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SUBDIVISION MAPPING DEPT.

23716

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SAN DIEGO COUNTY RECORDER'S OFFICE  
GREGORY J. SMITH, COUNTY RECORDER

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2003-1521100

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AMENDED AND RESTATED  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS

OF

THE GRANDE SOUTH AT SANTA FE PLACE

**THIS DECLARATION CONTAINS A BINDING ARBITRATION PROVISION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT IN SECTION 17.4 HEREOF AND A WAIVER OF THE CONSTITUTIONAL RIGHT TO A JURY.**

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AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
THE GRANDE SOUTH AT SANTA FE PLACE

This AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE GRANDE SOUTH AT SANTA FE PLACE ("Declaration") is made this \_\_\_\_ day of February, 2003 by BOSA DEVELOPMENT CALIFORNIA, INC., a California corporation ("Declarant") with reference to the facts set forth in the Article hereof entitled "Recitals."

ARTICLE 1

RECITALS

1.1 PROPERTY OWNED BY DECLARANT. Declarant is the owner in fee simple of that certain real property (the "Property") situated in the City of San Diego, County of San Diego, State of California, more particularly described on **Exhibit "A"** attached hereto and incorporated herein.

1.2 ORIGINAL DECLARATION. The Property is subject to that certain Declaration of Covenants, Conditions and Restrictions of The Grande at Santa Fe Place, recorded on October 9, 2002 as Document No. 2002-0872994 in the San Diego County Recorder's Office ("Original Declaration"). Declarant, as the sole fee title owner of the Property, intends, by recordation of this Declaration, to amend, restate, terminate and supercede in its entirety the Original Declaration.

1.3 NATURE OF PROJECT. Declarant intends to establish a plan of condominium ownership and to develop the Property as a condominium project within the meaning of California Business and Professions Code Section 11004.5(c) and California Civil Code Section 1351(f), to conform with the provisions of the California Subdivided Lands Law (California Business and Professions Code Section 11000, et seq.) and to subject the Property to certain limitations, restrictions, conditions and covenants as hereinafter set forth, in accordance with the provisions of California Civil Code Sections 1350 et seq., or any successor statutes or laws. To that objective, Declarant desires and intends to impose on the Property certain mutually beneficial restrictions, limitations, easements, assessments and liens under a comprehensive plan of improvement and development for the benefit of all of the Owners, the Condominiums, Common Area (as defined below) and Association Property (as defined below) and the future Owners of said Condominiums, Common Area and Association Property.

1.4 DESCRIPTION OF PROJECT. Declarant intends to develop a residential development on the Property consisting of residential condominiums. If developed as planned, the

Project (as hereafter defined) may consist of 222 Condominiums. Declarant makes no guarantee that the Project will be constructed as presently proposed. Owners of a Condominium will receive title to a Residential Unit plus an undivided fractional interest as tenant in common to the Common Area (as hereinafter defined). In addition, Owners of a Condominium will receive the exclusive right of use and occupancy of a portion of the Common Area and/or Association Property designated as an appurtenant Exclusive Use Easement, all as shown on the Condominium Plan (as hereinafter defined). Each Owner (as defined below) will also receive certain easements for ingress, egress, use and enjoyment over the Common Area and the Association Property. Such easements are more particularly described in this Declaration and the deeds conveying the Residential Units to the Owners. Each Condominium shall have appurtenant to it a membership in The Grande South at Santa Fe Place Homeowners Association, a California nonprofit mutual benefit corporation ("Association").

## DECLARATION

Declarant declares that the Property is, and shall be, held, conveyed, hypothecated, encumbered, leased, rented, used and occupied subject to the following limitations, restrictions, easements, covenants, conditions, liens and charges, all of which are declared and agreed to be in furtherance of a plan of Condominium ownership as described in California Civil Code Section 1350 et seq. or any successor statutes or laws for the subdivision, improvement, protection, maintenance, and sale of Condominiums within the Property, and all of which are declared and agreed to be for the purpose of enhancing, maintaining and protecting the value and attractiveness of the Property. All of the limitations, restrictions, easements, covenants, conditions, liens and charges shall run with the land, shall be binding on and inure to the benefit of all parties having or acquiring any right, title or interest in the Property, shall be enforceable equitable servitudes and shall be binding on and inure to the benefit of the successors-in-interest of such parties. Declarant further declares that it is the express intent that this Declaration satisfy the requirements of California Civil Code Section 1354, and any successor statutes or laws.

## ARTICLE 2

### DEFINITIONS

Unless the context otherwise specifies or requires, the terms defined in this Article shall, for all purposes of this Declaration, have the meanings herein specified.

2.1 **ADDITIONAL CHARGES.** The term "Additional Charges" means costs, fees, charges and expenditures, including without limitation, attorneys' fees, late charges, interest and recording and filing fees actually incurred by the Association in collecting and/or enforcing payment of assessments, fines and/or penalties.



2.2 ADJACENT PROPERTIES. The term "Adjacent Properties" refers to The Grande North, the Northerly Adjacent Property and the Southerly Adjacent Property.

2.3 ARCHITECTURAL COMMITTEE. The term "Architectural Committee" means the committee created under the Article of this Declaration entitled "Architectural Committee."

2.4 ARCHITECTURAL GUIDELINES. The term "Architectural Guidelines" means the design criteria adopted under the provisions of **Article 9** of this Declaration.

2.5 ARTICLES. The term "Articles" means the Articles of Incorporation of the Association as they may from time to time be amended which are or shall be filed in the Office of the Secretary of State for the State of California.

2.6 ASSOCIATION. The term "Association" means The Grande South at Santa Fe Place Homeowners Association, a California nonprofit mutual benefit corporation, its successors and assigns.

2.7 ASSOCIATION GUEST UNIT. The term "Association Guest Unit" means Condominium Number 205 described in the Condominium Plan.

2.8 ASSOCIATION'S MAINTENANCE MANUAL. The term "Association's Maintenance Manual" refers to the manual which may be prepared by Declarant or its agents and provided to the Association, specifying obligations for maintenance of the Common Area and Association Property by the Association, as updated and amended from time to time.

2.9 ASSOCIATION PROPERTY. The term "Association Property" means all real property owned, from time-to-time, in fee title by the Association including, without limitation, the Parking Garage Module (as defined below), the Association Facilities Module (as defined below) and the Association Guest Unit.

2.10 "B" STREET ENTRYWAY. The term "B Street Entryway" refers to the entryway providing access to the Project, which is located partially on the Property and partially on The Grande North Property over which certain nonexclusive easements for access, ingress, egress, use and enjoyment of, in, to and over the "B" Street Entryway are granted pursuant to that certain Shared Entryway Declaration.

2.11 BOARD. The term "Board" means the Board of Directors of the Association.

2.12 BUDGET. The term "Budget" means the budget for the Association which sets forth all the Common Expenses to be allocated among all the Owners.

2.13 BYLAWS. The term "Bylaws" means the Bylaws of the Association, as they may from time to time be amended, which are or shall be adopted by the Board.

2.14 "C" STREET ENTRYWAY. The term "C Street Entryway" refers to the entryway providing access to the Southerly Adjacent Property, which is located partially on the Property and partially on the Southerly Adjacent Property as shown on **Exhibit "C"** attached hereto and incorporated herein over which certain nonexclusive easements for access, ingress, egress, use and enjoyment of, in, to and over the "C" Street Entryway are granted pursuant to the Street Cross-Easement Agreement.

2.15 CAPITAL IMPROVEMENT ASSESSMENTS. The term "Capital Improvement Assessments" means the assessments which are levied pursuant to the provisions of **Section 6.6** of this Declaration.

2.16 CITY. The term "City" means the City of San Diego, California.

2.17 COMMON AREA. The term "Common Area" refers to the Common Area as shown on the Condominium Plan, in which each Owner owns an undivided interest in the Common Area. The Common Area includes the bearing walls located within a Residential Unit and all structural properties within a Residential Unit which may be required for the support of the building within which the Residential Units are located, except for the finished surfaces thereof. Any utility equipment located in a plenum area (which is the Common Area between the ceilings of the Residential Units and the floor of the Residential Units above), inside of perimeter Common Area walls or dropped ceilings or otherwise in an area designated as Common Area are a part of Common Area, as shown on the Condominium Plan.

2.18 COMMON EXPENSES. The term "Common Expenses" refers to the actual and estimated costs and expenses incurred or to be incurred by the Association, the Board or the Architectural Committee, including, but not limited to, the following:

2.18.1 maintenance, management, operation, repair and replacement of the Common Area and Association Property and all other areas within the Property which are maintained by the Association, including, but not limited to any Perimeter Easement Areas, the Transit Platform and the "B" Street Entryway;

2.18.2 due but unpaid Assessments (as hereinafter defined);

2.18.3 costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, architects and employees;

2.18.4 the costs of any utilities, trash pickup and disposal, elevator, landscaping, and other services benefitting the Owners and their Residential Units to the extent such services are paid for by the Association;

2.18.5 the costs of fire, casualty, liability, worker's compensation and other insurance maintained by the Association hereunder;

2.18.6 reasonable reserves as deemed appropriate by the Board or otherwise required pursuant to the Governing Documents;

2.18.7 the costs of bonding of the members of the Board, the Architectural Committee, any professional managing agent or any other person handling the funds of the Association;

2.18.8 taxes paid by the Association, including the Transit Courtyard Tax;

2.18.9 amounts paid by the Association for the discharge of any lien or encumbrance levied against the Common Area, Association Property or portions thereof;

2.18.10 costs incurred by the Architectural Committee or other committees of the Association; and

2.18.11 the costs of any other item or items designated by, or in accordance with other expenses incurred by the Association for any reason whatsoever in connection with the operation and/or maintenance of the Common Area, Association Property or in furtherance of the purposes or the discharge of any obligations imposed on the Association by the Governing Documents.

2.19 CONDOMINIUM. The term "Condominium" means an estate in real property as defined in California Civil Code Section 1351(f) any successor statutes or laws, consisting of an undivided interest as a tenant-in-common in all or any portion of the Common Area, together with a separate fee interest in a Residential Unit and any other separate interests in the Property as are described in this Declaration, the Condominium Plan or in the deed conveying the Condominium.

