and shall incur a late penalty in an amount to be set by the Board from time to time, not to exceed the maximum amount permitted by law.

6.9 Allocation of Regular and Special Assessments. Regular and special assessments levied by the Board shall be allocated in equal amounts among the Condominiums.

Notwithstanding anything herein to the contrary, if the use of any Condominium, the equipment or facilities maintained in any Condominium or any related reason results in an increase in the Association costs, including, but not limited to, increases in maintenance and repair costs, trash removal costs, commonly-metered utility costs or insurance costs, the Board may allocate the amount of the increase to the Condominium or Condominiums responsible for the increase.

6.10 Enforcement of Delinquent Assessments. The Association may elect to pursue one or both of the following remedies in the event of a delinquent assessment:

6.10.1 Personal Obligation. The Association may bring a legal action directly against the Owner for breach of the Owner's personal obligation to pay the assessment and in such action shall be entitled to recover the delinquent assessment or assessments, accompanying late charges, interest, costs and reasonable attorneys' fees. Commencement of a legal action shall not constitute a waiver of any lien rights as described in **Section 6.10.2.**

6.10.2 Assessment Lien. Except as otherwise provided in **Section 6.5** and subject to the provisions of **Section 6.10.3**, the Association may impose a lien against the Owner's Condominium for the amount of the delinquent assessment or assessments, plus any costs of collection (including attorneys' fees), late charges and interest by taking the following steps:

(a) At least 30 days prior to recording a lien upon the Owner's Condominium to collect a delinquent assessment, the Association shall notify the Owner in writing by certified mail of the following (the "Delinquency Notice"):

(1) A general description of the collection and lien enforcement procedures of the Association and the method of calculation of the amount, a statement that the Owner of the Condominium has the right to inspect the Association records, pursuant to section 8333 of the Corporations Code, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION".

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

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

(4) The right to request a meeting with the Board as provided by **Section 6.10.2(b)(3).**

(5) The right to dispute the assessment debt by submitting a written request for dispute resolution to the Association pursuant to the Association's "meet and confer" program required in Civil Code sections 1363.810 through 1363.850.

(6) The right to request alternative dispute resolution with a neutral third party pursuant to Civil Code sections 1369.510 through 1369.590 before the Association may initiate foreclosure against the Owner's Condominium, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

(b) Any payments made by the Condominium Owner toward the delinquent assessment shall first be applied to the assessments owed; and only after the assessments owed are paid in full shall the payments be applied to the fees and the costs of collection, attorneys' fees, late charges or interest. When an Owner makes a payment, the Owner may request a receipt and the Association shall

provide it. The receipt shall indicate the date of payment and the Person who received it. The Association shall provide a mailing address for overnight payment of assessments.

(1) Prior to recording a lien for delinquent assessments, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to the Association's "meet and confer" program required in Civil Code sections 1363.810 through 1363.850.

Prior to initiating a foreclosure for delinquent assessments, the Association shall offer the Owner and, if so requested by the Owner, shall participate in dispute resolution pursuant to the Association's "meet and confer" program required in Civil Code sections 1363.810 through 1363.850 or alternative dispute resolution with a neutral third party pursuant to Civil Code sections 1369.510 through 1369.580. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

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

(3) An Owner may submit a written request to meet with the Board to discuss a payment plan for the delinquent assessment. The Association shall provide the Owners the standards for payment plans if any exist. The Board shall meet with the Owner in executive session within 45 days of the postmark of the request if the request is mailed within 15 days of the date of the postmark of the Delinquency Notice unless there is no regularly-scheduled Board meeting within that period, in which case the Board may designate a committee of one or more Members to meet with the Owner. Payment plans may incorporate any assessments that accrue during the payment plan period. Payment plans shall not impede an Association's ability to record a lien on the Owner's Condominium to secure payment of delinquent assessments. Additional late fees shall not accrue during the payment plan period if the Owner is in compliance with the terms of the payment plan. In the event of a default on any payment plan, the Association may resume its efforts to collect the delinquent assessments from the time prior to entering into the payment plan.

(c) The amount of the assessment, plus any costs of collection, late charges, and interest assessed in accordance with **Section 6.8**, shall be a lien on the Owner's Condominium from and after the time the Association causes to be recorded with the county recorder of the county in which the Condominium is located a notice of delinquent assessment, which shall state the amount of the assessment and other sums imposed in accordance with Civil Code section 1366, a legal description of the Owner's interest in the Development against which the assessment and other sums are levied, and the name of the record owner of the Owner's interest in the Development against which the lien is imposed. The itemized statement of the charges owed by the Owner described in **Section 6.10.2(a)(2)** shall be recorded together with a notice of delinquent assessment. In order for the lien to be enforced by nonjudicial foreclosure as provided in **Section 6.10.2(e)**, the notice of delinquent assessment shall state the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice of delinquent assessment shall be signed by any officer of the Association or by the Person designated by the Association for that purpose. A copy of the recorded notice of delinquent assessment shall be mailed by certified mail to every person whose name is shown as an Owner in the Association's records, and the notice shall be mailed no later than ten calendar days after recordation. Within 21 days of the payment of the sums specified in the notice of delinquent assessment, the Association shall record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the Condominium Owner a copy of the lien release or notice that the delinquent assessment has been satisfied.

A monetary charge imposed by the Association: (i) as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Common Area Improvements or landscaping for which the Member or the Member's guests or tenants were responsible; or (ii) as a disciplinary measure for failure of a Member to comply with the Governing Documents, except for the late payments, may not be characterized nor treated as an assessment that may become a lien against the Member's Condominium enforceable by the sale of the interest under Civil Code sections 2924, 2924b and 2924c.

(d) A lien created pursuant to **Section 6.10.2(c)** shall be prior to all other liens recorded subsequent to the notice of assessment, except as described in **Article 10**.

(e) Subject to the limitations of this **Section 6.10**, after the expiration of 30 days following the recording of a lien created pursuant to **Section 6.10.2(c)**, the lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent assessment, or sale by a trustee substituted pursuant to Civil Code section 2934a. Any sale by the trustee shall be conducted in accordance with Civil Code sections 2924, 2924b and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trusts. The fees of a trustee may not exceed the amounts prescribed in Civil Code sections 2924c and 2924d plus the cost of service for either of the following: (i) the notice of default pursuant to Civil Code section 1367.1(j); or (ii) the decision of the Board to foreclose upon the separate interest of an Owner as described in Civil Code section 1367.4(c)(3).

(f) If it is determined that a lien previously recorded against a Condominium was recorded in error, the party who recorded the lien, within 21 calendar days, shall record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the Condominium Owner with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission.

(g) In addition to the requirements of Civil Code section 2924, a notice of default shall be served by the Association on the Owner's legal representative in accordance with the manner of service of summons in Code of Civil Procedure sections 415.10 through 415.95. The Owner's legal representative shall be the person whose name is shown as the Owner of the Condominium in the Association's records, unless another person has been previously designated by the Owner as his or her legal representative in writing and mailed to the Association in a manner that indicates that the Association has received it.

(h) Upon receipt of a written request by an Owner identifying a secondary address for purposes of collection notices, the Association shall send additional copies of any notices required by this section to the secondary address provided. The Association shall notify Owners of their right to submit secondary addresses to the Association, at the time the Association issues the Pro Forma Operating Budget pursuant to Civil Code section 1365. The Owner's request shall be in writing and shall be mailed to the Association in a manner that shall indicate 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.

(i) This **Section 6.10.2** is subordinate to and shall be interpreted in conformity with **Section 6.10.3**.

(j) If the Association fails to comply with the procedures set forth in this **Section 6.10.2**, prior to recording a lien, the Association shall recommence the required notice process. Any costs associated with recommencing the notice process shall be borne by the Association and not by the Condominium Owner.

#### 6.10.3 Assessment Enforcement Restrictions.

(a) If the Association seeks to collect delinquent regular or special assessments of an amount less than one thousand eight hundred dollars (\$1,800), not including any accelerated assessments, late charges, fees and costs of collection, attorneys' fees, or interest, the Association may not collect that debt through judicial or nonjudicial foreclosure, but may attempt to collect or secure that debt in any of the following ways:

(1) By a civil action in small claims court, pursuant to Code of Civil Procedure sections 116.110 through 116.950. If the Association chooses to proceed by an action in small claims court, and prevails, the Association may enforce the judgment as permitted under Code of Civil Procedure sections 116.810 through 116.880. The amount that may be recovered in small claims court to

collect upon a debt for delinquent assessments may not exceed the jurisdictional limits of the small claims court and shall be the sum of the following:

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

(B) In the discretion of the court, an additional amount to that described in **Section 6.10.3(a)(1)** equal to the amount owed for the period from the date the complaint is filed until satisfaction of the judgment, which total amount may include accruing unpaid assessments and any reasonable late charges, fees and costs of collection, attorneys' fees, and interest, up to the jurisdictional limits of the small claims court.

(2) By recording a lien on the Owner's Condominium upon which the Association may not foreclose until the amount of the delinquent assessments secured by the lien, exclusive of any accelerated assessments, late charges, fees and costs of collection, attorneys' fees, or interest, equals or exceeds one thousand eight hundred dollars (\$1,800) or the assessments secured by the lien are more than 12 months delinquent. If the Association chooses to record a lien under these provisions, prior to recording the lien, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution as set forth in Civil Code sections 1363.810 through 1363.850.

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

(b) If the Association seeks to collect delinquent regular or special assessments of an amount of one thousand eight hundred dollars (\$1,800) or more, not including any accelerated assessments, late charges, fees and costs of collection, attorneys' fees, or interest, or any assessments secured by the lien that are more than 12 months delinquent, the Association may use judicial or nonjudicial foreclosure subject to the following conditions:

(1) Prior to initiating a foreclosure on an Owner's Condominium, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to the Association's "meet and confer" program required in Civil Code sections 1363.810 through 1363.850 or alternative dispute resolution as set forth in Civil Code sections 1369.510 through 1369.580. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

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

(3) The Board shall provide notice by personal service in accordance with the manner of service of summons in Code of Civil Procedure sections 415.10 through 415.95 to an Owner of a Condominium who occupies the Condominium or to the Owner's legal representative, if the Board votes to foreclose upon the Condominium. The Board shall provide written notice to an Owner who does not occupy the Condominium by first-class mail, postage prepaid, at the most current address shown on the books of the Association. In the absence of written notification by the Owner to the Association, the address of the Owner's Condominium may be treated as the Owner's mailing address.

(4) A nonjudicial foreclosure by the Association to collect upon a debt for delinquent assessments shall be subject to a right of redemption. The redemption period within which the Condominium may be redeemed from a foreclosure sale under this paragraph ends 90 days after the sale. In addition to the requirements of Civil Code section 2924f, a notice of sale in connection with an Association's

foreclosure of a Condominium shall include a statement that the Property is being sold subject to the right of redemption created by Civil Code section 1367.4(c)(4).

6.10.4 Erroneous Liens. If it is determined, through dispute resolution pursuant to the Association's "meet and confer" program required in Civil Code sections 1363.810 through 1363.850 or alternative dispute resolution with a neutral third party pursuant to Civil Code sections 1369.510 through 1369.590, that the Association has recorded a lien for a delinquent assessment in error, the Association shall promptly reverse all late charges, fees, interest, attorneys' fees, costs of collection, costs imposed for the notice prescribed in Civil Code sections 1367.1(a) and 1367.1(b) and pay all costs related to the dispute resolution or alternative dispute resolution.

**The provisions of this Section 6.10 are intended to comply with the requirements of Civil Code sections 1367.1, 1367.4 and 1367.5 in effect as of January 1, 2007. If these sections are amended or rescinded in any manner, the provisions of this Section 6.10 automatically shall be amended or rescinded in the same manner. Civil Code sections 1367.1, 1367.4 and 1367.5 may have been amended by the State Legislature, and the Board should confirm the current statutory requirements.**

6.11 Assessment Exemption. Any Condominium having no structural Improvement for human occupancy shall be exempt from the payment of that portion of any assessment that is for the purpose of defraying expenses and reserves directly attributable to the existence and use of the structural Improvement. Exemption may include, but is not limited to:

- (i) roof replacement;
- (ii) exterior maintenance;
- (iii) walkway and street lighting; and
- (iv) refuse disposal.

The foregoing exemptions shall be in effect until the earliest of the following events:

- (i) a notice of completion of the structural Improvements has been recorded;
- (ii) occupation or use of the Condominium; or
- (iii) completion of all elements of the residential structures that the Association is obligated to maintain.

The Declarant and any other Owner of a Condominium are exempt from the payment of that portion of any assessment that is for the purpose of defraying expenses and reserves directly attributable to the existence and use of a common facility that is not complete at the time assessments commence. This exemption from the payment of assessments shall be in effect until the earliest of the following events:

- (i) a notice of completion of the common facility has been recorded; or
- (ii) the common facility has been placed into use.

6.12 Estoppel Certificate. Within ten days of the mailing or delivery of a written request by any Owner, the Board shall provide the Owner with a written statement containing the following information: (i) whether to the knowledge of the Association, the Owner or occupant of the Owner's Condominium is in violation of any of the provisions of this Declaration, the Articles, Bylaws or Rules; (ii) the amount of regular and special assessments, including installment payments, paid by the Owner during the fiscal year in which the request is received; and (iii) the amount of any assessments levied against the Owner's Condominium that are unpaid as of the date of the statement, including any late charges, interest or costs of collection, and that, as of the date of the statement, are or may be made a lien against the Owner's Condominium as provided by this Declaration. The Association may charge a fee to provide this information provided the fee shall not exceed the Association's reasonable cost to prepare and reproduce the requested items.

6.13 Restrictions on Association Funds. Pursuant to the requirements of Civil Code section 1363.04, no Member funds shall be used for campaign purposes in connection with any election of members to the Board or for company purposes in connection with any other Association election, except to the extent necessary to comply with duties of the Association imposed by law.

## ARTICLE 7 - Architectural Review

7.1 Architectural Committee. An Architectural Committee may be established by the Declarant or by the Board. The Committee shall consist of three members. Declarant may appoint all of the original members of the Committee and all replacements until the first anniversary of the issuance of the original final subdivision public report for the Development. Declarant's appointees need not be Members of the Association. Declarant shall have the right to appoint a majority of the members of the Committee until 90% of all the Condominiums in the Development have been sold or until the fifth anniversary of the issuance of the final public report for the first phase of the Development, whichever occurs first. On the first anniversary date of the issuance of the original public report for the first phase of the Development, the Board shall have the power to appoint one member to the Committee until 90% of the Condominiums of the Development have been sold or until the fifth anniversary date of the issuance of the final public report for the first phase of the Development, whichever first occurs. Thereafter, the Board shall have the power to appoint all of the members of the Committee. The Board appointees shall be Members of the Association and shall serve at the will of the Board. The term of the members shall be as designated by the Declarant or by the Board. If a member is removed from the Committee for any reason, the Person appointing the member immediately shall appoint a replacement for the balance of the removed member's term. Until a replacement is named, the remaining members of the Committee shall have full authority to act on behalf of the Committee. No member of the Committee shall be entitled to any compensation for serving as a member, provided that member shall be entitled to be reimbursed by the Committee for any expenses incurred by the member in performing its duties, provided the member received prior authorization for the incurrence of the expense. All actions of the Committee shall be governed by a majority vote of the members. The Committee shall meet at such times and places as it shall designate. Meetings of the Committee shall be open to all Members of the Association. The Committee may adopt guidelines regarding the type, location, quality, size, height and other matters relating to any Improvements or landscaping to be constructed or installed in the Condominiums and may establish a procedure for reviewing all plans and specifications submitted to it for prior approval and shall be responsible for periodic review and modification of the guidelines. The guidelines shall comply with the use restrictions described in Article 3. Factors that shall be considered in approving proposed plans and specifications shall include without limitation: (i) conformity and harmony of external design with other Condominiums in the Development; (ii) effect of the proposed location on neighboring Condominiums; (iii) relation of the topography, grade and finished ground elevation to that of adjoining Condominiums; (iv) proper facing of elevations with respect to nearby streets and adjoining Condominiums; (v) overall conformity with the general purpose of the Development and the restrictions in this Declaration; and (vi) the guidelines.

7.2 Approval. None of the following actions shall take place anywhere within the Development without the prior written approval of the Committee:

(i) any construction, installation, addition, repair (including exterior painting), replacement, alteration or removal of any Unit Improvement that is part of a building structure (including flooring, interior and exterior walls) or any portion of any Unit Improvement that can be seen from the Common Area or any other Unit; or

(ii) any replacement or modification to any floor coverings or wall or ceiling materials or any penetration or other disturbance of any wall, floor, or ceiling if the replacement, modification, penetration or disturbance could result in any increase in the sound transmissions, resonances or reverberations from the Unit to any other Unit.

Approval shall require the applicant to submit to the Committee plans and specifications in a manner and form satisfactory to the Committee. All plans and specifications shall conform with any guidelines established by the Committee. Plans shall adequately describe the proposed Improvements; plot layout; all

exterior elevations; materials and colors; utility locations; construction schedule; and such other information as the Committee shall require. The Committee, in its sole discretion, may grant variances or exceptions from any guidelines it has established for approving plans and specifications, which variances or exceptions may contain such conditions and time limitations as the Committee deems appropriate.

Notwithstanding anything herein to the contrary, any Owner may repaint the interior of the Owner's Unit in any color the Owner desires or remodel the Unit with the prior written approval of the Committee, which approval shall be granted if the Committee finds the remodeling does not in any manner remove or adversely affect any bearing wall or fire rated wall, affect the structural integrity of the Common Area, alter the exterior appearance of any Condominium Building or increase the sound transmissions, resonances or reverberations from the Unit to any other Condominium. It shall be the Owner's responsibility to comply with all building code requirements and permitting requirements in connection with any modification to the Owner's Unit.

The Committee may establish reasonable fees to reimburse the Committee for any out-of-pocket costs incurred by the Committee in reviewing plans and specifications. Except as paid or reimbursed by the applicant, any costs incurred by the Committee in the performance of its duties shall be paid by the Association. If the Committee fails to approve or disapprove any plans or specifications within 60 days of receipt of either the plans and specifications or any advance payments required by the Committee, whichever shall occur later, the plans and specifications shall be deemed approved unless a written extension is executed by the Person submitting the plans and by the Committee. The burden shall be on the applicant to establish that the Committee did receive the plans and specifications and/or advance payments and to establish the date of receipt.

The Committee shall be entitled to determine that the proposed work is unacceptable even if the same or similar work previously had been approved for another Condominium as long as the Committee finds that reasonable factors exist to distinguish this application from the approved work. The Committee shall be entitled to make subjective judgments and to consider the aesthetics of a proposal when the proposed work will result in Improvements and/or landscaping that can be seen from any other Condominium, Common Area or public right-of-way as long as the Committee acts in good faith and not unreasonably, arbitrarily or capriciously.

The Committee may impose terms and conditions on any approval, including: (i) contractor licensing and insurance requirements (including workers compensation and liability insurance); (ii) completion and labor and material bonds or other acceptable collateral; and (iii) construction regulations such as authorized hours of construction, access restrictions, noise restrictions and clean-up requirements.

Any member of the Committee or any authorized agent of the Committee from time to time and anytime during normal business hours may enter any Condominium for the purpose of inspecting any construction to confirm compliance with the plans and specifications as approved by the Committee.

In reviewing and approving plans, the Committee shall comply with the requirements of Civil Code section 1378, the restrictions contained in **Article 3** and with all federal, State and local laws regulating the rights of handicapped persons. If there is any conflict between this **Article 7** and Civil Code section 1378, Civil Code section 1378 shall control to the extent of the conflict.

**7.3 Architectural Committee's Decision.** The decision on any proposed work shall be in writing. If a proposed change is disapproved by the Committee, the written decision shall include both an explanation of why the proposed change is disapproved and a description of the procedure for reconsideration of the decision by the Board. If disapproved, the applicant is entitled to reconsideration by the Board at an open meeting of the Board unless the disapproval decision was made by the Board instead of the Committee or unless the Architectural Committee has the same members as the Board. Reconsideration by the Board does not constitute a dispute resolution procedure described in **Section 5.6.7**.

**7.4 Completion of Work.** On receipt of approval, the Owner shall commence the work as soon as reasonably practicable and shall diligently pursue the completion of the work. If the work is not commenced within 90 days after receipt of approval or completed within 180 days or such later date as the Committee shall approve in writing, the approval automatically shall be deemed revoked and no further work shall be done without again obtaining the written approval of the Committee as described herein. The work



shall be done in strict compliance with the approved plans except for minor non-material changes as may be necessary during the course of construction.

7.5 Non-liability. The Association, the Committee, the Declarant, or the other Condominium Owners, or their respective successors or assigns, shall not be liable to any Person submitting plans to the Committee for approval or to any other Condominium Owners or occupants by reason of any act or omission arising out of or in connection with the approval or disapproval of any plans or specifications. Approval shall not constitute any warranty or representation by the Committee or its members that the plans satisfy any applicable governmental law, ordinance or regulation or that any Improvement constructed in accordance with the plans shall be fit for the use for which it was intended and safe for use and occupancy. Applicants shall make their own independent verifications of the foregoing and shall not rely on the Committee or its members in any manner in this regard.

7.6 Enforcement. If any Owner or occupant violates the provisions of this **Article 7**, the Declarant or the Association, in addition to levying monetary fines or penalties and in addition to any other remedy available at law or equity, may bring an action to compel compliance, including an action for a court order mandating the removal of any Improvement or other property constructed or installed in violation of the provisions of this **Article 7**. In such action, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

7.7 Board's Authority. If for any reason the Committee is not established or not active, the Board shall perform the duties and shall have the rights of the Committee as described in this **Article 7**. Notwithstanding anything herein to the contrary, modifications, changes or additions to any Common Area Improvements authorized by the Board shall not require approval from the Committee.

7.8 Governmental Approval. Before commencement of any alteration or Improvement approved by the Committee, the Owner shall comply with all the appropriate governmental laws and regulations. Approval by the Committee does not satisfy the appropriate approvals that may be required from any governmental entity with appropriate jurisdiction.

7.9 Declarant Exemption. Declarant, or its successor or assign, shall not be subject to the approval requirements of this **Article 7** in connection with the construction or alteration of any Improvement within the Development or the installation of any landscaping, provided that this exemption shall expire on the third anniversary date of the recordation of this Declaration. In addition Declarant, or its successor or assign shall not be subject to the approval requirements of this **Article 7** in connection with any repairs or modifications made to any Improvements as may be required by law or pursuant to an agreement with any Unit Owner or the Association.

## ARTICLE 8 - Insurance

8.1 Liability and Fidelity Insurance. The Association shall obtain and maintain the following liability policies:

8.1.1 Commercial General Liability Policy: A commercial general liability insurance policy insuring the Association, any manager, the Association's directors and officers, and the Owners against any liability incident to any bodily injury or property damage from any accident or occurrence within the Common Area. The policy shall also cover any liability incident to any bodily injury or property damage from any accident or occurrence within any Condominium related to any maintenance or repair work required to be performed on any Condominium by the Association pursuant to this Declaration, including, but not limited to, work performed in any Common Area. The policy shall include, if obtainable, a cross liability or severability of interest endorsement insuring each insured against the liability to each other. The limits of such insurance (including the commercial general liability and any umbrella liability coverage) shall not be less than \$3,000,000 covering all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, liability for non-owned and hired automobiles, liability for property of others, and other liability or risk customarily covered with respect to

projects similar in construction, location and use and shall require at least 30 days' written notice to the Association before the policy can be cancelled or substantially modified unless the policy is being replaced with a policy of equivalent coverage. The policy shall be primary and noncontributing with any other liability policy covering the same liability.

8.1.2 Directors and Officers Liability Policy: A directors and officers liability policy containing such terms and conditions as are normally and customarily carried for directors and officers of a residential condominium association.

8.1.3 Fidelity Policy. A blanket fidelity insurance policy covering any Person who either handles or administers (or is responsible for) Association funds, whether or not that Person receives compensation for services. The Association shall be the insured under the policy and the policy shall provide that ten days' written notice be provided to the Association before the policy can be canceled or substantially modified for any reason. The policy amounts shall satisfy the Federal National Mortgage Association ("FNMA") requirements and in no event shall be less than the sum of three months of assessments on all Condominiums subject to assessments.