2.20 CONDOMINIUM PLAN. The term "Condominium Plan" means (i) the condominium plan recorded pursuant to California Civil Code Section 1351, and any amendments to the plan, (ii) any recorded Condominium Plan or Plans, including any amendments thereto and Supplemental Condominium Plans (as defined below), pursuant to the provisions of this Declaration, and (iii) any Supplemental Condominium Plans (as defined below).

2.21 COUNTY. The term "County" means the County of San Diego, California.

2.22 DECLARANT. The term "Declarant" means Bosa Development California, Inc., a California corporation, and its successors and assigns, if such successors and assigns acquire any or all of Declarant's interest in the Property for the purpose of purchase or sale, and Declarant has expressly transferred or assigned to such successors or assigns its rights and duties as Declarant to a portion or all of the Project. For any successor or assignee of "Declarant" to be deemed a Declarant under the terms of this Declaration, Declarant shall record in the County a certificate so designating said successor or assignee as Declarant. A successor Declarant shall also be deemed to include the beneficiary under any deed of trust securing an obligation from a then existing Declarant encumbering all or any portion of the Property, which beneficiary has acquired any such property by foreclosure, power of sale or deed in lieu of such foreclosure or sale.

2.23 DECLARATION. The term "Declaration" means this enabling Amended and Restated Declaration of Covenants, Conditions and Restrictions of The Grande South at Santa Fe Place, as this Declaration may from time to time be amended, modified or supplemented.

2.24 DESIGN COVENANTS. The term "Design Covenants" means that certain Covenant Creating Design Restrictions dated May 30, 2001, which was recorded in the Office of the County Recorder of San Diego County on May 31, 2001 as Instrument No. 2001-0353570 and the First Amendment to Covenant Creating Design Restrictions dated July 31, 2002 and recorded in the Office of the County Recorder of San Diego County on August 5, 2002 as Instrument No. 2002-0659795 which requires approval before any structure or appurtenance thereto is constructed, installed or altered on the Property which has a physically imposing and material impact on the aesthetic appearance of the Property as more particularly described in the Design Covenants.

2.25 DESIGNATED EXCLUSIVE USE COMMON AREA, WALLS OR FLOORS. The term "Designated Exclusive Use Common Area Walls or Floors" refers to those portions of the Common Area consisting of walls and internal equipment located within such walls or floors such as plumbing, ventilating and electrical wires, which are located between two (2) adjacent Residential Units (either horizontally or vertically) over which an Exclusive Use Easement shall be assigned by the Declarant or the Association if an Owner acquires fee title to two (2) or more adjacent Residential Units separated by such wall or floor, subject to compliance with the requirements of this Declaration.

2.26 ELIGIBLE HOLDER. The term "Eligible Holder" means any First Mortgagee who has given written notice to the Association specifying its name, address, and the number or address of the Condominium encumbered by the Mortgage and requesting written notice of any or all of the events specified in this Declaration.

2.27 ENFORCEMENT ASSESSMENTS. The term "Enforcement Assessments" means the assessments which are levied pursuant to the provisions of **Section 6.7** of this Declaration.

2.28 EXCLUSIVE USE BALCONY AREAS. The term "Exclusive Use Balcony Areas" refers to those portions of the Common Area designated as "Exclusive Use Balcony Areas" on the Condominium Plan over which an exclusive easement has been reserved for the benefit of certain Owners for balcony purposes and which is appurtenant to such Owner's Residential Unit and which are conveyed to the Owners subject to any easements and other matters of record, including without limitation, the right of the Association, pursuant to the terms of this Declaration to enter onto any portions of the Project including, without limitation, the Exclusive Use Common Areas to perform maintenance and other obligations under this Declaration.

2.29 EXCLUSIVE USE COMMON AREA OR EXCLUSIVE USE EASEMENT. The term "Exclusive Use Common Area" or "Exclusive Use Easement" means those portions of the Common Area over which exclusive easements are reserved for the benefit of certain Owners in accordance with California Civil Code Section 1351(i), including the Exclusive Use Balcony Areas, Exclusive Use Patio Areas, Exclusive Use Deck Areas, Exclusive Use Storage Areas and Exclusive Use Parking Spaces as shown on the Condominium Plan or described in this Declaration to which an exclusive use easement is granted to an Owner and is appurtenant to such Owner's Residential Unit, subject to any easements and other matters of record, including without limitation, the right of the Association, pursuant to the terms of this Declaration to enter onto any portions of the Project, including, without limitation, the Exclusive Use Common Areas to perform its maintenance and other obligations under this Declaration. Except as specifically provided in this Declaration and the Condominium Plan, no other portion of the Common Area shall be an Exclusive Use Common Area.

2.30 EXCLUSIVE USE DECK AREAS. The term "Exclusive Use Deck Areas" means those portions of the Common Area designated as Exclusive Use Deck Areas on the Condominium Plan over which an exclusive easement has been reserved for the benefit of certain Owners for deck purposes and which is appurtenant to such Owner's Residential Unit and which the areas are conveyed to the Owners subject to any easements and other matters of record, including without limitation, the right of the Association, pursuant to the terms of this Declaration to enter onto any portions of the Project, including, without limitation, the Exclusive Use Common Areas to perform its maintenance and other obligations under this Declaration.

2.31 EXCLUSIVE USE PARKING SPACES. The term "Exclusive Use Parking Spaces" means the parking spaces designated as Exclusive Use Parking Spaces on the Condominium Plan over which easements have been reserved for the benefit of certain Owners as shown on the grant deeds conveying the Condominium from Declarant to an Owner or on a subsequent grant deed pursuant to the provisions of this Declaration.

2.32 EXCLUSIVE USE PATIO AREAS. The term "Exclusive Use Patio Areas" means those portions of the Common Area designated as Exclusive Use Patio Areas on the Condominium Plan over which an exclusive easement has been reserved for the benefit of certain Owners for patio purposes and which is appurtenant to such Owner's Residential Unit, and which are conveyed to the Owners subject to any easements and other matters of record, including without limitation, the right

of the Association, pursuant to the terms of this Declaration to enter onto any portions of the Project, including, without limitation, the Exclusive Use Common Areas to perform its maintenance and other obligations under this Declaration.

2.33 EXCLUSIVE USE STORAGE AREAS. The term "Exclusive Use Storage Areas" means the storage areas designated as Exclusive Use Storage Areas on the Condominium Plan over which easements have been reserved for the benefit of certain Owners as shown on the grant deeds conveying the Condominium from Declarant to an Owner or on a subsequent grant deed.

2.34 FINAL SUBDIVISION MAP. The term "Final Subdivision Map" means the final subdivision map covering the Project.

2.35 FIRST MORTGAGE. The term "First Mortgage" means a Mortgage which has priority under the recording statutes of the State of California over all other Mortgages encumbering a specific Condominium in the Project.

2.36 FIRST MORTGAGEE. The term "First Mortgagee" means the Mortgagee of a First Mortgage.

2.37 FISCAL YEAR. The term "Fiscal Year" means the fiscal accounting and reporting period of the Association selected by the Board.

2.38 GOVERNING DOCUMENTS. The term "Governing Documents" collectively means this Declaration and the Articles, Bylaws and the Project Handbook, (which includes the Rules and Regulations and Architectural Guidelines).

2.39 HAZARDOUS MATERIALS. The term "Hazardous Materials" refers to any toxic substance, material or waste which is or becomes (i) regulated by any local governmental authority, the State of California or the United States Government; or (ii) defined as a "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "Non-RCRA hazardous waste," RCRA hazardous waste," recyclable material," under any federal, state or local statute or regulation promulgated thereunder.

2.40 HOMEOWNER MAINTENANCE MANUAL. The term "Homeowner Maintenance Manual" refers to the manual which may be prepared by the Declarant or its agents and provided to the Association and each Owner, specifying obligations for maintenance of Residential Units by the Owners, as updated and amended from time to time.

2.41 IMPROVEMENTS. The term "Improvements" means any alteration or modification to a Residential Unit, Exclusive Use Common Area, Association Property or the balance of the Common Area or Project or any addition to a Residential Unit or the Common Area, Association Property or Project, including, without limitation, room partitions, structural alterations to any

portion of a Residential Unit or any Common Area surrounding the Residential Unit, any additions or alterations to a Residential Unit which cause penetration(s) which puncture through the drywall, ceilings or surface flooring of a Residential Unit or impact or effect in any manner any Common Area or Association Property within the Project, changes of level, grade or drainage patterns of any Exclusive Use Common Area, fences, walls, patios, patio covers, screening walls, skylights, stairs, decks, hedges, windbreaks, window tinting, plantings, planted trees and shrubs, paving, tiling or other carpeting of any patio, deck or balcony areas, utility facilities, poles, signs, and all other structures or improvements of every type and kind installed or erected on the Property.

2.42 INSTITUTIONAL MORTGAGEE. The term "Institutional Mortgagee" means a First Mortgagee which is (i) a bank, savings and loan association, insurance or mortgage company or other entity or institution chartered under federal and/or state law; (ii) an insurer or governmental guarantor of a First Mortgage; (iii) any federal or state agency; (iv) the State of California as the vendor under an installment land sales contract covering a Condominium; or (v) any other institution specified by the Board in a recorded instrument, who is the Mortgagee of a Mortgage or the beneficiary of a Deed of Trust encumbering a Condominium.

2.43 INVITEE. The term "Invitee" means any person whose presence within the Project is approved by or is at the request of a particular Owner, including, but not limited to, lessees, tenants and the family, guests, employees, licensees or invitees of Owners, tenants or lessees.

2.44 LEASE. The term "Lease" means any lease, license or other agreement whereby an occupant acquires rights to use or occupy any portion of the Residential Units.

2.45 MAINTENANCE OBLIGATIONS. The term "Maintenance Obligations" refers to the Association's and each Owner's obligations to perform (i) all reasonable maintenance consistent with the terms of the Association's Maintenance Manual and Homeowner Maintenance Manual, as applicable, any maintenance obligations and schedules in any warranty offered by Declarant or any manufacturer, and any maintenance obligations and schedules otherwise provided to either the Association or the Owners by Declarant or any manufacturer; and (ii) any commonly accepted maintenance practices to prolong the life of the materials and construction of the Association Property, the Common Area and the Residential Units, as updated and amended from time to time.