8.2 Association Property Insurance. The Association shall obtain and maintain a master property insurance policy that satisfies each of the following conditions:

8.2.1 Property Covered. The policy shall cover the following real and personal property:

(a) Common Area. All Common Area Improvements, including buildings and any additions or extensions thereto; all fixtures, machinery and equipment permanently affixed to the building; windows; fences; monuments; lighting fixtures; exterior signs; and personal property owned or maintained by the Association; but excluding land; foundations; excavations; and other items typically excluded from property insurance coverage;

(b) Units. The standard fixtures originally installed by the Declarant and any equivalent replacements thereto, including, but not limited to, interior walls and doors; ceiling, floor and wall surface materials (e.g., paint, wallpaper, mirrors, carpets, and hardwood floors); utility fixtures (including gas, electrical and plumbing); cabinets; built-in appliances; heating and air-conditioning systems; water heaters installed as a part of the original construction of the residence and any equivalent replacements thereto; but excluding any personal property located in the Unit; and excluding any improvements or upgrades to any of the foregoing to the extent the replacement cost of any such improvement or upgrade made after completion of the original construction of the Unit exceeds the replacement cost of the original improvements as determined on the date that immediately precedes the date of the damage or destruction of the improvement or upgrade; and

(c) Landscaping. Lawn, trees, shrubs and plants located in the Common Area.

8.2.2 Covered Cause of Loss. The policy shall provide coverage against losses caused by fire and all other hazards normally covered by a "special form" policy or its equivalent.

8.2.3 Dollar Limit. The dollar limit of the policy shall not be less than the full replacement value of the covered property described in Section 8.2.1 above, provided that there may be lower dollar limits for specified items as is customarily provided in property insurance policies.

8.2.4 Primary. The policy shall be primary and noncontributing with any other insurance policy covering the same loss.

8.2.5 Endorsements. The policy shall contain such other endorsements as the Board in its discretion shall elect after consultation with a qualified insurance consultant.

8.2.6 Waiver of Subrogation. The policy shall waive all subrogation rights against any Owner or occupant and their family members and invitees except to the extent of any deductible.

**8.2.7 Deductible.** The amount of any deductible shall be paid by the Association and/or Owner as provided herein or pursuant to guidelines adopted by the Board. When a claim is made on the Association's property insurance policy, an Owner is responsible for payment of damage up to the amount of the deductible in circumstances: (i) where damage is caused by the fault of the Owner or that Owner's tenant or their family members, invitees or agents; and/or (ii) where damage is caused by the failure of some portion of the Unit which the Owner is responsible for maintaining. In cases where damage affects more than one Condominium or a Condominium and the Common Area and **Section 8.2.7 (i) or (ii)** does not apply, each Owner is responsible for the cost to repair the Owner's Unit up to the deductible and the Common Area immediately abutting the Unit or exclusively serving the Unit and the Association is responsible for the cost to repair any other Common Area Improvements up to the deductible. If the cumulative cost of repairs exceeds the deductible, the burden of the deductible shall be prorated between or among the claimants based on the proportion that the costs of repairs to the Unit or Common Area bears to the total cost of repairs. The Association may levy a reimbursement assessment against an Owner's Condominium as authorized under **Section 6.5** for the Owner's share of the deductible.

**8.3 Insurance Rating and Cancellation.** The insurance company providing the Association's insurance under **Sections 8.1** and **8.2** shall have a A.M. Best rating of not less than A:VII if licensed to do business in the State of California and a rating of not less than A+:X if not licensed to do business in the State of California. If the A.M. Best ratings are no longer available, the insurance ratings shall be based on equivalent ratings issued by an independent insurer company rating entity used by financial institutions for insurance rating purposes. All of the policies of insurance maintained by the Association shall contain a provision that such policy or policies shall not be cancelled or terminated, or expired by their terms, or not renewed without 30 days' prior written notice to the Board, the Owners and their respective first Mortgagees (provided that such Owners or Mortgagees have filed written requests with the carrier for such notice) and every other Person in interest who shall have requested such notice of the insurer.

**8.4 Board's Authority to Revise Insurance Coverage.** Subject to the provisions of **Section 8.6**, the Board shall have the power and right to deviate from the insurance requirements contained in this **Article 8** in any manner that the Board, in its discretion, considers to be in the best interests of the Association. If the Board elects to materially reduce the coverage from the coverage required in this **Article 8**, the Board shall make all reasonable efforts to notify the Members of the reduction in coverage and the reasons therefor at least 30 days prior to the effective date of the reduction.

The Board is authorized to negotiate and agree on the value and extent of any loss under any policy carried by the Association, including, but not limited to, the right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

Each Owner, by acceptance of a deed to a Condominium, irrevocably appoints the Association or the Insurance Trustee, described in **Section 8.7**, as that Owner's attorney-in-fact for purposes of procuring, negotiating, accepting, compromising, releasing, settling, distributing and taking other related actions in connection with any insurance policy maintained by the Association and any losses or claims related thereto and agrees to be bound by the actions so taken as if the Owner had personally taken the action.

**8.5 Periodic Insurance Review.** The Board periodically (and not less than once every three years) shall review the Association's insurance policies and make such adjustments to the policies' terms and conditions as the Board considers to be in the best interests of the Association. If applicable, the review shall include an appraisal by a qualified appraiser of the current replacement costs of all covered property under the Association's property insurance policy unless the Board is satisfied that the current dollar limit of the property insurance policy, coupled with the amount of actual reserves on hand, is equal to or greater than the current replacement costs.

**8.6 FNMA and FHLMC Requirements.** Notwithstanding anything herein to the contrary, the Association shall maintain such policies, containing such terms, amount of coverage, endorsements, deductible amounts, named insureds, loss payees, standard mortgage clauses, notice of changes or cancellation, and an appropriate insurance company rating that shall satisfy the minimum requirements imposed by the Federal National Mortgage Association ("FNMA") and the Federal Home Loan Mortgage Corporation ("FHLMC") or any successor thereto. If the FNMA or FHLMC requirements conflict, the more stringent requirements shall be met.

8.7 Insurance Trustee. All property insurance proceeds payable to the Association under any property insurance policy procured by the Association as described in **Section 8.2**, subject to the rights of Mortgagees under **Article 10**, may be paid to a trustee as designated by the Board to be held and expended for the benefit of the Owners and Mortgagees as their respective interests shall appear. The trustee shall be a commercial bank or other financial institution with trust powers in the county in which the Development is located that agrees in writing to accept such trust. If repair or reconstruction is authorized, the Association will have the duty to contract for such work as provided for in this Declaration.

8.8 Owners' Individual Insurance Requirements. Each Condominium Owner shall maintain property insurance against losses to personal property located within the Owner's Unit. **The Association's insurance policies will not provide coverage for losses to the Owner's personal property or for any upgrades or additions to any fixtures or Improvements located within the Unit to the extent not covered under Section 8.2.1(b)**. In addition, each Condominium Owner shall maintain a general liability insurance policy in an amount not less than \$100,000. The liability policy shall cover any liability for injury to any Person or damage to any Improvements or personal property within the Development caused by any act or omission of Owner or tenant of the Owner's Condominium, or their family members, employees, agents or invitees. Each Owner is advised to carry unit owner building insurance for the Improvements within the Unit to the extent not covered under **Sections 8.2.1(b)** and loss assessment coverage in such amounts as may be recommended by a qualified consultant.

The Board may from time to time increase the liability coverage amounts under such terms and conditions as the Board shall elect and may require each Owner to periodically submit appropriate evidence that the required policies are in full force and effect. Nothing herein imposes any duty on the Association, its directors, officers or agents (including the manager) to confirm or otherwise verify that the Owners are carrying the insurance mandated by this **Section 8.8**.

No Owner shall separately insure any property covered by the Association's property insurance policy as described in **Section 8.2** above. If any owner violates this provision and, as a result, there is a diminution in insurance proceeds otherwise payable to the Association, the Owner will be liable to the Association to the extent of the diminution. The Association may levy a reimbursement assessment against the Owner's Condominium to collect the amount of the diminution.

Each Owner is strongly advised to seek the advice of a qualified insurance consultant regarding the Owner's property and liability insurance obligations under this **Section 8.8** and regarding loss assessment and unit owners building insurance coverage.

8.9 Other Insurance. In addition to the policies described in **Sections 8.1 and 8.2**, the Association may obtain and maintain the following insurance:

- (i) Workers Compensation Insurance to the extent required by law; and
- (ii) such other insurance as the Board in its discretion considers necessary or advisable.

#### ARTICLE 9 - Damage, Destruction or Condemnation

9.1 Restoration Defined. As used in this **Article 9**, the term "restore" shall mean repairing, rebuilding or reconstructing Improvements damaged or destroyed as a result of a fire or other casualty to substantially the same condition and appearance in which they existed prior to fire or other casualty damage.

9.2 Insured Casualty. If any Improvement is damaged or destroyed from a risk covered by the insurance required to be maintained by the Association and the insurance proceeds are sufficient to cover the loss, then the Association, to the extent permitted under existing laws and except as otherwise authorized under this **Article 9**, shall restore the Improvement to the same condition as it was in immediately prior to the damage or destruction subject to such changes as may be approved by the Architectural Committee or required by law. The Association shall proceed with the filing and adjustment of all claims arising under the

existing insurance policies. The insurance proceeds shall be paid to and held by the Association or an insurance trustee selected under the provisions of **Section 8.7**. If the insurance proceeds exceed the costs of restoration, the excess proceeds shall be paid into reserves and held for the benefit of the Association.

**9.3 Inadequate Insurance Proceeds or Uninsured Loss.** If the insurance proceeds are insufficient to restore the damaged Improvement or the loss is uninsured, the Board shall add to any available insurance proceeds all reserve account funds designated for the repair or replacement of the damaged Improvement. If the total funds then available are sufficient to restore the damaged Improvement, the Improvement shall be restored. If the aggregate amount of insurance proceeds and such reserve account funds are insufficient to pay the total costs of restoration, a special assessment shall be levied by the Board up to the maximum amount permitted without the approval of the Members in accordance with the limitations set forth in this Declaration and by law. If the total funds then available are sufficient to restore the damaged Improvement, the Improvement shall be restored. Any special assessment levied to cover a shortfall in available repair proceeds shall be allocated among the Condominiums without regard to the extent of damage or destruction to the individual Condominiums.

If the total funds available to the Association are still insufficient to restore the damaged Improvement, then the Board first shall attempt to impose an additional special assessment pursuant to **Section 9.4** below and, second, use a plan of alternative reconstruction pursuant to **Section 9.5** below. Any special assessment levied to cover a shortfall in available repair proceeds shall be allocated among the Condominiums without regard to the extent of damage or destruction to the individual Condominiums. If the Members do not approve such actions, then the provisions of **Section 9.6** shall apply.

**9.4 Additional Special Assessment.** If the total funds available to restore the damaged Improvement as provided in **Section 9.3** are insufficient, then a meeting of the Members shall be called for the purpose of approving a special assessment to make up all or a part of the deficiency ("Additional Special Assessment"). The Additional Special Assessment shall be allocated among the Condominiums in accordance with **Section 6.9** and without regard to the extent of the damage or destruction to the individual Condominiums. If the amount of the Additional Special Assessment approved by the Members and the amounts available pursuant to **Section 9.3** above are insufficient to restore the damaged Improvement or if no Additional Special Assessment is approved, the Association shall consider a plan of alternative reconstruction in accordance with **Section 9.5**.

**9.5 Alternative Reconstruction.** The Board shall consider and propose plans to reconstruct the damaged Improvement making use of whatever funds are available to it pursuant to **Section 9.3** and **Section 9.4** above ("Alternative Reconstruction"). All proposals shall be presented to the Owners. If two-thirds of the voting power of the Owners whose residences were materially damaged as determined by the Association ("Affected Owners") and a majority of the voting power of the Members, including the Affected Owners, agree to any plan of Alternative Reconstruction, then the Board shall contract for the reconstruction of the damaged Improvement in accordance with the plan of Alternative Reconstruction making use of whatever funds are then available to it. If no plan of Alternative Reconstruction is agreed to, then the provisions of **Section 9.6** shall apply.

**9.6 Sale of Condominiums.** If the damaged Improvement is part of a Condominium Building (the "Damaged Building"), the damage renders one or more of the Condominiums within the Damaged Building uninhabitable, and the Improvements will not be restored in accordance with the provisions of **Sections 9.3, 9.4 and/or 9.5**, the Board, as the attorney-in-fact for each Owner of a Condominium in the Damaged Building, shall be empowered to sell the Condominiums in the Damaged Building in their then present condition on terms to be determined by the Board, provided that the Board receives adequate assurances that the purchaser shall, and has the financial capability to: (i) restore the Damaged Building (either by renovation or removal and rebuilding); (ii) remove the Damaged Building and restore any remaining Improvements as may be necessary; (iii) remove the Damaged Building (including foundations), grade the area, and appropriately landscape or otherwise improve the area in any manner as may be acceptable to the Board; or (iv) perform any combination of the foregoing. Any work to be performed by the purchaser with respect to any of the foregoing shall be subject to the provisions of **Article 7**.

The proceeds from the sale, together with the insurance proceeds for the Damaged Building received and any reserve funds allocated to the Damaged Building, after deducting therefrom the Association's sale

expenses, including commissions, title and recording fees, legal costs, and that portion of the proceeds allocated for the removal of the Damaged Building, shall be distributed among the Owners of Condominiums in the Damaged Building and their respective Mortgagees in proportion to the respective fair market values of these Condominiums immediately prior to the date of the event causing the damage as determined by an independent appraisal made by a qualified real estate appraiser selected by the Board.

If a Damaged Building is removed and not restored so that the new Building contains the same number of Condominiums as the removed Building, the Board shall take appropriate steps to effect such amendments as may be necessary to this Declaration, the Condominium Plan or Plans, and the Map to reflect the removal.

9.7 Restoration of Partition Rights. Notwithstanding anything herein to the contrary, if the damage has rendered any Condominium uninhabitable and (i) within one year of the date of the occurrence of the damage, the Association has not elected to repair the damage under the provisions of Sections 9.2, 9.3, 9.4 or 9.5 or if so has not commenced and diligently pursued the repair work or (ii) the Association has not commenced and diligently pursued the sale of the Development as authorized under Section 9.6, the restriction against partition described in Section 2.13 shall be null and void and any Owner may bring a partition action under the authority of Civil Code section 1359 or any successor statute thereto.

9.8 Rebuilding Contract. If there is a determination to restore, the Board or its authorized representative shall obtain bids from at least two licensed and reputable contractors and shall accept the repair and reconstruction work from whomever the Board determines to be in the best interests of the Members. The Board shall have the authority to enter into a written contract with the contractor for such repair and reconstruction, and the repair and reconstruction funds shall be disbursed to the contractor according to the terms of the contract. The Board shall take all steps necessary to assure the commencement and completion of authorized repair and reconstruction at the earliest possible date. Such construction shall be commenced no later than 180 days after the event requiring reconstruction and shall thereafter be diligently prosecuted to completion. Such construction shall return the Development to substantially the same condition and appearance in which it existed prior to the damage or destruction.

9.9 Authority to Effect Changes. If any Condominium Building or portion thereof containing Condominiums is damaged or destroyed or in need of renovation or rehabilitation and the Condominium Building is repaired or reconstructed, the Condominium Building may be repaired or reconstructed in a manner that alters the boundaries of the Units, Common Area, and/or Exclusive Use Common Area, provided the following conditions are satisfied:

(i) the alteration has been approved by the Board, by Members holding a majority of the total voting power of the Association, and by the holders of any first Mortgages to the extent required herein;

(ii) the Board has determined that the alteration is necessary in order to comply with current building code requirements, to meet current building construction standards and procedures, or to improve the conditions and quality of the Condominium Building;

(iii) the alteration does not materially change the location of any Unit or materially increase or decrease the size of any Unit without the consent of the Unit Owner and the holders of any first Mortgages thereon. For purposes herein, a material change in the size of the Unit shall mean any alteration that increases or decreases the square footage of the interior floor space of the Unit by more than 10% from the square footage as determined from the Condominium Plan or Plans;

(iv) the Board has determined that any alteration that will relocate or reduce the Common Area will not unreasonably interfere with the rights of the Owners and occupants to use and enjoy the Common Area; and

(v) the Condominium Plan is or Plans are amended to reflect the alteration to the Units or Common Area.

Each Owner irrevocably appoints the Association as that Owner's attorney-in-fact and irrevocably grants to the Association the full power in the name of the Owner to effect any alteration to any Unit or

Common Area as authorized above, including, but not limited to, the execution, delivery and recordation of any Condominium Plan or Plans, amendments, deeds or other instruments.

9.10 Condemnation. If there is a total sale or taking of the Development, meaning a sale or taking (i) that renders more than 50% of the Condominiums uninhabitable (such determination to be made by the Board in the case of a sale and by the Court in the case of a taking) or (ii) that renders the Development as a whole uneconomical as determined by the vote or written consent of 75% of those Owners and their respective first Mortgagees whose Condominiums will remain habitable after the taking, the right of any Owner to partition through legal action as described in Section 2.13 shall revive immediately. However, any determination that a sale or taking is total must be made before the proceeds from any sale or award are distributed. The proceeds of any such total sale or taking of the Development, together with the proceeds of any sale pursuant to any partition action, after payment of all expenses relating to the sale, taking or partition action, shall be paid to all Owners and to their respective Mortgagees as their interests appear in proportion to the ratio that the fair market value of each Owner's Condominium bears to the fair market value of all Owners' Condominiums.

In the case of a partial sale or taking of the Development, meaning a sale or taking that is not a total taking as described above, the proceeds from the sale or taking shall be paid or applied in the following order of priority; and any judgment of condemnation shall include the following provisions as part of its terms:

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

(ii) to Owners and their respective Mortgagees as their interests may appear whose Condominiums have been sold or taken in an amount up to the fair market value of such Condominiums as determined by the Court in the condemnation proceeding or by an independent, qualified appraiser selected by the Board, less such Owner's share of expenses paid pursuant to the preceding subsection (i) (which share shall be allocated on the basis of the fair market value of the Condominium). After such payment, the recipient shall no longer be considered an Owner, and the Board or individuals authorized by the Board acting as attorney-in-fact of all Owners shall amend the Condominium Plan or Plans, the subdivision map (if necessary), and this Declaration to eliminate from the Development the Condominium so sold or taken and to adjust the undivided ownership interests of the remaining Owners in the Common Area based on the ratio that each remaining Owner's undivided interest bears to all of the remaining Owners' undivided interest in the Common Area; then

(iii) to any remaining Owner and to his or her Mortgagees, as their interests may appear, whose Condominium has been diminished in fair market value as a result of the sale or taking disproportionately to any diminution in value of all remaining Condominiums but, as of a date immediately after any announcement of condemnation, in an amount up to the disproportionate portion of the total diminution in value; then

(iv) to all remaining Owners and to their respective Mortgagees, as their interests may appear, the balance of the sale proceeds or award in proportion to the ratio that the fair market value of each remaining Owner's Condominium bears to the fair market value of all remaining Owners' Condominiums as determined by the Court in the condemnation proceeding or by an independent, qualified appraiser selected by the Board.

Notwithstanding the foregoing, if the amount from the sale or taking is less than \$50,000, the Board may elect to retain the amount as a part of the Association's operating or reserve funds in lieu of making a distribution to the Owners.

9.11 Dispute Resolutions. If there are any disputes regarding the rights and/or duties of the Owners or the Association under this Article 9, the dispute shall be submitted to mediation and, if necessary binding arbitration, to the Judicial Arbitration and Mediation Services (JAMS), any successor thereto or any other alternative dispute resolution provider acceptable to the parties for resolution. If the mediation is unsuccessful, the dispute shall be resolved by binding arbitration in accordance with JAMS' commercial rules. The mediation and arbitration shall be held in the county where the Development is located. The parties shall

be entitled to the discovery rights provided by Code of Civil Procedure section 1283.05. The arbitrator may award costs and attorneys' fees to the prevailing party. The arbitrator's decision shall be binding on the parties and may be enforced in any court of competent jurisdiction.

#### ARTICLE 10 - Rights of Mortgagees

10.1 Lender Definitions. Unless the context indicates otherwise, the following terms as used in this **Article 10** shall have the definitions contained in this **Section 10.1**. An "institutional" Mortgagee is a first Mortgagee that is: (i) a federally or state chartered or licensed bank or savings and loan association; (ii) a mortgage company or other entity chartered or licensed under federal or state laws whose principal business is lending money on the security of real property or investing in such loans; (iii) an insurance company; (iv) a federal or State agency or instrumentality including, without limitation, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation; or (v) an insurer or governmental guarantor of a first Mortgage including the Federal Housing Authority and the Veterans Administration. A "first Mortgage" or "first Mortgagee" is one having a priority as to all other Mortgages encumbering the same Condominium or other portions of the Development. An "eligible Mortgage holder" shall mean a first Mortgagee who has requested the Association to notify the first Mortgagee of any proposed action that requires the consent of a specified percentage of eligible Mortgage holders.

10.2 Encumbrance. Any Owner may encumber his or her Condominium with a Mortgage or Mortgages.

10.3 Rights of Institutional Mortgagees. Any institutional Mortgagee who obtains title to a Condominium pursuant to the remedies provided in the first Mortgage, including judicial foreclosure or nonjudicial foreclosure under a power of sale (but excluding voluntary conveyance to the first Mortgagee), shall take the Condominium free of any obligation to pay any assessments that were delinquent as of the date the institutional Mortgagee acquired title to the Condominium, including any interest, penalties or late charges in connection therewith. The institutional Mortgagee as Owner of the Condominium shall be obligated to pay any assessments that were not delinquent as of the date the institutional Mortgagee took title to the Condominium and all future assessments levied against the Condominium as long as the institutional Mortgagee remains in title, including any special assessments levied by the Association to raise operating or reserve funds needed because of uncollected delinquent assessments, as long as the special assessment is allocated among all the Condominiums as provided in **Section 6.9**.

10.4 Subordination. Any assessment lien established under the provisions of this Declaration is expressly made subject to and subordinate to the rights of any Mortgage that encumbers all or any portion of the Development or any Condominium made in good faith and for value and recorded before the recordation of a notice of delinquent assessment. No assessment lien shall in any way defeat, invalidate or impair the obligation or priority of such Mortgage unless the Mortgagee expressly subordinates in writing its interest to such lien. If any Condominium is encumbered by a Mortgage made in good faith and for value, the foreclosure of any assessment lien cannot operate to effect or impair the lien of any Mortgage recorded prior to the recordation of the notice of delinquent assessment. Upon the foreclosure of any prior-recorded Mortgage, any lien for delinquent assessment shall be subordinate to the Mortgage lien; and the purchaser at the foreclosure sale shall take title free of the assessment lien. By taking title, the purchasers shall be obligated to pay only assessments or other charges that were not delinquent at the time the purchaser acquired title or that were levied by the Association on or after the date the purchaser acquired title to the Condominium. Any subsequently-levied assessments or other charges may include previously-unpaid assessments, provided all Owners, including the purchaser and its successors and assigns, are required to pay their proportionate share of such unpaid assessments.

10.5 Breaches. No breach of any provision of this Declaration shall invalidate the lien of any Mortgage made in good faith or for value; but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through foreclosure sale, trustee sale or otherwise.



10.6 Special Voting Requirements. Any action taken by the Association, the Members or the Board are subject to the special voting requirements set forth in this **Section 10.6.**

10.6.1 First Mortgagee Approval Rights: Except as provided by statute, in case of condemnation or substantial loss to the Units and/or Common Area of the Development, unless at least two-thirds of the first Mortgagees (based on one vote for each first Mortgage owned) and Owners (other than the Declarant) of the individual Condominiums have given their prior written approval, the Association may not:

(i) by act or omission seek to abandon or terminate the Condominium Development;

(ii) change the pro rata interest or obligations of any Condominium in order to levy assessments or charges, allocate distribution of hazard insurance proceeds or condemnation awards, or determine the pro rata share of ownership of each Condominium and the Common Area. In the case of a Condominium Development subject to additions or expansions, in which sections or phases are established by the Governing Documents, this requirement will be deemed waived to the extent necessary to allow the phasing or additions in accordance with the Governing Documents;

(iii) partition or subdivide any Condominium;

(iv) seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area by act or omission. The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area by the Condominium Development or as authorized under **Section 2.9** is not a transfer within the meaning of this clause. In the case of a Condominium Development subject to additions or expansions in which sections or phases are established by the Governing Documents, this requirement will be deemed waived to the extent necessary to allow the phasing or additions in accordance with the Governing Documents; or

(v) use hazard insurance proceeds for losses to any Condominium property (whether Units or Common Area) for other than the repair, replacement or reconstruction of the Condominium property.

10.6.2 Material Adverse Amendments: The approval of Mortgagees who represent at least 51% of the votes of Condominiums that are subject to Mortgages must be obtained prior to: (a) the adoption of any amendment of a material adverse nature to Mortgages; or (b) any action to terminate the legal status of the Development after substantial destruction or condemnation or for other reasons. Approval from a Mortgagee shall be assumed if a Mortgagee fails to submit a response to any written proposal for an amendment or proposed action within 60 days after the Mortgagee receives proper notice of the proposal, provided the notice was delivered by certified or registered mail within a "return receipt" requested.