2.46 MEMBER. The term "Member" means every person or entity who holds a membership in the Association. Membership shall be appurtenant to and may not be separated from ownership of a Condominium.

2.47 MODULE. The term "Module" means each module designated on the Condominium Plan. Each Module is a three-dimensional portion of the parcel described on **Exhibit "A"** and has been created pursuant to California Government Code Section 66427. The lower and upper boundaries of each Module are set forth on the Condominium Plan. The lateral boundaries of each Module are vertical planes which are also described and depicted in the Condominium Plan. The

Module includes all Improvements whether now or hereafter located within its boundaries. Each Module shall be conveyed to the Association, subject to the easements in this Declaration and the grant deed conveying the Module to the Association. The types of modules include:

2.47.1 Association Facilities Module. The term "Association Facilities Module" refers to the Module designated on the Condominium Plan conveyed to the Association which includes certain recreational facilities, lobby, concierge office, lounge and multi-purpose center.

2.47.2 Parking Garage Module. The term "Parking Garage Module" or "Parking Garage Modules" refers to the underground parking garage(s) designated on the Condominium Plan situated within the Association Property which will be conveyed to and owned by the Association as part of the Association Property.

2.48 MORTGAGE. The term "Mortgage" means any duly recorded mortgage or deed of trust encumbering a Condominium in the Project.

2.49 MORTGAGEE. The term "Mortgagee" means a mortgagee under a Mortgage as well as a beneficiary under a deed of trust.

2.50 NORTHERLY ADJACENT PROPERTY. The term "Northerly Adjacent Property" means the real property located adjacent to The Grande North Property, as more particularly described on **Exhibit "D"** attached hereto and incorporated herein.

2.51 NOTICE AND HEARING. The term "Notice and Hearing" means the procedure which gives an Owner notice of an alleged violation of the Governing Documents and the opportunity for a hearing before the Board.

2.52 OWNER. The term "Owner" means the record owner, whether one or more persons or entities, including Declarant, of any Condominium excluding those having such interest merely as security for the performance of an obligation. A contract purchaser under a recorded installment land sales contract shall be included as an Owner but those merely having an interest as security for the performance of an obligation shall not be Owners.

2.53 PARKING GARAGE. The term "Parking Garage" or "Parking Garages" refers to the underground parking garage(s) situated within the Project.

2.54 PERIMETER EASEMENT AREAS. The term "Perimeter Easement Areas" means those areas within the Property, the Santa Fe Train Station, the Adjacent Properties and additional surrounding property as shown on **Exhibit "E"** attached hereto and incorporated herein which shall be maintained by various parties pursuant to the Street Cross-Easement Agreement.



2.55 PERSON. The term "Person" means a natural individual or any entity with the legal capacity to hold title to real property. When the word "person" is not capitalized, the word only refers to natural persons.

2.56 PROJECT. The term "Project" means all of the real property described on **Exhibit "A"** together with all Improvements situated thereon.

2.57 PROJECT HANDBOOK. The term "Project Handbook" refers to the handbook which contains the Rules and Regulations and the Architectural Guidelines.

2.58 PROPERTY. The term "Property" means all of the real property described in **Exhibit "A"** of this Declaration and all Improvements situated thereon.

2.59 PUBLIC REPORT. The term "Public Report" means the Final Subdivision Public Report issued by the California Department of Real Estate for the Project.

2.60 RECONSTRUCTION ASSESSMENT. The term "Reconstruction Assessment" means a charge levied against the Owners and their Condominiums, representing their share of the Association's cost to reconstruct any Improvements on the Project. Reconstruction Assessments are special assessments as described in California Civil Code Section 1366.

2.61 REGULAR ASSESSMENTS. The term "Regular Assessments" means the assessments that are levied pursuant to the provisions of **Section 6.4** of this Declaration.

2.62 RESIDENTIAL UNIT. The term "Residential Unit" means the elements of a Condominium which are not owned in common with the other Owners of Condominiums in the Project, such Residential Units and their respective elements and boundaries being shown and particularly described in the Condominium Plan. The elements of a Condominium that are owned separately, consist of a separate interest in space, the boundaries of which are described as the area designated as "Residential Unit" in the Condominium Plan(s). The dimensions of the Residential Unit are measured from the unfinished floor, walls, dropped ceiling, except as otherwise noted herein. Certain Residential Units consists of a Lower Living Element and an Upper Living Element shown on the Condominium Plan. The Residential Unit includes all Improvements 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 following are not part of any Residential Unit: bearing walls, columns, floors, roofs and foundations; central heating and other central services; pipes, ducts, flues, chutes, conduits, wires and other utility installations wherever located, except the openings and outlets thereof when located in the Residential Unit. Each Residential Unit shall include any door or window within a perimeter wall, the interior undercoated surfaces of bearing walls and perimeter walls, floors and ceilings, the openings and outlets of all utility installations in the Residential Unit and the fire box of any fireplace located in the Residential Unit. Any utility fixtures that are located partially within the

Residential Unit and partially in the Common Area, such as electrical outlets, and that exclusively serve the Residential Unit are part of the Residential Unit. Areas within a dropped ceiling that contain utilities that serve two or more Condominiums are Common Area and not part of the Residential Unit. In interpreting deeds and plans, the existing physical boundaries of the Residential Unit or Residential 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 Plans or any other recorded document, regardless of minor variances between boundaries shown on the Condominium Plans or in any other recorded document and those of the building within which the Condominium and regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown on the Condominium Plan or deed and those of the building.

2.63 RULES AND REGULATIONS. The term "Rules and Regulations" refers to the rules and regulations promulgated by the Board which are included within the Project Handbook.

2.64 SHARED ENTRYWAY DECLARATION. The term "Shared Entryway Declaration" means that certain Declaration Establishing Entryway Easements and Maintenance Obligations for the "B" Street Entryway dated October 9, 2002 recorded in the Official Records of the San Diego, California County Recorder's Office on October 9, 2002 as Instrument No. 2002-0872992.

2.65 SIGNAGE. The term "Signage" refers to any signage, billboards, posters, banners, flags or any other signage medium of any type or kind.

2.66 SOUTHERLY ADJACENT PROPERTY. The term "Southerly Adjacent Property" means the real property located adjacent to the Property to the south, as more particularly described on **Exhibit "F"** attached hereto and incorporated herein.

2.67 SPECIAL ASSESSMENTS. The term "Special Assessments" means the assessments that are levied pursuant to the provisions of **Section 6.5** of this Declaration.

2.68 STREET CROSS-EASEMENT AGREEMENT. The term "Street Cross-Easement Agreement" refers to that certain Amended and Restated Agreement Granting Street Cross-Easements and Covenants for Maintenance and Repair dated July 31, 2002 and recorded in the Official Records of the San Diego, California County Recorder's Office on August 5, 2002 as Instrument No. 2002-065797. The Street Cross-Easement Agreement requires the Association to maintain and repair the Perimeter Easement Areas located on the Property and allows the owners of the Adjacent Properties the right to enter and repair and maintain the Perimeter Easement Areas located on the Property and the "B" Street Entryway, if the Association fails to do so. The Street Cross-Easement Agreement also gives the Association the right to enter, repair and maintain certain areas of the Adjacent Properties if either adjacent property owner fail to do so.

2.69 SUPPLEMENTAL CONDOMINIUM PLAN. The term "Supplemental Condominium Plan" means any Condominium Plan which supplements a previously recorded Condominium Plan and which is subsequently recorded to designate the boundaries of the Exclusive Use Storage Areas or any other Exclusive Use Areas, which Supplemental Condominium Plan shall be recorded prior to the conveyance of the first Condominium covered by the Condominium Plan which is being supplemented by the Supplemental Condominium Plan. A Supplemental Condominium Plan shall also include a Condominium Plan or amendment to Condominium Plan which corrects technical errors in the originally recorded Condominium Plan.

2.70 SUPPLEMENTARY DECLARATION. The term "Supplementary Declaration" means those certain declarations of covenants, conditions and restrictions, or similar instruments, which may do all or any of the following: (a) identify areas referenced in this Declaration to be maintained by the Association, (c) make such other com (d) impose additional covenants and restrictions on the property which is being annexed, and/or (e) make technical or minor corrections to the provisions of this Declaration or previously recorded Supplementary Declaration(s).

2.71 THE GRANDE NORTH PROJECT. The term "The Grande North Project" means that certain condominium Project located on The Grande North Property (as defined below) located immediately adjacent to the Property.

2.72 THE GRANDE NORTH PROPERTY. The term "The Grande North Property" means all of the real property described in **Exhibit "B"** of this Declaration and all Improvements situated thereon.

2.73 TRANSIT COURTYARD TAX. The term "Transit Courtyard Tax" means the real property taxes and assessments attributable to the Transit Courtyard Tax Area which the Association must pay pursuant to the Street Cross-Easement Agreement.

2.74 TRANSIT COURTYARD TAX AREA. The term "Transit Courtyard Tax Area" means the real property located within Santa Fe train station as depicted on **Exhibit "G"** attached hereto and incorporated herein.

2.75 TRANSIT PLATFORM. The term "Transit Platform" means the transit platform on the Property and The Grande North Property which services the Santa Fe train station as described on **Exhibit "H"** attached hereto and incorporated herein.

2.76 VOTING POWER. The term "Voting Power" refers to the voting power of the Association.

### ARTICLE 3

#### OWNERSHIP AND EASEMENTS

3.1 OWNERSHIP OF CONDOMINIUM. Title to each Condominium in the Project shall be conveyed in fee to an Owner. Ownership of each Condominium within the Project shall include (a) a Residential Unit, (b) an undivided interest in the Common Area as designated on the Condominium Plan and/or shown on the deed to the Condominium, (c) a membership in the Association, and (d) any exclusive or non-exclusive easement or easements appurtenant to such Condominium over the Common Area and/or Association Property as described in this Declaration, the Condominium Plan, and the deed to the Condominium.