10.7 Distribution of Insurance and Condemnation Proceeds. No Owner, or any other party, shall have priority over any right of any first Mortgagees pursuant to their Mortgages in case of payment to the Condominium Owners of insurance proceeds or a condemnation award for losses to or taking of Condominium Units or Common Area. Any provision to the contrary in this Declaration or in the Bylaws or other documents relating to the Development is to such extent void.

10.8 Mortgagee Notice. If any Owner is in default under any provision of this Declaration or under any provision of the Articles, Bylaws or the Rules and the default is not cured within 60 days after written notice to that Owner, the Association, upon request, shall give to any first Mortgagee of such Owner a written notice of such default and of the fact that the 60-day period has expired.

Any Mortgage holder or guarantor shall have the right to timely written notice of any of the following:

(i) any condemnation or casualty loss that affects either a material portion of the Development or the Condominium securing the Mortgage;

(ii) any 60-day delinquency in the payment of assessments or charges owed by the Owner of any Unit encumbered by the holder's, insurer's or guarantor's Mortgage;

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

(iv) any proposed action that requires the consent of a specified percentage of eligible Mortgage holders.

10.9 Right of First Refusal. No right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey the Owner's Condominium is imposed by this Declaration, the Articles, Bylaws or in any deed restriction of any deed from the Declarant to the first purchaser of the Condominium.

10.10 Unpaid Assessments. Any first Mortgagee of a Mortgage recorded prior to the recordation of a Notice of Delinquent Assessment who obtains title to a Condominium pursuant to the foreclosure procedures will not be liable for unpaid delinquent assessments accrued before the acquisition of title to the Condominium by the Mortgagee.

#### ARTICLE 11 - Amendments

11.1 Amendment Before Close of First Sale. Before the close of the first sale of a Condominium in the Development to a purchaser other than Declarant or an entity controlled by Declarant, this Declaration may be amended in any respect or rescinded by Declarant by recording an instrument amending or rescinding this Declaration. Before the close of the first sale of a Condominium in a subsequent phase of the Development to a purchaser other than Declarant or entity controlled by Declarant, any declaration of annexation recorded pursuant to **Article 14** with respect to such phase may be amended in any respect or rescinded by the Declarant by recording an instrument amending the declaration of annexation or rescinding the declaration of annexation. If the declaration of annexation is rescinded, the phase shall be de-annexed from the Development and no longer subject to this Declaration. The amending or rescinding instrument shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the county in which the Development is located. For purposes herein, a Person is considered controlled by Declarant if the Declarant holds 50% or more of the capital and profit interests if a partnership or limited liability company, 50% or more of the voting shares if a corporation, and 50% or more of the beneficial interests if a trust.

11.2 Amendment After Close of First Sale. After the close of the first sale of a Condominium in the Development to a purchaser other than Declarant or an entity controlled by Declarant, this Declaration may be amended or revoked in any respect with the vote or written consent of the holders of not less than 51% of the voting rights of each class of Owners or, if a single class of Owners is then in effect, by the vote or written consent of not less than 51% of all votes and 51% of the votes excluding Declarant. If any provision of this Declaration requires a greater or lesser percentage of the voting rights of any class of Owners in order to take affirmative or negative action under such provision, the same percentage of such class or classes of Owners shall be required to amend or revoke such provision. Also, if the consent or approval of any governmental authority, Mortgagee or other Person, firm, agency or entity is required under this Declaration with respect to any amendment or revocation of any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained. Notwithstanding anything herein to the contrary, any provision in this Declaration that specifically confers rights or benefits on Declarant as the Declarant and not on any other Owner may not be amended or rescinded without the prior written consent of Declarant except as expressly authorized by Civil Code section 1355.5. The amendment is effective when it has been approved by the appropriate percentage of Owners as required herein, the approval has been certified in a writing executed and acknowledged by the officer designated in this Declaration or by the Association for that purpose (or, if no one has been designated, the President of the Association), and the amendment and certification have been recorded in the county in which the Development is located.

11.3 Amendment of the Condominium Plan or Plans. The Condominium Plan for each Condominium Building may be amended by the consent of the Owners of Condominiums in that Building and their Mortgagees as required by Civil Code section 1351(e) and the consent of the Board. The consent of no other Owner or Mortgagee shall be required, provided that if the amendment involves the conversion of any

Association Common Area into Building Common Area, the consent of Members holding a majority of the total voting power shall be required. The authorization of an encroachment into Association Common Area or the designation of Association Common Area as Exclusive Use Common Area under the provisions of **Section 2.10** shall not be considered a conversion of Association Common Area into Building Common Area for purposes of this **Section 11.3**, provided that the prior written consent of the Board shall be required as provided in **Section 2.10**.

11.4 Special Amendment Requirements. Notwithstanding anything herein to the contrary, no amendment affecting the dimensions of any Unit or the interests in the Common Area or Exclusive Use Common Area shall be effective without the consent of all Owners whose Units, Common Area interests, or Exclusive Use Common Area rights are affected by the amendment, except as authorized in **Sections 2.10 and 9.9**. The provisions of this **Section 11.4** may not be amended without the unanimous consent of the total voting power of the Association.

11.5 Corrections. Notwithstanding anything herein to the contrary, Declarant reserves the right as the attorney-in-fact for each Condominium Owner to record an amendment or appropriate instrument of correction to correct any errors in this Declaration, any Declarations of Annexation, or any exhibits thereto, including any Condominium Plans, and the consent of neither the Association nor any Condominium Owner shall be required provided that if the correction affects the size, location or access or use rights to any Unit or any Exclusive Use Common Area appurtenant to that Unit, the consent of that Unit Owner shall be required.

#### ARTICLE 12 - Declarant Disputes

Any claim, dispute or other controversy between: (i) the Association and/or any Owner(s) and (ii) the Declarant or any affiliated general contractor or affiliated contractor who is a "builder" within the meaning of Civil Code section 911, or any director, officer, member, shareholder, partner, employee or agent thereof (individually and collectively the "Declarant" for purposes of this **Article 12**) and/or any non-affiliated general contractor, non-affiliated contractor, subcontractor, material supplier, individual product manufacturer, design professional or any other Person that provided materials or services to the Development on behalf of Declarant, relating to this Declaration, the use, condition, design, specifications, surveying, grading, construction, installation and/or operation of any Improvements or landscaping located within the Development, including any claims made under Civil Code sections 896 and 897 (individually and collectively the "Claim") shall be subject to the claims procedures set forth in Exhibit C attached hereto and incorporated herein.

The claims procedures in Exhibit C do not apply to any action taken by the Association to enforce delinquent assessments against Declarant, which shall be governed by **Section 6.10** of this Declaration.

#### ARTICLE 13 - Miscellaneous Provisions

13.1 Headings. The headings used in this Declaration are for convenience only and are not to be used to interpret the meaning of any of the provisions of this Declaration.

13.2 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision or provisions or any portion thereof shall not invalidate any other provision or any portion of the provisions not found invalid or unenforceable.

13.3 Cumulative Remedies. Each remedy provided for in this Declaration shall be cumulative and nonexclusive. Failure to exercise any remedy provided for in this Declaration shall not, under any circumstances, be construed as a waiver of the remedy.

13.4 Discrimination. No Owner shall execute or cause to be recorded any instrument that imposes a restriction on the sale, leasing or occupancy of the Owner's Condominium on the basis of race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income as defined in Government Code section 12955(p), or ancestry.

13.5 Notification of Sale. No later than five days after the closing of the sale of any Condominium, the new Owner shall notify the Association of such sale. Such notification shall be in writing and shall set forth the name and address of the new Owner and the date of sale.

13.6 Reservation or Grant of Easements. Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in any deed to any Condominium.

13.7 Incorporation of Exhibits. All exhibits referred to herein and attached to this Declaration are incorporated herein by reference as fully set forth herein.

13.8 Enforcement Rights and Remedies. The covenants, restrictions, rights and duties contained in this Declaration constitute covenants running with the land and equitable servitudes that benefit and bind each Condominium in the Development, each Owner, and each successive Owner thereto, and may be enforced by the Association, the Declarant or any Owner in any legal or equitable action pursuant to the procedures described herein. Declarant may enforce any covenants, restrictions, and rights set forth in this Declaration that expressly benefit Declarant without regard to whether Declarant owns any Condominiums in the Development.

Each Owner acknowledges and agrees that if any Person breaches any of the restrictions contained herein, money damages may not be adequate compensation. As a result, each Owner agrees that in the event of a breach, the non-breaching party, in addition to any other remedy available at law or equity, shall be entitled to equitable relief, including, but not limited to, an order compelling the breaching party to perform an act which the party is required to perform under this Declaration or which is necessary to bring the breaching party or the breaching party's Condominium into compliance with restrictions contained herein or prohibiting the breaching party from performing any act that violates the restrictions.

Notwithstanding anything herein to the contrary, the Association shall have the exclusive right to levy assessments and to take appropriate action to enforce delinquent assessments, including imposition of an assessment lien and the foreclosure of the lien. Furthermore, the Association shall have the primary responsibility for enforcing the restrictions contained in **Article 3** and the architectural provisions contained in **Article 7**. If any Owner or occupant desires the Association to take any enforcement action, the Owner or occupant shall notify the Association in writing of the alleged violation. On receipt, the Board shall review the matter and shall determine what action, if any, to take. Neither the Board nor the Association or any director, officer or agent thereof shall be liable if the Board in the exercise of its judgment elects not to take any action. To the extent applicable, the Board shall comply with the due process requirements described in this Declaration. If within 90 days after receipt of the notice the Board has failed to take any corrective action and the alleged violation has not been cured and is continuing, any Owner may bring an action on the Owner's behalf for appropriate legal and/or equitable relief. In such action, the Owner shall bear his or her own costs and attorneys' fees, provided that the prevailing party in such action shall be entitled to recovery of such costs and fees.

Prior to the commencement of any action by the Association, the Declarant or Owner to enforce the Governing Documents, the Davis-Stirling Common Interest Development Act (Civil Code sections 1350-1376) or the Nonprofit Mutual Benefit Corporation Law (Corporations Code sections 7110-8910), the Association, the Declarant or the Owner shall comply with the requirements of Civil Code sections 1369.510 through 1369.560 to the extent applicable.

13.9 Term. The term of this Declaration shall be for a period of 50 years from the date on which this Declaration is recorded in the records of the county in which the Development is located. After that time, this Declaration and each of its restrictions and covenants and other provisions automatically shall be extended for successive ten-year periods unless this Declaration is rescinded by the written consent of

Owners holding a majority of the total voting power of the Association. The rescission shall be effective on recordation of a notice of rescission in the records of the county in which the Development is located.

13.10 Reserved Rights of Declarant. Declarant is recording this Declaration as part of the construction of a residential development. No covenant or restriction contained herein shall be applied in any manner that would unreasonably interfere with Declarant's rights to complete the construction of the Improvements and to sell the Improvements. The rights retained by Declarant during the construction and sales period include, but are not limited to, the right to:

- (i) maintain construction equipment, personnel and materials on the Property;
- (ii) use such portions of the Property as may be necessary or advisable to complete the construction or sales;
- (iii) maintain construction and/or sales offices on the Property and appropriate parking to accommodate the foregoing;
- (iv) maintain sale signs or other appropriate advertisements on the Property;
- (v) maintain model homes for viewing by prospective purchasers; and
- (vi) allow prospective purchasers access to the Property to inspect any Common Area or any model homes.

13.11 Assignment by Declarant. Declarant may assign all or any portion of its rights and delegate all or any portion of its duties to any other Person; and from and after the date of such assignment and/or delegation, the Declarant shall have no further rights and/or duties hereunder with respect to the rights assigned and duties delegated. Any successor or assignee of the rights and duties of the Declarant shall execute an instrument assuming the rights and duties of the Declarant hereunder and thereafter shall be entitled to exercise all the rights of Declarant so assigned and shall be obligated to perform all the Declarant's duties so delegated, provided such successor or assignee shall not be liable in any manner for any act or omission committed or omitted by the Declarant before the date the successor or assignee succeeded to the rights of the Declarant hereunder.

13.12 Attorneys' Fees. Except as otherwise provided herein, in the event of any litigation or alternative dispute resolution procedure regarding the rights or obligations of the Declarant, the Association or any Person subject to this Declaration, the prevailing party in such proceeding, in the discretion of the judge or decision-maker, shall be entitled to recover costs, including reasonable attorneys' fees.

13.13 Notices. Any notice permitted or required by this Declaration, the Articles, Bylaws or Rules shall be considered received on the date the notice is personally delivered to the recipient or 48 hours after the notice is deposited in the United States mail, first-class, registered or certified, postage fee prepaid and addressed to the recipient at the address that the recipient has provided the Association for receipt of notice or, if no such address was provided, at the recipient's Condominium address in the Development.