3.2 NO SEPARATE CONVEYANCE. The interest of each Owner in the use and benefit of the Common Area and Association Property shall be appurtenant to the Residential Unit owned by the Owner. No Residential Unit shall be conveyed by the Owner separately from the interest in the Common Area or the right to use the Association Property for the benefit of such Owner. Any conveyance of any Residential Unit shall automatically transfer the interest in the Common Area and the Owner's right to use the Association Property as provided in this Declaration without the necessity of express reference in the instrument of conveyance. Anything in the Article hereof entitled "Amendments," to the contrary notwithstanding, this Article shall not be amended, modified or rescinded until Declarant has conveyed the last Condominium within the Project without (i) the prior written consent of Declarant and (ii) the recording of said written consent in the Office of the County Recorder.

3.3 DELEGATION OF USE. Any Owner entitled to the right and easement of use and enjoyment of the Common Area and the Association Property may delegate such Owner's rights provided in this Declaration to the use and enjoyment of the Common Area and the Association Property to the extent applicable, to his or her other tenants, contract purchasers or subtenants who reside in such Owner's Condominium, subject to reasonable regulation by the Board. An Owner who has made such a delegation of rights shall not be entitled to use or enjoyment of the Common Area and the Association Property for so long as such delegation remains in effect, other than such access rights as are directly related to the Owner's rights and duties as landlord.

3.4 PARTITION. Except as provided in this Declaration, there shall be no judicial partition of the Common Area, or any part thereof, for the term of the Project, nor shall Declarant, any Owner or any other person acquiring any interest in any Condominium in the Project seek any such judicial partition. The undivided interest in the Common Area described above may not be altered or changed as long as the prohibition against severability of interests in a Condominium remains in effect as provided in this Declaration.

3.5 EASEMENTS. The ownership interests in the Common Area, Association Property, and to the extent applicable, Residential Units described in this Article are subject to the easements granted and reserved in this Declaration. Each of the easements reserved or granted under this Declaration shall be deemed to be established upon the recordation of this Declaration and shall henceforth be deemed to be covenants running with the land for the use and benefit of the Owners,

and their Condominiums, the Association and Association Property, the Common Area and the Declarant superior to all other encumbrances applied against or in favor of any portion of the Project. Individual grant deeds to Condominiums may, but shall not be required to, set forth the easements specified in this Article.

3.5.1 Declaration Subject to Easements. Notwithstanding anything herein expressly or impliedly to the contrary, this Declaration and the Project shall be subject to all easements shown on the Final Subdivision Map and to all easements heretofore or hereafter granted by Declarant for the installation and maintenance of utilities and drainage facilities that are necessary for the Project.

3.5.2 Utilities. There are reserved and granted for the benefit of each Residential Unit, as dominant tenement, over, under, across and through the Common Area and Association Property and each other Residential Units as the servient tenement and for the benefit of the Association Property, as dominant tenement, over, under and across each Residential Unit, as servient tenement, non-exclusive easements for the maintenance, repair and replacement of the utility facilities servicing the Project.

3.5.3 Encroachment. There are hereby reserved and granted for the benefit of each Residential Unit, as dominant tenement, over, under and across each other Residential Unit, and Common Area and Association Property, as servient tenements, and for the benefit of the Common Area and Association Property, as dominant tenement, over, under and across each Residential Unit, and Common Area and Association Property as servient tenement, non-exclusive easements for encroachment, support, occupancy and use of such portions of the Residential Units, Association Property and/or Common Area as are encroached upon, used and occupied by the dominant tenement as a result of any original construction design, accretion, erosion, addition, deterioration, decay, errors in original construction, movement, settlement, shifting or subsidence of any building, structure, or other improvements or any portion thereof, or any other cause. In the event any portion of the Project is partially or totally destroyed, the encroachment easement shall exist for any replacement structure that is rebuilt pursuant to the original construction design. The easement for the maintenance of the encroaching improvement shall exist for as long as the encroachments exists; provided, however, that no valid easement of encroachment shall be created due to the willful misconduct of the Association or any Owner. Any easement of encroachment may, but need not be, cured by repair and restoration of the structure.

3.5.4 Support, Maintenance and Repair. There is hereby reserved and granted a non-exclusive easement appurtenant to the Common Area and the Association Property and to all other Residential Units, as dominant tenements, through each Residential Unit and the Common Area and Association Property, as servient tenements, for the support, maintenance and repair of the Common Area and Association Property and all Residential Units to the extent necessary. Without limiting the generality of the foregoing, the Recreational Facilities Module and the Parking Module

shall have an easement for support, maintenance, repair and encroachment on, over, through and across the Common Area.

3.5.5 Association Easement. The Association shall have an easement over the Common Area for performing its duties and exercising its powers described in this Declaration.

3.5.6 Declarant's Non-Exclusive Easements. Subject to a concomitant obligation to restore, Declarant and its agents, employees and independent contractors shall have the easements described in the Article hereof entitled "Development Rights."

3.5.7 Communications Facility. The Association shall have the right to install, maintain and repair and replace a satellite or other communications device on the roof of the buildings in the Project.

3.5.8 Easements for Common Area and Association Property. Subject to the provisions of this Declaration, and any Exclusive Use Easements, every Owner of a Condominium shall have, for himself or herself and such Owner's Invitees, a nonexclusive easement of access, ingress, egress, use and enjoyment of, in, to and over the Common Area and the Parking Garage except no Owner shall have the right of access to any rooftop areas, any mechanical or operating areas or any other areas within the Common Area or Parking Garage to which access has been restricted by this Declaration or the Association. Such easements shall be appurtenant to and shall pass with title to such Condominiums, subject to the rights and restrictions set forth below:

(a) Suspend Rights of Members. The Board shall have the right, after Notice and Hearing, to temporarily suspend an Owner's rights as a Member pursuant to the terms of this Declaration.

(b) Dedicate or Grant Easements. The Association shall have the right, without the consent of the Owners, to grant easements over all or any portion of the Common Area and the Association Property.

(c) Control Parking. Subject to the provisions of this Declaration, the Association shall have the right to control parking within the Parking Garage and to promulgate rules and regulations to control parking in a manner consistent with this Declaration; provided however, that the Declarant has reserved all of the Exclusive Use Parking Spaces and Exclusive Use Storage Spaces with the right to convey such Exclusive Use Parking Spaces and Exclusive Use Storage Spaces to Owners. Notwithstanding the foregoing, in no event may the Association remove or relocate a parking space granted to an Owner as an Exclusive Use Parking Space. Any easements over the Common Area shall be subject to the Exclusive Use Easements.

(d) Limit Guests. The Association shall have the right to limit, on a reasonable basis, the number of guests and tenants of the Owners using the recreational and other

facilities situated within the Association Property and Common Area. Any such limitation or restrictions shall be set forth in the Project Handbook.

3.5.9 Easement to Declarant. Declarant shall have and hereby expressly reserves the easements necessary for Declarant to exercise its rights set forth in **Article 10** of this Declaration. Such rights shall include the right to reserve easements over the Common Area for construction purposes and the right to limit access, ingress and egress to the Common Area during such construction and the right to reserve such easements as may be required for the marketing, sale or leasing of the Condominiums.

3.5.10 "C" Street Entryway Easements. Pursuant to the Street Cross-Easement Agreement the owner of the Southerly Adjacent Property shall have a non-exclusive easement over, under, across and through the portion of the "C" Street Entryway located on the Property for the purpose of providing access, ingress and egress to the Southerly Adjacent Property and for the purpose of maintaining, repairing and replacing the "C" Street Entryway.

3.5.11 "B" Street Entryway Easement. Pursuant to the Shared Entryway Declaration, the Declarant shall have a non-exclusive easement for access, ingress and egress across the portion of the "B" Street Entryway located on the Property and the Owner of each Residential Unit shall have an easement for access, ingress and egress across the portion of the "B" Street Entryway located on The Grande North Property.

3.5.12 Perimeter Easement Areas. The owner of the Adjacent Properties shall have non-exclusive easements over and across the Perimeter Easement Areas located on the Property to maintain, repair and replace the landscaping if the Association fails to do so pursuant to the Street Cross-Easement Agreement.

3.5.13 Transit Platform Easement. There shall be a non-exclusive easement over the Transit Platform for the benefit of the users of the Santa Fe Depot Train Station pursuant to the Street Cross-Easement Agreement.

3.6 RIGHTS TO ENTER INTO AGREEMENTS WITH OTHER OWNERS ASSOCIATIONS. The Association shall have the power to enter into agreements with such other owners associations to share services if the Board determines, in its prudent business judgment, that such sharing of services would be of benefit to the Associations and the Owners.

3.7 LIGHT, AIR AND VIEW. No Owner shall have an easement for light, air or view over the Residential Unit of another Owner and no diminution of light, air or view by any building or Improvement now existing or hereafter erected shall entitle the Owner or any Invitee to claim any easement for light, air or view within the Project; provided, however, that the following provision shall not relieve any Owner from obtaining the approvals required pursuant to **Article 9** hereof with respect to any modification to such Owner's Improvements.

3.8 CREATION OF DESIGNATED EXCLUSIVE USE COMMON AREA WALLS OR FLOORS. The Declarant and, subject to the provisions of **Article 9** of this Declaration, the Association shall have the right to grant to an Owner who acquires fee title to two (2) or more adjacent Residential Units, without amending this Declaration or the Condominium Plan, an Exclusive Use Easement on and through any demising wall(s) or floors separating two (2) or more Residential Units and the right to alter, modify or remove such demising walls or floors subject to the consent of the Declarant and conformance with the requirements of the Architectural Committee, pursuant to the provisions of the Section of **Article 9** entitled "Scope of Architectural Review."

#### ARTICLE 4

##### THE ASSOCIATION

4.1 THE ORGANIZATION. The Association is a nonprofit mutual benefit corporation formed under the Nonprofit Mutual Benefit Law of the State of California. On the conveyance of the first Condominium to an Owner under a Public Report, the Association shall be charged with the duties and invested with the powers set forth in this Declaration and the other Governing Documents.