13.14 No Enforcement Waiver. Failure to enforce a restriction in the past in and of itself shall not constitute a defense to any action brought against any Owner for violation of any restriction contained herein. Each Owner, by acceptance of a deed to a Condominium in the Development, acknowledges that the enforcement of these restrictions may vary as a result of different Owners, Boards or Architectural Committees, changing conditions, or other reasons and agrees that the failure of any Owner, Board or Committee to enforce any particular restriction, even if such failure is for an extended period of time, shall not in any manner restrict or estop the right of any Owner, Board or Committee to enforce these restrictions at any future time.

ARTICLE 14 - Annexation

14.1 Automatic Annexation. The real property described in Exhibit A or any portion of it may be annexed at anytime into the Development in one or more phases and made subject to this Declaration at the written election of the Declarant (or by the successors in title to such real property). Declarant reserves the right to determine the number of phases, the number of condominiums in a phase, and the building types in a phase. Declarant makes no representations or warranty that any subsequent phase will be annexed into the Development and has no obligation to annex any subsequent phase into the Development. Each election shall be made by the recording of a declaration of annexation. The declaration of annexation shall describe the real property to be annexed and shall state that it is being executed pursuant to the terms of this Declaration for the purpose of annexing the property described in the declaration of annexation into the Development and to subject the property to the terms of this Declaration. The declaration of annexation may contain a condominium plan for condominiums annexed into the Development under the declaration of annexation or any declaration of annexation to be recorded in the future. Any declaration of annexation recorded in accordance with the terms of this section shall be conclusively presumed valid in favor of all Persons who relied on it in good faith. In recording the declaration of annexation in accordance with the provisions of this Declaration, the real property described in the declaration of annexation shall be a part of the Development and subject to the provisions of this Declaration and to the rights and powers of the Association pursuant to the terms of this Declaration, the Articles and the Bylaws; and thereafter all Owners of Condominiums constituting a portion of the annexed real property shall automatically be Members of the Association with voting rights commencing on the date regular assessments commence. Regular and special assessments with respect to the annexed property shall commence at the time and to the extent described in **Section 6.7**.

Declarant reserves the right to rescind any declaration of annexation before Declarant has transferred title to any purchaser under the authority of a final subdivision public report issued by the California Department of Real Estate. The rescission shall be effective on the date a notice of rescission is recorded in the records of Santa Clara County, California. From and after this rescission, the property described in the declaration of annexation shall no longer be subject to the covenants, rights, duties, benefits or burdens set forth in this Declaration except as otherwise provided in the notice of rescission. Any declaration of annexation may be amended or corrected in the manner described in **Article 11**.

Declarant expressly reserves for the benefit of all property that may from time to time be covered by this Declaration reciprocal easements of use, enjoyment, access, ingress and egress. Such easements may be used by Declarant, its successors, purchasers and all Owners of Condominiums, their guests, tenants and invitees for sidewalks, walkways, vehicular access and such other purposes reasonably necessary to the use and enjoyment of all the Condominiums in the Development. The declaration of annexation may contain complementary additions, amendments and modifications to this Declaration necessary to reflect the different character, if any, of the real property being annexed which are not consistent with the general scheme of this Declaration or which are required by any institutional Mortgagee as defined in **Section 10.1** to make Condominiums in the Development eligible for mortgage, purchase, guarantee or insurance.

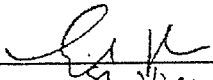
If the annexed property has been rented for at least one year before the closing of the first Condominium in the annexed phase, the Declarant shall pay the Association appropriate amounts for reserves for replacement or deferred maintenance of Common Area Improvements or other Improvements that the Association is required to maintain in the annexed phase.

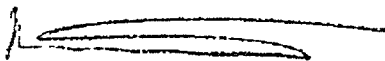
14.2 Annexation by Approval. Except for the automatic annexation provision contained in **Section 14.1**, no additional real property shall be annexed into the Development without the approval of Members holding two-thirds of the total voting power of the Association other than Declarant and such approval of Mortgagees as may be required herein.

Declarant has executed this Declaration as of July 31, 2007.

**SUMMERHILL VILLAGE SQUARE, LLC**  
a California limited liability company

By: **SUMMERHILL HOMES LLC**  
a California limited liability company,  
Manager

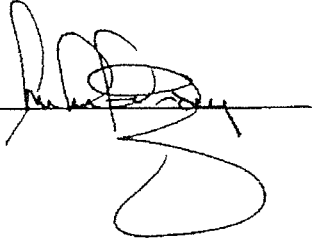
By:  Elaine Breeze  
Its  Sr. Vice President

By:   
Its  Rena Katarin, V.P.

STATE OF CALIFORNIA )  
 )  
COUNTY OF Santa Clara ) ss.

On July 31 2007 before me, Michele Ganey, a notary public, personally appeared Claine Breeze and Royal Katwin personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature 



(Seal)



EXHIBIT A - Property That May Be Annexed

Lots 1 through 9 and 11 through 18 and Lots A and B more particularly described on the subdivision map entitled "Tract 9884 Village Square" filed in the records of Santa Clara County, California, on April 11, 2007, in Book 812 of Maps at pages 49 through 51 and the Condominiums situated thereon.\*

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\*Declarant at its discretion reserves the right to establish the number of phases; the order of phases; the Association Common Area, Condominiums and Lots in a phase; and the Unit or building types in a phase.

## EXHIBIT B - Stormwater Maintenance Plan

### VEGETATED TREATMENT SWALE MAINTENANCE

The following maintenance activities and schedule are based on the recommendations provided in the California Stormwater BMP Handbook - New and Redevelopment.

Maintenance activities should include periodic mowing (with grass never cut shorter than the design flow depth), weed control, watering during drought conditions, reseeding of bare areas, and clearing of debris and blockages. Cuttings should be removed from the channel and disposed in a local composting facility. Accumulated sediment should also be removed manually to avoid concentrated flows in the swale. The application of fertilizers and pesticides should be minimal.

If channels develop ruts or holes, they should be repaired utilizing a suitable soil that is properly tamped and seeded. The grass cover should be thick; if it is not, reseed as necessary. Any standing water removed during the maintenance operation must be disposed to a sanitary sewer at an approved discharge location. Residuals (e.g., silt, grass cuttings) must be disposed of in accordance with local or State requirements. Maintenance of grassed swales mostly involves maintenance of the grass or wetland plant cover. Typical maintenance activities are summarized below:

- inspect swales at least twice annually for erosion, damage to vegetation, and sediment and debris accumulation preferably at the end of the wet season to schedule summer maintenance and before major fall runoff to be sure the swale is ready for winter. However, additional inspection after periods of heavy runoff is desirable. The swale should be checked for debris and litter, and areas of sediment accumulation.

- Grass height and mowing frequency may not have a large impact on pollutant removal. Consequently, mowing may only be necessary once or twice per year for safety or aesthetics or to suppress weeds and woody vegetation.

- Trash tends to accumulate in swale areas, particularly along highways. The need for litter removal is determined through periodic inspection, but litter should always be removed prior to mowing.

- Sediment accumulating near culverts and in channels should be removed when it builds up to 75mm (3 in.) at any spot, or covers any vegetation.

- Regularly inspect swales for pools of standing water. Swales can become a nuisance due to mosquito breeding in standing water if obstructions develop (e.g., debris accumulation, invasive vegetation) and/or if proper drainage slopes are not implemented and maintained.

## MEDIA FILTRATION SYSTEM MAINTENANCE

The following maintenance information is based on information contained in the Stormwater brochure available on the CDS Technologies, Inc. website <http://www.cdstech.com/stormwater/mediafiltrationsystem.htm>.

Maintenance of the CDS Media Filtration System can be performed by any qualified personnel and does not require specialized or proprietary equipment or media. Since maintenance intervals of any storm water BMP are highly site-specific, CDS recommends the cleaning and inspection schedule below to insure successful operation of the Media Filtration System. Detailed Operations and Maintenance Guidelines are available from CDS Technologies, Inc.

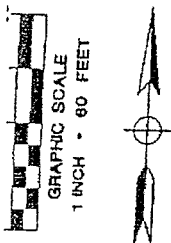
**Annual Maintenance.** Inspect system prior to the rainy season. Observe floatable accumulation; check inlet and outlet pipes for obstructions.

If possible, observe system during a storm event to determine whether or not water is in the bypass due to clogging of the media. Measure depth of material in the sediment bay below the cartridges.

In the dry season, recharge or replace media and cartridges as necessary, and remove floatable trash and debris.

**Three Year Maintenance.** Replace filter cartridges and clean sediment storage area below cartridges.

The location of the swales and CDS Filter is shown in Exhibit B-1.



LOT	1	2	3	4	5	6	7	8	9
NUMBER OF APPROVED UNITS	5	5	4	4	4	5	5	5	4

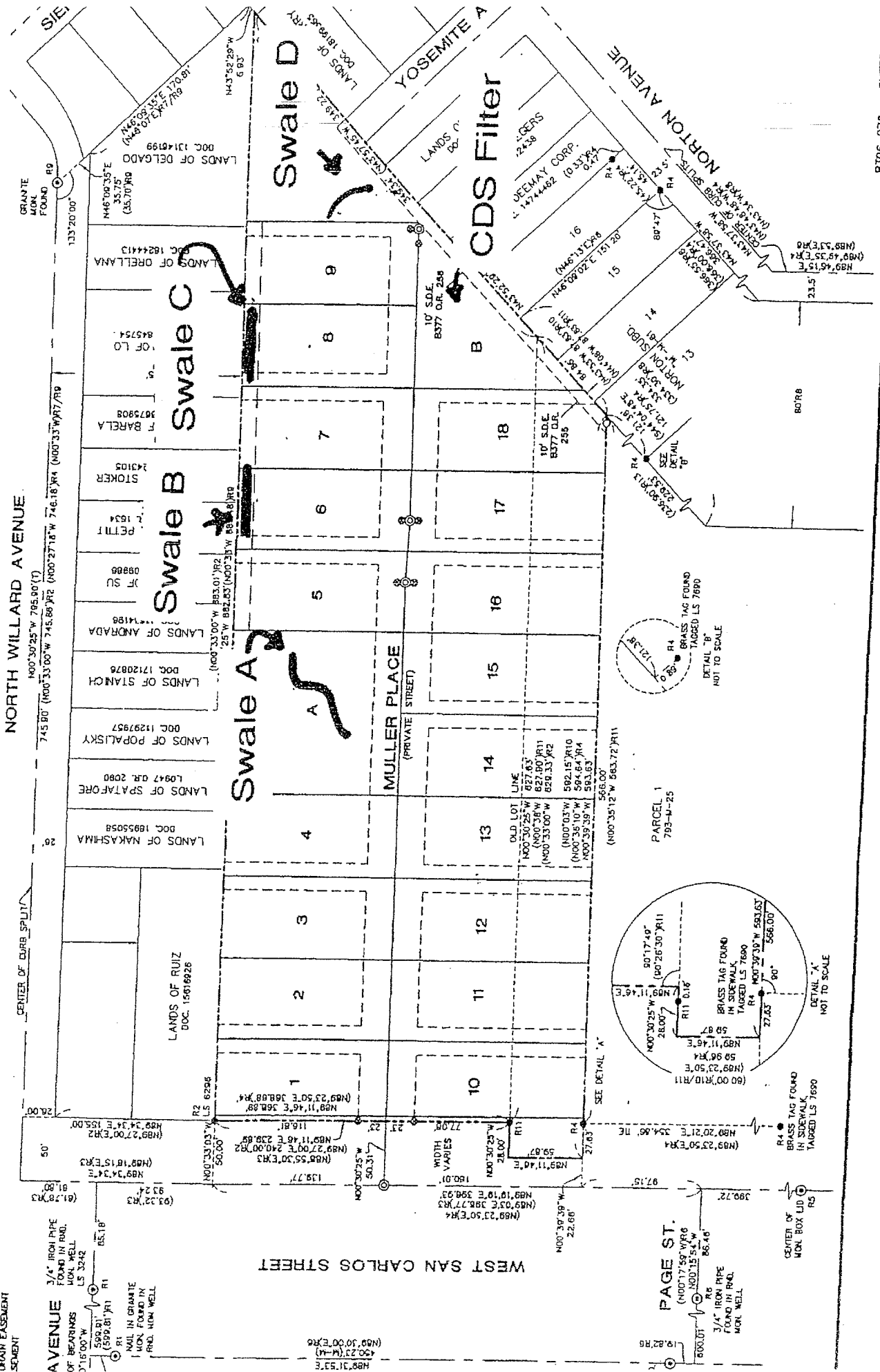
  

LOT	10	11	12	13	14	15	16	17	18
NUMBER OF APPROVED UNITS	6	6	6	6	6	6	6	6	5

SET & TAGGED 0.01". UNLESS NOTED MULTI OR COPY TAGGED "LS 7871" OFFSET 7' FROM 4" TO SCALE

BRUNN ALONG THIS LINE OR CURVE DIMENSION DIMENSIONS ENGRAVED IN REDDOR SEGMENT

ESS EASEMENT DRAIN EASEMENT SEWMENT



SEE DETAIL "A"  
 SEE DETAIL "B"  
 SEE DETAIL "C"

EXHIBIT C - Claims Procedure

VILLAGE SQUARE  
CLAIMS PROCEDURE  
EXHIBIT C

**This Exhibit contains alternative dispute resolution procedures. These procedures bind subsequent purchasers as well as the initial purchasers. You are advised to read these procedures carefully and consult with legal counsel if you have any questions.**

This document describes the procedures for filing claims against Declarant and certain other designated parties related to this Development. Unless the context indicates otherwise, the definitions set forth in Article 1 of the Declaration shall apply in this Exhibit.