4.2 ASSOCIATION ACTION; BOARD OF DIRECTORS AND OFFICERS; MEMBERS' APPROVAL. Except as to matters requiring the approval of Members as set forth in this Declaration, the Articles, or the Bylaws, the affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint. Such election or appointment shall be in accordance with this Declaration and the Bylaws. Except as otherwise provided in this Declaration, the Articles and the Bylaws, all matters requiring the approval of Members shall be deemed approved if Members holding a majority of the total Voting Power assent to them by written consent as provided in the Bylaws or if approved by a majority vote of a quorum of Members at any regular or special meeting held in accordance with the Bylaws or, in certain situations set forth in **Section 4.5** of this Declaration, by written ballot without a meeting pursuant to Corporations Code Section 7513, of a simple majority of the Members, other than Declarant, constituting a quorum consisting of more than a majority of the Voting Power of the Association residing in Members other than the Declarant.

4.3 POWERS OF THE ASSOCIATION. The Association shall have all the powers of a nonprofit corporation organized under the Nonprofit Mutual Benefit Corporation Law of California subject only to such limitations on the exercise of such powers as are set forth in the Articles, the Bylaws and this Declaration. It 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, the powers set forth below. Notwithstanding the foregoing, the Association shall not undertake any of the



activities described in **Section 4.7** below. Unless otherwise provided, the Association's action shall be undertaken by and through the Board.

4.3.1 Assessments. The Association shall have the power to establish, fix, and levy assessments against the Owners and to enforce payment of such assessments, in accordance with the provisions of this Declaration.

4.3.2 Right of Enforcement and Notice and Hearing.

(a) Enforcement Actions. The Association in its own name and on its own behalf, can commence and maintain actions for damages or to restrain and enjoin any actual or threatened breach of any provision of the Governing Documents or any resolutions of the Board, and to enforce by mandatory injunction, or otherwise, all of these provisions. In addition, the Association can temporarily suspend the membership rights and privileges or can assess monetary penalties against any Owner or other person entitled to exercise such rights or privileges for any violation of the Governing Documents or Board resolutions.

(b) Notice Requirements. Before a decision to impose such a suspension or monetary penalties is reached by the Board, at least fifteen (15) days written notice of suspension or imposition of monetary penalties and the reasons therefor must be given to the Owner of such suspension or imposition of a penalty or any such longer period as may be required under California Corporations Code Section 7341, or any successor statute or law. Additionally, before the Board decides to impose a suspension of privileges or impose a monetary penalty, the aggrieved Owner shall be provided with an opportunity to be heard by the Board, orally or in writing, not less than five (5) days before the date of the suspension of privileges or imposition of monetary penalty is to take effect. For the purposes of this Subsection, notice shall be given by any method reasonably calculated to provide actual notice. Notice may be hand-delivered to the Owner or sent by first class registered or certified mail, return receipt requested or overnight courier delivery and addressed to the Owner at the last address of the Owner shown on the Association's records, or any other method deemed reasonable by the Board for delivering notices.

4.3.3 Delegation of Powers, Professional Management. The Association acting by and through the Board can delegate its powers, duties, and responsibilities to committees or employees, including a professional managing agent ("Manager"), subject to the requirements of the Section of **Article 14** entitled "Self Management."

4.3.4 Association Rules. The Board shall have the power to adopt, amend and repeal the Rules and Regulations set forth in the Project Handbook as it deems reasonable. The Board may, in its discretion, promulgate rules applicable to the Owners. The rules and regulations set forth in the Project Handbook shall govern the use of the Common Area and the Association Property by all Owners and their Invitees. However, the Project Handbook shall not be inconsistent with or materially alter any provisions of the Governing Documents. A copy of the Project

Handbook as adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner. In case of any conflict between any of the rules and regulations set forth in the Project Handbook and any other provisions of this Declaration, the Articles, or Bylaws, the conflicting rules and regulations set forth in the Project Handbook shall be deemed to be superseded by the provisions of this Declaration, the Articles and the Bylaws.

4.3.5 Right of Entry and Enforcement. Except in the case of emergencies in which case no prior notice need be given, the Board or any authorized representative thereof shall have the right, upon forty-eight (48) hours prior notice and during reasonable hours, to enter into a Residential Unit for the purpose of construction, maintenance or emergency repair for the benefit of the Common Area and Association Property or the other Condominiums or to perform its obligations under this Declaration or to cure any default by an Owner under this Declaration. Such persons shall not be deemed guilty of trespass by reason of such entry. If any such repair or maintenance is due to the failure of an Owner to perform its obligations hereunder, the cost of such maintenance or repair shall be assessed against said Owner as an Enforcement Assessment in accordance with the provisions of the Article hereof entitled "Assessments."

4.3.6 Easements and Rights of Way. The Association, acting by and through the Board, and without the vote of the Owners, may grant and convey to any third party easements and licenses for use and rights of way in, on, over or under any Common Area and Association Property conveyed or otherwise transferred to said Association or under its jurisdiction in accordance with the provisions of this Declaration.

4.3.7 Capital Improvements. Subject to the terms of this Declaration, the Board may, on its own motion or acting on a petition signed by two-thirds (2/3rds) of the Owners, approve the construction, installation or acquisition of a particular capital improvement to the Common Area and/or the Association Property.

4.3.8 Other Property. The Association, acting by and through the Board, may acquire and hold, as trustee for the benefit of its Members, tangible and intangible personal property and to dispose of the same by sale or otherwise, subject to the limitations set forth in **Section 4.5.2**.

4.3.9 Enter Into Subsidy or Maintenance Agreements. The Association shall have the power to enter into maintenance or subsidy agreements with Declarant.

4.3.10 Contract for Goods and Services. The Association shall have the power to contract for goods and services for the benefit of the Association Property and the Common Area and/or the Project necessary for the Association to perform its duties and obligations hereunder, subject to the limitations set forth in **Subsection 4.5** below.

4.3.11 Architectural Committee. Subject to the provisions of **Article 9**, the Association shall have the right to appoint and remove Members of the Architectural Committee.

4.3.12 Borrow Funds. The Association shall have the right to borrow money to improve, repair or maintain the Common Area and Association Property and to hypothecate any or all real or personal property owned by the Association, including pledging as collateral the assessment liens collected thereon provided that, the borrowing of any money or hypothecation of any real or personal property in excess of five percent (5%) of the budgeted gross expenses of the Association shall require the approval by written ballot of fifty-one percent (51%) of each class of Members.

4.3.13 Rights Regarding Title Policies. If any title claims regarding the Association Property, are made by any third party, the Association shall have the power to pursue such claims on any title insurance policy held by the Owners or the Association and each Owner hereby delegates, on a non-exclusive basis, and assigns to the Association any rights it may have under its title insurance policies to the extent that the title claim relates to the Association Property.

4.3.14 Settlement of Claims. The Association shall have the power to settle and release any and all claims, causes of action, damages and suits for defects relating in any way to the design or construction of the Association Property and Common Area on behalf of all Owners and each Owner hereby authorizes the Association to settle and release any and all claims and assigns to the Association all powers and authority as is necessary to carry out the powers of the Association pursuant to this Section 4.3.14. While Declarant is the Class C Member, the Association's power to settle and release such claims shall be exercised by a majority of the Members of the Association other than Declarant.

4.3.15 Employ Personnel. The Association shall have the power to employ Persons necessary for the effective operation and maintenance of the Association including legal, management and accounting services.

4.3.16 Entry onto Adjacent Properties. The Association shall have the right to enter onto the Adjacent Properties and that portion of the Perimeter Easement Areas located within the Santa Fe Train Station to maintain, repair and replace the Perimeter Easement Areas if the owners of the Adjacent Properties fails to do so, pursuant to the Street Cross-Easement Agreement. Additionally, the Association has the right to enter onto the Adjacent Properties to maintain, repair and replace the "C" Street Entryway if the owners of the Adjacent Properties fail to maintain their respective property as set forth in the Street Cross-Easement Agreement.

4.3.17 Claims and Actions. Subject to the provisions of this Declaration, the Association shall have the power, but not the duty, to initiate, defend, settle or intervene in mediation, arbitration, judicial or administrative proceedings on behalf of the Association in matters pertaining to (a) the application or enforcement of this Declaration and (b) damage to the Association Property or the Common Area; provided, however that no representative of Declarant on the Board shall vote on the initiation of any claim under California Civil Code Section 895 et seq., such that

from and after the first annual meeting of the Association, Declarant shall have no control over the Association's ability to decide whether to initiate a claim under such statutory provisions and in the event of such a vote, the affirmative vote of the two non-Declarant representatives on the Board shall be binding so long as a quorum of the Board is present at any meeting where such vote is taken. The Association and not the individual Members shall have the power to pursue any claims or other actions using the non-adversarial procedures for construction defects in the Association Property or the Common Area pursuant to Civil Code Section 895 et seq., and any successor statutes or laws. The Association shall comply with such non-adversarial procedures in bringing any such claims or actions. Any recovery by the Association with respect to any damage to or defect in the Association Property or the Common Area shall be utilized solely for the purpose of paying for the costs of obtaining the recovery and for correcting such damage or defect.

4.4 DUTIES OF THE ASSOCIATION. In addition to the powers delegated to it by its Articles and the Bylaws, and without limiting their generality, the Association, acting by and through the Board, has the obligation to perform each of the duties set forth below.

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

(a) Transit Courtyard Tax. Pursuant to the Street Cross-Easement Agreement the Association shall pay all real property taxes and assessments levied against the Transit Courtyard Tax Area.

4.4.2 Water and Other Utilities. The Association shall have the duty to acquire, provide and pay for water, sewer, garbage disposal, refuse and rubbish collection, electrical, telephone, gas and other necessary utility services for the Association Property.

4.4.3 Utilities Suppliers. The Association shall have the duty to permit utility suppliers and other providers of any telecommunications or other services to use portions of the Common Area and/or the Association Property reasonably necessary to the ongoing development and operation of the Project.

4.4.4 Maintenance of Project. The Association shall landscape, maintain and/or replace and repair the Common Area and Association Property, and any other portions of the Project described in **Article 8** pursuant to the provisions of this Declaration and the Association's Maintenance Manual.

(a) Association Guest Unit. The Association shall have the duty to operate, manage and maintain the Association Guest Unit. The Association Guest Unit shall not be

conveyed by the Association unless seventy-five percent (75%) of the Owners and seventy-five percent (75%) of the Eligible Holders agree to sell the Association Guest Unit and a Supplementary Declaration is recorded which discloses the conveyance of the Association Guest Unit.

(b) Perimeter Easement Areas. The Association shall have the duty to maintain, repair and replace the landscaping in that portion of the Perimeter Easement Areas located on the Property pursuant to the Street Cross-Easement Agreement.

(c) Transit Platform. The Association shall have the duty to comply with the obligations under the Street Cross-Easement Agreement, including the maintenance and other obligations relating to the Transit Platform.

(d) "B" Street Entryway. The Association shall have the duty to maintain the portion of the "B" Street Entryway located on the Property pursuant to the Shared Entryway Declaration.

4.4.5 Association's Maintenance Manual. The Association shall maintain at the offices of the Association a copy of the Homeowner Maintenance Manual provided by Declarant to the Owners and shall make available to every Owner upon request a copy of the Homeowner Maintenance Manual for the Owners' Residential Units. The Association shall have the right to charge the requesting Owner a fee for the copying of such Homeowner Maintenance Manual. The Association shall also comply with provisions of the Association's Maintenance Manual provided by Declarant to the Association. The Board may, from time to time, make appropriate revisions to the Homeowner Maintenance Manual and the Association's Maintenance Manual based on the Board's review thereof, to update such manual to provide for maintenance according to current industry practices so long as such changes do not reduce the useful life or functionality of the items being maintained.

4.4.6 Insurance. The Association shall obtain, from reputable insurance companies and maintain the insurance described in the Article hereof entitled "Insurance" and any Insurance required pursuant to the Street Cross-Easement Agreement.

4.4.7 Notice Prior to Litigation. The Board shall notify all Owners of any litigation filed for or on behalf of the Association pursuant to the provisions of **Sections 17.3 and 17.4** of this Declaration.

4.4.8 Refuse and Rubbish Collection. The Association shall provide refuse and rubbish collection for the Owners, which cost shall be included as a Common Expense.

4.4.9 Financial Matters. The Association shall have the duty to prepare annual budgets, reports, balance sheets and operating statements for the Association as required under this Declaration and the Bylaws.

4.4.10 Use of Proceeds to Repair. In the event the Association receives, on its own behalf or for the benefit of the Owners, any proceeds as a result of any construction defect or other claims or litigation brought by the Association, then the Association shall apply such proceeds first for the purpose of repairing such defects or replacing reserve funds previously utilized by the Association to cause such repairs and then to the costs of such litigation.

4.4.11 Indemnification.

(a) For Association Representative. To the fullest extent authorized by law, the Association has the power and duty to indemnify Board members, Association officers, Architectural Committee members, and all other Association committee members for all damages, pay all expenses incurred, and satisfy any judgment or fine levied as a result of any action or threatened action brought because of performance of an act or omission within what such person reasonably believed to be the scope of the person's Association duties ("Official Act"). Board members, Association officers, Architectural Committee members, and all other Association committee members are deemed to be agents of the Association when they are performing Official Acts for purposes of obtaining indemnification from the Association pursuant to this Section. The entitlement to indemnification under this Declaration inures to the benefit of the estate, executor, administrator and heirs of any person entitled to such indemnification.

(b) For Other Agents of the Association. To the fullest extent authorized by law, the Association has the power, but not the duty, to indemnify any other Person acting as an agent of the Association for damages incurred, pay expenses incurred, and satisfy any judgment or fine levied as a result of any action or threatened action because of an Official Act.

(c) Provided by Contract. The Association also has the power, but not the duty, to contract with any Person to provide indemnification in addition to any indemnification authorized by law on such terms and subject to such conditions as the Association may impose.

4.4.12 Member's Approval of Certain Actions. In the event that any claim or other actions brought by the Association against Declarant, including, but not limited to claims brought under California Civil Code Section 895 et seq., and any successor statutes or laws, involving allegations of construction defects relating to the Association Property or the Common Area is not resolved pursuant to the non-adversarial procedures set forth in California Civil Code Sections 910 through 938 and any successor statutes or laws, the Association shall not initiate a further action or procedure against Declarant under **Section 17.4** or otherwise without first obtaining the consent of the Owners other than Declarant, constituting a quorum of more than fifty percent (50%) of the Owners of the Association casting a majority of the votes at a meeting or election of the Association conducted in accordance with the provisions of California Corporations Code Sections 7510 et. seq. and 7613 and any successor statutes or laws.

4.5 LIMITATIONS ON AUTHORITY OF BOARD. The Board shall not take any of the actions listed below except with the vote or approval by written consent of (a) a majority of the Members of each of Class A and Class B during the time the two-class voting structure set forth in **Section 5.2** of this Declaration is in effect; or (b) except with the vote at a meeting of the Association or by written ballot without a meeting pursuant to Corporations Code Section 7513 of at least fifty-one percent (51%) of the Members of the Association including at least a majority of Association Members other than Declarant after conversion to a single Class A voting membership.

4.5.1 Limit on Capital Improvements. The Board shall not, without obtaining the consent of the Members as set forth above, incur aggregate expenditures for capital improvements to the Common Area or the Association Property in any Fiscal Year in excess of five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year.

4.5.2 Limit on Sales of Association Property. The Board shall not, without obtaining the consent of the Members as set forth above, sell during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year. In addition, as provided in **Section 4.4.5**, the Association shall not convey the Association Guest Unit unless seventy-five percent (75%) of the Owners and seventy-five percent (75%) of the Eligible Holders agree to sell the Association Guest Unit.

4.5.3 Limit on Compensation. The Board shall not, without obtaining the consent of the Members as set forth above, pay compensation to members of the Board for services performed in the conduct of the Association's business. However, the Board may cause a member of the Board to be reimbursed for expenses incurred in carrying on the business of the Association.

4.5.4 Limit on Third Person Contracts. The Board shall not, without obtaining the consent of the Members as set forth above, enter into a contract with a third person wherein the third person will furnish goods or services for the Common Area or the Association Property or the Association for a term longer than one year with the following exceptions:

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

(b) A prepaid casualty and/or liability insurance policy not to exceed three (3) years duration; provided that the policy permits for short-rate cancellation by the insured;

(c) An agreement for cable television services and equipment or satellite television services or equipment of not to exceed (5) five years duration but which may provide for renewals for an additional ten (10) years so long as a majority of the Owners do not object;

(d) An agreement for sale or lease of any security, fire, or other similar equipment, installation and services or telecommunications, data processing, fiber optics, cable or other similar services or technological evolutions of the foregoing, of not to exceed ten (10) years duration but which may provide for renewals for an additional ten (10) years so long as a majority of the Owners do not object;

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

(f) A contract approved by the DRE;

(g) Contracts in which the Association enters into litigation or any alternative dispute resolution procedure when the Association's obligation to pay for services is set in whole or in part on a contingency basis only if they are (i) contracts for collection of assessments or other accounts receivable or (ii) contracts involving evaluation of services;

(h) A management contract with a term not to exceed three (3) years

(i) Any maintenance agreement for the maintenance of any portion of the Association Property which is required as a condition to the effectiveness of any warranty in favor of the Association; and

(j) Any agreement with a homeowners association formed to operate, manage and govern another residential project situated adjacent to the Property to share services, so long as the term is not greater than five (5) years' duration.

4.6 PROHIBITED ACTIVITIES. Notwithstanding any other provisions of this Declaration or the other Governing Documents, the Association is expressly prohibited from undertaking or performing any of the following activities, or expending or otherwise utilizing Association funds or resources therefor, and the following activities shall not be permitted functions of the Association.

4.6.1 Property Manager. The Association shall not hire a professional manager as an employee. The Manager for the Association shall at all times be a professional manager employed as an independent contractor. Nothing contained herein shall limit the Association from hiring other employees for the Property.

#### 4.7 TERMINATION OF CONTRACTS AND AGREEMENTS.



4.7.1 Contracts or Leases. Any contract or lease, including any contract providing for the services of Declarant, entered into by the Association while Declarant controls the Association shall not exceed three (3) years and shall provide that the Association has the right to terminate such contract or lease without cause upon thirty (30) days prior written notice and without penalty or the payment of a termination fee at any time after the transfer of control of the Association from Declarant upon not more than ninety (90) days notice to the other party. For purposes of this Section, the term "control" shall mean the right of Declarant to exercise unilateral control over the Association, the Board, the Project or the Owners in any manner other than by Declarant's exercise of Votes allocated to Declarant on the same basis as votes are allocated to other Owners.

4.7.2 Professional Management Contracts. Any agreement for professional management of the Project or any agreement providing for services of the Declarant shall be for a term not to exceed one (1) year without the consent of fifty-one percent (51%) of each class of Members; provided, however, that in no event shall such an agreement exceed a term of three (3) years. Any such agreement shall provide that the agreement may be terminated by either party without cause and without payment of a termination fee upon not more than ninety (90) days written notice.

4.8 PERSONAL LIABILITY. No member of the Board, or of any committee of the Association, or any officer of the Association, or any manager, or Declarant, or any agent or employee or consultant of Declarant, shall be personally liable to any Owner, or to any other party, including the Association, for any error or omission of the Association, the Board, its authorized agents or employees or the Architectural Committee, if such person or entity has, on the basis of such information as may be possessed by him or her, acted in good faith without wilful or intentional misconduct. In addition to the foregoing, as more particularly specified in California Civil Code Section 1365.7 and any successor statutes or laws, any person who suffers bodily injury, including, but not limited to, emotional distress or wrongful death as a result of the tortious act or omission of a member of the Board who resides in the Project either as a tenant or as an Owner of no more than two (2) Residential Units, and who, at the time of the act or omission, was a "volunteer" as defined in California Civil Code Section 1365.7 and successor statutes or laws shall not recover damages from such Board member, if such Board member committed the act or omission within the scope of his or her Association duties, while acting in good faith and without acting in a willful, wanton or grossly negligent manner, provided that all of the requirements of California Civil Code Section 1365.7, or any successor statute or law, have been satisfied.