Any claim, dispute or other controversy between (i) the Association and/or any Owner(s) (the "Claimant") and (ii) the Declarant or any affiliated general contractor or affiliated contractor who is a "builder" within the meaning of Civil Code section 911 or any director, officer, member, shareholder, partner, employee or agent thereof (individually and collectively the "Declarant" for purposes of this Exhibit) and/or any non-affiliated general contractor, non-affiliated contractor, subcontractor, material supplier, individual product manufacturer, design professional or any other Person that provided materials or labor or other services to the Development on behalf of Declarant, relating to this Declaration, the use, condition, design, specifications, surveying, grading, construction, installation, budgeting and/or operation of any Improvements or landscaping located within the Development or maintained by the Association, including but not limited to any claims for violation of the functionality standards set forth in Civil Code sections 896 and 897, whether based in contract, tort or statute violation (individually and collectively the "Claim"), shall be subject to the claim procedures set forth in Sections 1 and 2 of this Exhibit.

The procedures in this Exhibit do not apply to Declarant's normal customer service procedures. Owners are encouraged to resolve any potential Claim first through Declarant's normal customer service procedures. It is intended that the procedures in this Exhibit become operative only if the Claim cannot be resolved in accordance with Declarant's normal customer service procedures; provided however, a Claim may be filed under the provisions in this Exhibit without complying with Declarant's normal customer service procedures.

Declarant, the Association and each Owner covenant not to commence any litigation without complying with the procedures described in Section 1. If any party breaches the foregoing, the other party may obtain an appropriate order compelling the breaching party to comply with the procedures. Except as

is expressly authorized by law, nothing herein shall reduce or extend any applicable time-frame within which legal action must be commenced, including applicable statutes of limitation or repose and time frames set forth in Civil Code sections 896, 897 and 941.

Title 7 of Part 2 of Division 2 of the Civil Code (Civil Code sections 895 through 945.5) commonly known as "SB 800" sets forth functionality or construction standards that describe how the Improvements and landscaping within this Development should function within the certain applicable time frames (the "Functionality Standards"). SB 800 impacts the legal rights of the Association and each Owner. Civil Code sections 910 through 938 contain prelitigation procedures that Declarant may elect to use or Declarant may elect to use alternate procedures. Declarant's election is set forth in **Section 1**. The Association and Owner have certain rights under SB 800 if the Improvement or landscaping fails to meet a Functionality Standard during the applicable time period. These rights may be lost as described in Civil Code section 945.5, including if the Association or Owner: (1) fails to follow the Declarant's or the manufacturer's reasonable recommendations regarding inspection and maintenance, including schedules; (2) fails to follow commonly accepted homeowner maintenance guidelines; (3) fails to provide Declarant with timely notice after a discovery of the violation of the Functionality Standard or to allow Declarant reasonable and timely access for repairs; or (4) unreasonably fails to minimize or prevent damages in a timely manner.

**1. Nonadversarial Prelitigation Procedures:**

The Claim is subject to the nonadversarial prelitigation procedures set forth in this **Section 1**.

1.1 Claim Notice. The Claimant shall notify Declarant in writing of the Claim addressed to the agent for service of the Claim Notice described in **Section 3**. The notice shall: (i) contain the Claimant's name and address and preferred method of contact; (ii) state that the Claimant elects to commence the procedures in this Exhibit to resolve the Claim; (iii) describe the Claim in reasonable detail sufficient to determine the nature and location, to the extent known, of the claimed violation; and (iv) if applicable, state that the Claimant alleges a violation of the Functionality Standards (the "Claim Notice").

1.2 Claim Procedures. The Claim shall be processed in accordance with the nonadversarial prelitigation procedures set forth in Civil Code sections 910 through 938.

**2. Binding Procedure:**

If Claimant and Declarant cannot resolve the entire Claim in accordance with the procedures in **Section 1** of this Exhibit, either party may commence litigation in a court of competent jurisdiction.

3. **Agent for Services of Claim Notice:**

Notice of any Claim made, including Civil Code sections 896 and 897 claims, or requests for information including requests for copies of the documents described in **Section 4** or for copies of the documents described in **Section 4**, may be served on Declarant's agent via certified mail, overnight mail or personal delivery. The name and address of Declarant's agent for this purpose is:

Customer Service Director - Village Square  
777 California Avenue  
Palo Alto, CA 94304

If the notice cannot be served on Declarant's agent at the above-referenced address because the agent is no longer located at the address or the agent has changed and Declarant has not provided the Claimant with an updated address or the name and/or address of the new agent, the Claimant may serve the claim notice on Declarant's agent for notice under Civil Code section 912(e) on file with the California Secretary of State's office in Sacramento, California. The current telephone number and website for the Secretary of State's office are: (916) 657-5448 and [www.ss.ca.gov](http://www.ss.ca.gov). Written requests may be mailed to the California Secretary of State Claims Filing, P.O. Box 944225, Sacramento, California 94244-2250. If the notice is served via mail, it shall be assumed received by Declarant on the third business day following deposit into the U.S. Mails. If delivered via overnight mail, such as Federal Express or UPS, it shall be assumed received on the next business day. If delivered personally, it shall be assumed received on the date of personal delivery. These assumptions may be rebutted by Declarant if Declarant did not receive actual notice.

4. **Documents and Subsequent Owners:**

Declarant has or will provide copies of the following documents to the initial purchasers of homes in this Development:

- (i) Homeowner's Maintenance Manual;
- (ii) Homeowner's Limited Fit and Finish Warranty;
- (iii) Association Maintenance Manual;
- (iv) Association Limited Fit And Finish Warranty;
- (v) A copy of Title 7 of Part 2 of the Civil Code (SB 800); and
- (vi) Manufactured Products Limited Warranties.

The initial purchasers shall retain the foregoing documents (the "Documents") and on transfer of title to the Property to a subsequent owner shall transfer the Documents or provide true and complete copies to the new owner(s) on or before transfer of title and instruct the new owner(s) that they are to retain the Documents and transfer or provide copies to any subsequent owner(s). **Replacement copies of the**

Documents may be obtained from Declarant by contacting Declarant at Declarant's principal place of business or through the agent for claim notice purposes described in Section 3 of this Exhibit. Declarant may charge a reasonable fee for providing replacement copies. Initial purchasers and subsequent owners must comply with the inspection and maintenance guidelines provided by the Declarant and any manufacturer.

5. **Covenants:**

The covenants, restrictions, rights, duties, benefits and burdens benefit and bind each condominium and each Owner and successor Owner thereto.

6. **Amendments:**

Notwithstanding anything in the Declaration to the contrary, the provisions in this Exhibit may be rescinded or modified or waived with the written consent of the Claimant or Claimants affected by the rescission or modification. The Board of Directors shall have full power and authority to approve any modifications with Declarant with respect to any Claim made by the Association.

7. **Claims Filing Period:**

Nothing herein extends any time periods in which a claim or action must be filed under Civil Code sections 896 or 897 or otherwise extends any applicable statutes of limitations or statutes of repose, except as expressly authorized by law.



## APPENDIX I - Unit Maintenance and Repair Responsibilities<sup>1</sup>

Note: This Appendix is not intended to be an all inclusive list of the items maintained either by the Owner or the Association. Its purpose is to describe maintenance responsibilities over certain items where there may be some uncertainty as to the responsible maintaining party. Unless otherwise limited, maintenance means inspection, cleaning, maintenance, repair and replacement.

### ASSOCIATION

#### **Within the Unit**

Building fire alarm system  
Structural repairs to load-bearing walls  
Fire sprinkler heads

#### **Within the Common Area:**

Exterior Unit door surfaces (repainting only)

[Except as noted, the Association maintains all other Common Area Improvements and landscaping.]

### CONDOMINIUM OWNER

#### **Within the Unit:**

Interior doors and hardware  
Interior walls (except structural repairs to load-bearing walls)  
Wall coverings (e.g., wallpaper)  
Floor coverings (e.g., tile, carpets, carpet pads, and hardwood floors)  
Ceiling coverings  
Paint  
Light fixtures and light bulbs  
Cabinets  
Appliances (e.g., refrigerators, stoves, ovens, dishwashers, garbage disposals, trash compactors)  
Electrical system (e.g., light fixtures, light switches, light bulbs, bathroom fan fixtures, and wiring)  
Heating system (e.g., baseboard electric heaters, wall-mounted electrical heaters, heater fans and components)  
Plumbing and water system (e.g., toilets, showers, tubs, faucets, pipes and drains)  
Window coverings  
Door locks  
Door bells  
Door thresholds  
Mirrors  
Smoke detectors  
Trade fixtures

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<sup>1</sup> The purpose of this exhibit is to describe the party responsible for maintaining and repairing certain items located within the Unit and within certain portions of the Common Area located in close proximity to the Unit in accordance with the provisions of Sections 4.1 and 4.3.

**Within the Common Area:**

Furnace in attic adjacent to Unit

Light fixtures wired to the Owner's Unit, including deck lighting fixture

Exterior Unit doors, including hardware (other than repainting exterior surface)

HVAC system, including condensor

Any lighting fixtures (including bulb replacement) that is connected into the Unit's electrical system (including front door and balcony/deck exterior lights)

Windows, window seals and door screens

Electrical wiring, plumbing pipes and drains that exclusively serve the Unit<sup>2</sup>

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<sup>2</sup> Pursuant to **Section 4.1** of the Declaration these items (other than the furnace and HVAC system) shall be maintained and repaired by the Association and the cost shall be paid by the Condominium Owner.

CONSENT AND SUBORDINATION

Village Square  
Tract No. 9884

To undersigned, beneficiary under that certain Deed of Trust dated December 22, 2006, recorded on January 31, 2007 as Document No. 19284823, Official Records, Santa Clara County, California, executed by Summerhill Village Square LLC, a California limited liability company does hereby consent to the execution and recordation and does hereby consent to the execution and does hereby subordinate said Deed of Trust to the Village Square Declaration of Restriction (CC&R's), with the same force and effect as if said Declaration had been executed and recorded prior to the execution and recordation of said Deed of Trust.

BANK OF AMERICA, N.A.

BY: Peter J. Coutrakon

Peter J. Coutrakon  
Senior Vice President

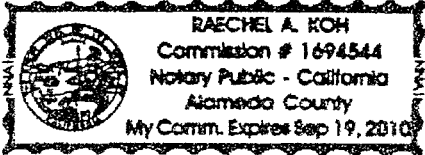
State of California            )  
  )ss.  
County of ALAMEDA        )

On August 2, 2007 before me, Rachel A. Koh,  
a notary public, personally appeared Peter J. Coutrakon, SVP  
\_\_\_\_\_ personally known to me (-or proved to me

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

WITNESS my hand and official seal.