## ARTICLE 5

### MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

#### 5.1 MEMBERSHIP.

5.1.1 Qualifications. Each Owner of a Condominium which is subject to assessment, including Declarant, shall be a Member of the Association. Ownership of a Condominium or interest in it shall be the sole qualification for membership in the Association. Each Owner shall remain a Member of the Association until his or her ownership or ownership interest in the Condominium in the Project ceases at which time his or her membership in the Association shall automatically cease. Persons or entities who hold an interest in a Condominium merely as security for performance of an obligation are not to be regarded as Members.

5.1.2 Members' Rights and Duties. Each Member shall have the rights, duties, and obligations set forth in the Governing Documents, as the same may from time to time be amended.

5.1.3 Transfer of Membership. The Association membership of each person or entity who owns, or owns an interest in, one or more Condominiums shall be appurtenant to each such Condominium, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except on a transfer of title to each such Condominium or interest in it and then only to the transferee. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Condominium or interest in it shall operate automatically to transfer the appurtenant membership right in the Association to the new Owner. Notwithstanding the foregoing, Declarant's Class C membership may not be transferred except to a successor to Declarant's rights to all or a portion of the Project. Transfer of Declarant's Class C membership shall be evidenced by the recordation in the Office of the County Recorder of San Diego County of an Assignment of Declarant's Rights which specifically assigns such Declarant's Class C membership rights.

5.1.4 Commencement of Voting Rights. An Owner's right to vote, including Declarant, shall not vest until Regular Assessments have been levied upon such Owner's Condominium as provided in this Declaration. All voting rights shall be subject to the restrictions and limitations provided for herein and in the other Governing Documents.

5.2 NUMBER OF VOTES. The Association shall have three (3) classes of voting membership:

5.2.1 Class A Members. Class A Members shall be all Owners, with the exception of Declarant, and shall be entitled to one (1) vote for each Condominium owned. When more than one (1) person holds an interest in any Condominium, all such persons shall be Members. The vote for such Condominium shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Condominium.

5.2.2 Class B Members. Class B Member(s) shall be Declarant who shall be entitled to three (3) votes for each Condominium owned. The Class B membership shall cease and be converted to Class A membership on the happening of the earliest of the following to occur:

(a) On the date the total outstanding votes held by the Class A Members is equal to the total outstanding votes held by the Class B Members; or

(b) The fourth (4<sup>th</sup>) anniversary of the first close of escrow of a Condominium covered by the original Public Report; provided, however, if as of such fourth anniversary ninety percent (90%) of the Condominiums are not sold by the fourth anniversary of the issuance of the Public Report, then the conversion date shall be extended to the fifth anniversary of the issuance of the Public Report.

As long as Class B membership exists, except for the initiation of any claim under **Section 4.4.12** of this Declaration, no action by the Association that must have the prior approval of the Association Members shall be deemed approved by the Members unless approved by the appropriate percentage of Class A and Class B Members. Upon conversion to a single Class A voting membership, any action by the Association that must have the prior approval of the Members will require approval by at least a majority of the Members of the Association including at least a majority of Members other than Declarant.

5.2.3 Class C Member. The Class C Member shall be Declarant (whether or not Declarant is an Owner). The Class C membership shall not be considered a part of the voting power of the Association and Declarant shall not be entitled to exercise any Class C votes except for the purpose of electing a majority of the members of the Board pursuant to the provisions set forth below. The Class C Member shall be solely entitled to elect a majority of the members of the Board until the day after the first annual meeting of the Members of the Association as further provided in the Bylaws; provided that during the initial three-year terms of the Board members elected by the Class C Member, the Class C Member shall be entitled to replace any Member of the Board initially elected by Declarant using its Class C membership upon the death, resignation or removal of any such Board member.

5.2.4 Joint Owner Votes. The voting rights for each Condominium may not be cast on a fractional basis. If the joint Owners of a Condominium are unable to agree among themselves as to how their voting rights shall be cast, they shall forfeit the vote on the matter in question. If any Owner exercises the voting rights of a particular Condominium, it will be conclusively presumed for all purposes that such Owner was acting with the authority and consent of all other Owners of the same Condominium. If more than one (1) person or entity exercises the voting rights for a particular Condominium, their votes shall not be counted and shall be deemed void.

5.2.5 Accrual of Voting Rights. No voting rights shall accrue to any Owner until Regular Assessments have first commenced for such Owner's Condominium.

## ARTICLE 6

## ASSESSMENTS

6.1 CREATION OF LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS.

Declarant, for each Condominium owned within the Property, hereby covenants, and each Owner of a Condominium by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association all assessments levied pursuant to the provisions of this Declaration. All assessments levied hereunder, together with interest, costs and reasonable attorneys' fees assessed hereunder, shall be a charge on the land and shall be a continuing lien upon the Condominium against which each such assessment is made, the lien to be effective upon recordation of a notice of delinquent assessments. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Condominium at the time when the assessment fell due and shall bind his or her heirs, devisees, personal representatives and assigns. Unlike the lien for non-delinquent assessments, the personal obligation for delinquent assessments shall not pass to successive Owners, unless expressly assumed by such successive Owner. No such assumption of personal liability by a successive Owner (including a contract purchaser under an installment land contract) shall relieve any Owner against whose Condominium the lien was levied from personal liability for delinquent assessments. If more than one person or entity was the Owner of a Condominium, the personal obligation to pay such assessment or installment respecting such Condominium shall be both joint and several.

6.2 FUNDS HELD IN TRUST. The assessments collected by the Association shall be held by the Association for and on behalf of each Owner and shall be used solely for the operation, care and maintenance of the Project as provided in this Declaration. Upon the sale or transfer of any Condominium, the Owner's interest in the funds shall be deemed automatically transferred to the successor in interest of such Owner. The Board shall budget and keep at least the following accounts (the "Maintenance Funds") into which shall be deposited all monies paid to the Association, and from which disbursements shall be made in the Association's performance of its functions:

6.2.1 General Operating Fund. A General Operating Fund for current expenses of the Association.

6.2.2 General Reserve Fund. An adequate General Reserve Fund for the deposit of Reserves attributable to Improvements within the Property which the Association is obligated to maintain.

6.2.3 Miscellaneous Maintenance Funds. Any other Maintenance Funds which the Association may deem necessary.

6.3 PURPOSE OF ASSESSMENTS. The assessments levied by the Association shall be used exclusively to perform the obligations and duties of the Association, including, but not limited to, the improvement and maintenance of the Common Area and Association Property and for any other maintenance responsibilities of the Association, and to reimburse the Association for the costs incurred in bringing an Owner into compliance with the Governing Documents. The Association shall not impose or collect any assessment, penalty or fee that exceeds the amount necessary for the purpose or purposes for which it is levied.

6.4 REGULAR ASSESSMENTS.

6.4.1 Payment of Regular Assessments. Regular Assessments for each fiscal year shall be established when the Board approves the budget for that fiscal year, which budget shall be prepared in accordance with the provisions of this Declaration. Regular Assessments shall be levied on a fiscal year basis. Unless otherwise specified by the Board, Regular Assessments shall be due and payable in monthly installments on the first day of each month during the term of this Declaration. Declarant's obligation for such Regular Assessments may be reduced in accordance with the terms of any Maintenance Agreement executed by Declarant and the Association.

6.4.2 Budgeting. Regardless of the number of Members or the amount of assets of the Association, each year the Board shall prepare, approve and make available to each Member a budget as described in the Article of the Bylaws entitled "Budget and Financial Statements." Increases in Regular Assessments shall be subject to the limitations set forth in **Section 6.8** below. For the first fiscal year, the budget upon which Regular Assessments shall be based shall be the budget accepted by the Department of Real Estate of the State of California. Thereafter, the Board shall annually prepare the budget and distribute a copy thereof to each Member (or a summary thereof as provided in the Article of the Bylaws referenced above), together with written notice of the amount of the Regular Assessment to be levied against the Owner's Condominium, not less than forty-five (45) days nor more than sixty (60) days prior to the beginning of the fiscal year.

6.4.3 Restrictions for Tax Exemption. As long as the Association seeks to qualify and be considered as an organization exempt from federal and state income taxes pursuant to Internal Revenue Code Section 528 and California Revenue and Taxation Code Section 23701t and any amendments thereto, then the Board shall prepare its annual budget and otherwise conduct the business of the Association in such a manner consistent with federal and state requirements to qualify for such status.

6.4.4 Non-Waiver of Assessments. If before the expiration of any fiscal year the Association fails to fix Regular Assessments for the next fiscal year, the Regular Assessment established for the preceding year shall continue until a new Regular Assessment is fixed.

6.5 SPECIAL ASSESSMENTS. If the Board determines that the estimated total amount of funds necessary to defray the Common Expenses of the Association for a given fiscal year is or

will become inadequate to meet expenses for any reason, including, but not limited to, unanticipated delinquencies, costs of construction, unexpected repairs or replacements of capital improvements on, damage and destruction or condemnation of, the Common Area and the Association Property, the Board shall determine the approximate amount necessary to defray such expenses, and if the amount is approved by a majority vote of the Board and does not exceed five percent (5%) of the budgeted gross expenses of the Association, it shall become a Special Assessment; provided, however, that such limitation shall not apply to Special Assessments levied by the Board to replenish the Association's reserve account as provided in **Section 9.3** of the Bylaws. Except for Special Assessments levied pursuant to **Section 9.3** of the Bylaws, any Special Assessment in excess of five percent (5%) of the budgeted gross expenses of the Association shall be subject to the limitations set forth in **Section 6.8** below. The Board may, in its discretion, prorate such Special Assessment over the remaining months of the fiscal year or levy the assessment immediately against each Condominium. Unless exempt from federal or state income taxation, all proceeds from any Special Assessment shall be segregated and deposited into a special account and shall be used solely for the purpose or purposes for which it was levied or it shall be otherwise handled and used in a manner authorized by law or regulations of the Internal Revenue Service or the California Franchise Tax Board in order to avoid, if possible, its taxation as income of the Association.