Signature Rachel A. Koh (seal)



2766697

RECORDED AT THE REQUEST OF AND  
WHEN RECORDED, RETURN TO:

JEFFREY G. WAGNER  
Law Office of Jeffrey G. Wagner  
1777 N. California Blvd., Suite 200  
Walnut Creek, CA 94596-4150

DOCUMENT: 19871339

Pages: 7



Fees	27.00
Taxes	
Copies	
AMT PAID	27.00

REGINA ALCOMENDRAS  
SANTA CLARA COUNTY RECORDER  
Recorded at the request of  
First American Title Company

RDE # 003  
5/30/2008  
1:30 PM

**SECOND AMENDMENT**

**TO**

**VILLAGE SQUARE DECLARATION OF RESTRICTIONS (CC&Rs)**

**THIS SECOND AMENDMENT** ("Second Amendment") is executed by SUMMERHILL VILLAGE SQUARE, LLC, a California limited liability company (the "Declarant") with reference to the following facts:

- A. Declarant is developing a residential condominium development commonly known as "Village Square" situated on the real property described on the subdivision map entitled "Tract 9884 Village Square" filed for record on April 11, 2007, in Book 812 of Maps at pages 49 through 51, in Santa Clara County, California (the "Development"). The Development is subject to the Village Square Declaration of Restrictions (CC&Rs) recorded on August 9, 2007, as Document No. 19544153 in the records of Santa Clara County, California, and amended by a First Amendment recorded on August 31, 2007, as Document No. 19573101 in the records of Santa Clara County, California (collectively, the "Declaration").
- B. The Declaration contains certain lender protection provisions in order to qualify the Development for loans from the Federal National Mortgage Association ("FNMA") and the Federal Home Loan Mortgage Corporation ("FHLMC"). The lending limits for loans insured by the Federal Housing Administration ("FHA") and guaranteed by the Veterans Administration ("VA") were recently increased. The purpose of this Second Amendment is to modify the Declaration by including the lender provisions required by FHA and VA so that the Declaration will contain the provisions that would enable the condominiums in this Development to be eligible for FHA and VA loans. This Second Amendment is being adopted pursuant to the authority of Section 11.1 of the Declaration.

**THE DECLARATION IS AMENDED AS FOLLOWS:**

A new Section 10.11 is added to Article 10 to read as follows:

"10.11 FHA/VA Loan Provisions. The provisions in this **Section 10.11** are applicable if any loans on any Condominium are insured by the Federal Housing Administration ("FHA") or guaranteed by the Veterans Administration ("VA"). If applicable and if any provision in this **Section 10.11** conflicts with any other provision in this Declaration, it is intended that to the extent possible, the provisions be interpreted in a manner that

allows compliance with both provisions. If not possible, the provision that provides greater protection to Mortgagee rights shall apply.

10.11.1 Document Availability. The Association shall make available to lenders and holders and insurers of a first Mortgage of any Condominium current copies of the Governing Documents and other books, records and financial statements of the Association. The Association shall make available to prospective purchasers current copies of the Governing Documents and, if prepared, the most recent audited financial statement. For purposes herein, available means available for inspection upon request during normal business hours or under other reasonable circumstances. Upon written request from FNMA, FHLMC, FHA or VA, the Association shall prepare and furnish within a reasonable time an audited financial statement of the Association for the immediately preceding fiscal year.

10.11.2 Association Contract Termination Right. The Association shall have the right to terminate without penalty at any time after transfer of control from Declarant to the Association, upon not more than 90 days' notice to any other party and except as otherwise expressly authorized in the Declaration: (i) any management contract, employment contract or lease of recreational or parking areas or facilities binding the Association; or (ii) any contract or lease binding the Association, including franchises and licenses to which a Declarant or any affiliate of Declarant is a party. For purposes herein, "affiliate of a Declarant" means any Person or entity which controls, is controlled by or is under common control with Declarant. A Person or entity shall be deemed to control a Declarant if that Person or entity: (i) is a general partner, officer, director or employee of the Declarant; (ii) is directly or indirectly or acting in concert with one or more Persons, or through one or more subsidiaries, owns, controls, or holds the power to vote or holds proxies representing more than 20% of the voting shares of the Declarant; (iii) controls in any manner the election of a majority of the directors of the Declarant; or (iv) has contributed more than 20% of the capital of the Declarant. A Person or entity shall be deemed to be controlled by a Declarant if the Declarant: (i) is a general partner, officer, director or employee of that Person or entity; (ii) directly or indirectly or acting in concert with one or more Persons or through one or more subsidiaries, owns, controls or holds the power to vote or holds proxies representing more than 20% of the voting share of that Person or entity; (iii) controls, in any manner, the election of a majority of the directors of that Person or entity; or (iv) has contributed more than 20% of the capital of that Person or entity.

10.11.3 Transfer of Control. The Class B Membership described in Section 5.4.2 shall terminate as described in Section 5.4.2 unless terminated earlier as described in this Section 10.11.3. Under this Section 10.11.3 the Class B Membership shall terminate and be converted to Class A Membership not earlier than the earlier of the following:

(i) 120 days after the date by which 75% of the Condominiums have been conveyed by Declarant to purchasers; or

(ii) the seventh anniversary of the date of the first conveyance of a Condominium by Declarant to a purchaser.

10.11.4 Notice to First Mortgagees. A first Mortgagee, upon written request to the Association (such request to state the name and address of the first Mortgagee), will be entitled to timely written notice of:

(i) Any proposed amendment of the Governing Documents, Map or Condominium Plans effecting a change in (a) the boundaries of any Unit or the Exclusive Use Common Area appurtenant thereto, (b) the interests in the Common Area or Exclusive Use Common Area appurtenant to any Unit or the liability for Common Area expenses appurtenant thereto, (c) the number of votes in the Association allocated to any Unit, or (d) the purposes to which any Unit or Common Area are restricted.

(ii) Any proposed termination of the Condominium regime.

(iii) Any condemnation loss of any casualty loss which affects a material portion of the Condominium or which affects any Unit on which there is a first Mortgage.

(iv) Any delinquency in the payment of assessments or charges owed by any Condominium Owner where such delinquency has continued for a period of 60 days.

(v) Any lapse, cancellation or material modification of any insurance policy maintained by the Association.

10.11.5 Repair or Restoration. Any restoration or repair of the Condominium after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with this Declaration and the original plans and specifications unless the approval of the eligible Mortgage holders on Condominiums to which at least 51% of the votes of Condominiums subject to mortgages held by such eligible Mortgage holders are allocated.

10.11.6 Condemnation/Destruction Termination. Any election to terminate the Condominium regime after substantial destruction or a substantial taking in condemnation of the Condominium Property shall require the approval of the eligible Mortgage holders on Condominiums to which at least 51% of the votes of Condominiums subject to Mortgages held by such eligible Mortgage holders are allocated.

10.11.7 Reallocation of Interests. No reallocation of interests in the Common Area resulting from a partial condemnation or partial destruction of the Condominium Development may be effected without the approval of the eligible Mortgage holders on Condominiums to which at least 51% of the votes of Condominiums subject to Mortgages held by such eligible Mortgage holders are allocated.

10.11.8 General Termination. The consent of Condominium Owners to which at least 67% of the votes in the Association are allocated, and the approval of the eligible Mortgage holders of first Mortgages on Condominiums to which at least 67% of the votes of Condominiums subject to a Mortgage held by an eligible Mortgage holder, shall be required to terminate the Condominium regime.

10.11.9 Eligible Mortgage Holder Consent Requirements. The consent of Condominium Owners to which at least 67% of the votes in the Association are allocated, and the approval of eligible Mortgage holders on Condominiums to which at least 51% of the votes of Condominiums subject to a Mortgage held by an eligible Mortgage holder are allocated, shall be required to materially amend any provisions of this Declaration, the Bylaws or equivalent documents, or to add any material provision thereto, which establish, provide for, govern or regulate any of the following:

- (i) voting;
- (ii) assessments, assessment liens or subordination of such liens;
- (iii) reserves for maintenance, repair and replacement of the Common Area;
- (iv) insurance or fidelity bonds;
- (v) rights to use the Common Area;
- (vi) responsibility for maintenance and repair of the several portions of the Condominium;
- (vii) expansion or contraction of the Condominium regime or the addition, annexation or withdrawal of Property to or from the Condominium regime, except as authorized in **Section 14.1**;
- (viii) boundaries of any Unit;
- (ix) the interests in the Common Area or Exclusive Use Common Area;
- (x) convertibility of Units into Common Area or of Common Area into Units;
- (xi) leasing of Units;
- (xii) imposition of any right of first refusal or similar restriction on the right of a Condominium Owner to sell, transfer, or otherwise convey his or her Condominium; or
- (xiii) establishment of self-management by the Association where professional management has been required by the FHA or VA.

In addition, the consent of the Owners of the Condominiums to which at least 67% of the votes in the Association are allocated and the approval of eligible Mortgage holders on Condominiums to which at least 51% of the votes of Condominiums subject to Mortgages held by eligible Mortgage holders are allocated, shall be required to amend any provisions included in the Governing Documents which are for the express benefit of first Mortgagees.

10.11.10 Insurance. The insurance requirements in **Article 8** shall include the following:

(i) The Association's property insurance under **Section 8.2** shall identify the name of the insured substantially as follows:

"Village Square of San Jose Owners Association, a California nonprofit mutual benefit corporation, for use and benefit of the individual Owners (designated by name if required by law)."

(ii) Certificates of insurance shall be issued to each Condominium Owner and each Mortgagee upon request.

(iii) The Association shall satisfy the insurance requirements of Section 14 of Appendix 24 of HUD Handbook 4265.1 applicable to FHA and VA.

10.11.11 Additional Rental Requirement. The following requirement is added to the rental requirements in **Section 3.2**: the initial terms of any lease shall not be less than 30 days.

10.11.12 Annexation of Additional Condominiums. Declarant's right to annex additional Property into the Development as described in **Article 14** is subject to the following:

(i) Any future Improvements annexed shall be consistent with the initial Improvements in terms of quality of construction.

(ii) If FNMA, FHA, or VA holds, issues or guarantees any Mortgage in the Development, no additional Property may be annexed without the prior written approval of FNMA, FHA or VA, as applicable. Consent may not be withheld and will be assumed granted if the Property to be annexed substantially conforms to the plan of annexation described in this Declaration or equivalent documents.

(iii) The Improvements on any Property to be annexed shall be substantially completed before the Property is annexed.

(iv) All taxes and other assessments relating to the Property to be annexed covering any period prior to the annexation of the Property shall be paid or otherwise satisfactorily provided for by the Declarant.

(v) Declarant's right to annex additional Property shall terminate on the seventh anniversary of the date of the recordation of this Declaration.

(vi) The overall development plan includes Urban Mediterranean style, townhome type condominium units varying in size from approximately 1,342 square feet to 1,647 square feet. The annexation of additional Property must be consistent with the overall development plans for the Development, provided that Declarant reserves the right to change the overall plans or elect not to construct additional



Units or Common Area Improvements if: (a) determines that the overall plan is not economically feasible; (b) the determination is made no later than 7 years after the recordation of this Declaration; or (c) Declarant obtains such approvals as may be required from any governmental agencies for approval of a change in the plan.

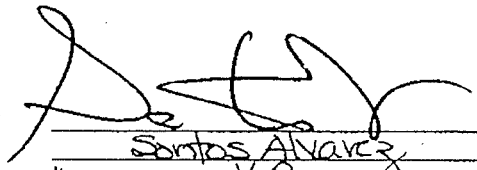
11.6 Mortgagee Reserved Amendment Rights. Notwithstanding anything herein to the contrary, Declarant reserves the rights to amend this Declaration as may be necessary or advisable in order to include provisions that satisfy the requirements of the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Federal Housing Administration (FHA) and/or the Veterans Administration (VA). The Association and each Owner shall fully cooperate in the delivery, execution and recordation of any documents necessary to effect the amendments.

Subject to the modifications contained herein, the Declaration remains in full force and effect in accordance with its terms. This Second Amendment shall be effective as of the date it is recorded in the records of Santa Clara County, California.

**SUMMERHILL VILLAGE SQUARE, LLC**  
a California limited liability company

By: **SUMMERHILL HOMES LLC**  
a California limited liability company  
Its Manager

By:   
\_\_\_\_\_  
Its Douglas L. McDonald  
CFO

By:   
\_\_\_\_\_  
Its Santos Alvarez  
V.P.

STATE OF CALIFORNIA  
COUNTY OF Santa Clara

On May 29, 2008 before me, Michele Ganey a  
Notary Public, personally appeared Douglas L. McDonald and Santos Alvarez

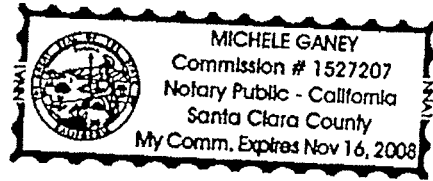
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and by his/her/their signature(s) on the instrument the person(s), or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

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

WITNESS my hand and official seal.

Signature [Handwritten Signature]

Name (typed or printed), Notary Public in  
and for said County and State.



(seal)