**6.6 CAPITAL IMPROVEMENT ASSESSMENT.** In addition to any other assessments provided for hereunder, the Association may levy a Capital Improvement Assessment for the purpose of defraying, in whole or in part, the cost of any construction or replacement of a capital improvement in accordance with the provisions of **Section 4.3.7**. Capital Improvement Assessments shall be due and payable by all Owners in such installments and during such period or periods as the Board shall designate. Increases in Capital Improvement Assessments shall be subject to the limitations set forth in **Section 6.8** below.

**6.7 ENFORCEMENT ASSESSMENTS.** The Association may levy an Enforcement Assessment against any Owner who causes damage to the Common Area and/or the Association Property or for bringing an Owner or his or her Condominium into compliance with the provisions of the Governing Documents and/or any other charge designated an Enforcement Assessment in the Governing Documents, together with attorneys' fees, interest and other charges related thereto as provided in this Declaration. If the Association undertakes to provide materials or services which benefit individual Owners, then such Owners in accepting such materials or services agree that the costs thereof shall be an Enforcement Assessment. The Board shall have the authority to adopt a reasonable schedule of Enforcement Assessments for any violation of the Governing Documents. If, after Notice and Hearing as required by this Declaration and that satisfies California Corporations Code Section 7341 and any successor statutes or laws, the Owner fails to cure or continues such violation, the Association may impose an additional fine each time the violation is repeated, and may assess such Owner and enforce the Enforcement Assessment as herein provided for nonpayment of an assessment. A hearing committee may be established by the Board to administer the foregoing. Notwithstanding any other provision in this Declaration to the contrary, except as provided in **Section 6.14** of this Declaration, Enforcement Assessments are assessments but they may not

become a lien against the Owner's Condominium that is enforceable by a power of sale under California Civil Code Sections 2924, 2924b and 2924c or any successor statutes or laws. This restriction on enforcement is not applicable to late payment penalties 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.

6.7.1 Reconstruction Assessments. Reconstruction Assessments may be levied by the Community Board under the conditions and in the manner specified in the Article hereof entitled "Destruction of Improvements."

6.8 LIMITATION ON ASSESSMENTS. From and after January 1st of the year immediately following the conveyance of the first Condominium to an Owner, other than Declarant, the maximum annual Regular Assessment may not, except in the case of an Emergency (as hereinafter defined), be increased by an amount greater than twenty percent (20%) of the Regular Assessments for the preceding fiscal year and Special Assessments and Capital Improvement Assessments shall not be imposed that in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, without the consent of the Owners, constituting a quorum and casting a majority of the votes at a meeting or election of the Association conducted in accordance with the provisions of California Corporations Code Sections 7510 et. seq. and 7613 and any successor statutes or laws. The Board may not increase the Regular Assessments for any fiscal year unless it has complied with California Civil Code Section 1365.5 and any successor statutes or laws. For the purpose of this Section, a quorum shall mean more than fifty percent (50%) of the Owners of the Association and an Emergency shall mean any one of the following:

6.8.1 Quorum. For purposes of this Section, "quorum" means more than fifty percent (50%) of the Owners.

6.8.2 Emergency Situation. For purposes of this Section, an emergency situation is any one of the following:

- (a) An extraordinary expense required by an order of a court;
- (b) An extraordinary expense necessary to repair or maintain the Property or any part of it for which the Association is responsible where a threat to personal safety in the Property is discovered; or
- (c) An extraordinary expense necessary to repair or maintain the Property or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the Budget required under this Declaration and Bylaws. However, prior to the imposition or collection of an assessment subsection, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting

process, and the resolution shall be distributed to the Members with the notice of assessment. Any increases authorized by this Section shall not be imposed unless the Board has complied with the budgetary requirements set forth in the Bylaws with respect to the fiscal year for which an assessment is being levied.

The "Regular Assessment for the Association's preceding fiscal year" is deemed to be the Regular Assessment which would have existed in the absence of any subsidy of assessments agreed to be paid by Declarant. Anything in this Section to the contrary notwithstanding, the limitation on Regular Assessments and Special Assessments shall comply with the laws of the State of California in effect at the time the Regular Assessment or Special Assessment is levied by the Association.

6.8.3 Notice to Owners. The Association shall provide notice by first class mail to the Owners of any increase in the Regular Assessments or Special Assessments of the Association, not less than thirty (30) days and not more than sixty (60) days prior to the increased assessment becoming due and payable.

6.9 RATE OF ASSESSMENT. Except as otherwise provided for herein, that portion of Regular and Special Assessments and Capital Improvements Assessments levied by the Board for the variable expenses ("Variable Expenses") identified below shall be allocated by the Board as provided below. The Board shall have the right to make an equitable change to the Variable Expenses if the Owners vote to sell the Association Guest Unit pursuant to **Section 4.5.2**. All other items covered by any Regular Assessments, Special Assessments and Capital Improvement Assessments shall be fixed at a uniform rate for all Residential Units.

(a) The amount of the Variable Expenses to be assessed against a particular Residential Unit shall be the percentages set forth on **Exhibit "I"** attached hereto and incorporated herein.

(b) As used herein, "Variable Expenses" includes the following:

- (i) insurance premiums for insurance policies obtained by the Association;
- (ii) gas for boilers and domestic hot water; and
- (iii) domestic water and sewer.

(c) In addition, should the Board determine that the use of any particular Residential Unit(s) or its (their) appurtenant Exclusive Use Common Area(s) will cause an increase in the premium(s) for any insurance policy which the Association is obligated to obtain pursuant to **Article 11** below, the Board shall assess the amount of the increased premium only to those particular Residential Unit(s). Any assessment pursuant to this **Section 6.9** must be based on a



written statement from the insurer, or insurance agent, which provided the insurance, which details: (i) the amount of the premium increase, (ii) which particular uses of which particular Residential Units (or their appurtenant Exclusive Use Common Areas) caused the increase and (iii) the allocation of the increase to each of those particular Residential Units.

**6.10 DATE OF COMMENCEMENT OF REGULAR ASSESSMENTS; DUE DATES.**

The Regular Assessments provided for herein shall commence as to all Condominiums subject to this Declaration on the first day of the month following the conveyance of the first Condominium to an Owner under authority of a Public Report.

**6.11 NOTICE AND ASSESSMENT INSTALLMENT DUE DATES.** A single ten (10) day prior written notice of each Special Assessment and Capital Improvement Assessment shall be given to each Owner. The due dates for the payment of installments normally shall be the first day of each month unless some other due date is established by the Board. Each installment of Regular Assessments, Special Assessments and Capital Improvement Assessments shall become delinquent if not paid within fifteen (15) days after its due date. There shall accrue with each delinquent installment a late charge, interest charge to be set by the Board and reasonable costs of collection, including attorneys' fees, which shall not, in any event, exceed the maximum rates permitted under California Civil Code Section 1366, and any successor statutes or laws.

**6.12 ESTOPPEL CERTIFICATE.** The Board on not less than ten (10) days prior written request shall execute, acknowledge and deliver to the party making such request a statement in writing stating whether or not to the knowledge of the Association, a particular Owner is in default as to such Owner's Condominium under the provisions of this Declaration and further stating the dates to which installments of assessments, regular or special, have been paid as to such Condominium. Any such statement may be relied on by any prospective purchaser or Mortgagee of the Condominium, but reliance on such statement may not extend to any default not involving the payment of assessments of which the signer had no actual knowledge.

**6.13 COLLECTION OF ASSESSMENTS, LIENS.**

**6.13.1 Right to Enforce.** The right to collect and enforce assessments is vested in the Board acting for and on behalf of the Association. The Board or its authorized representative, can enforce the obligations of the Owners to pay assessments provided for in this Declaration by commencement and maintenance of a suit at law or in equity, or the Board may foreclose by judicial proceedings or through the exercise of the power of sale pursuant to **Section 6.13** enforce the lien rights created. Suit to recover a money judgment for unpaid assessments together with all other Additional Charges described in **Section 6.14** shall be maintainable without foreclosing or waiving the lien rights. Notwithstanding anything else to the contrary herein, except for monetary penalties imposed by the Association to reimburse the Association for costs incurred by the Association in the repair of damage to Association Property and facilities for which the Member or the Member's invitees were responsible, which may become a lien on the Owner's Condominium, a monetary

penalty imposed by the Association as a disciplinary measure for failure of a Member to comply with the Governing Documents or in bringing the Member and his or her Condominium into compliance with the Governing Documents of the Association may not be characterized nor treated as an assessment that may become a lien against the Member's Condominium enforceable by a sale of the interest hereunder. The limitation in the preceding sentence however, does not apply to any Additional Charges.

6.13.2 Notice of Assessments and Foreclosure. The Association shall distribute a written notice regarding assessments and foreclosure as set forth in California Civil Code Section 1365.1 during the sixty (60) day period immediately preceding the beginning of the Association's fiscal year.

6.13.3 Delinquent Assessments. The Association shall comply with the requirements of California Civil Code Section 1367.1 and any successor statutes or laws when collecting delinquent assessments. The Board or its authorized representative must send to the delinquent Owner or Owners, at least thirty (30) days prior to the recordation of a lien against the delinquent Owner's Condominium (as set forth in **Section 6.13**), a written notice by certified mail, which notice shall contain all of the information specified in California Civil Code Section 1367.1 and any successor statutes or laws ("Initial Notice"). The delinquent Owner may dispute the debt noticed pursuant to the Initial Notice by submitting to the Board a written explanation of the reasons for the delinquent Owner's dispute ("Owner Explanation"). The Board shall respond to the Owner Explanation in writing to the delinquent Owner within the time frame set forth in California Civil Code Section 1367.1 and any successor laws or statutes. The delinquent Owner may submit a written request to the Board to meet with the Board to discuss a payment plan for the debt noticed in the Initial Notice. The Board shall meet with the delinquent Owner in executive session within the time frame set forth in California Civil Code Section 1367.1 and any successor laws or statutes. The Association shall provide the Owners the standards for payment plans if any exists.

6.13.4 Creation of Lien. If there is a delinquency in the payment of any assessment, or installment on a Condominium any amounts that are delinquent, together with the late charge described in California Civil Code Section 1366 and any successor statutes or laws, interest at the rate permitted in such Section, and all costs that are incurred by the Board or its authorized representative in the collection of the amounts, including reasonable attorneys' fees, shall be a lien against such Condominium upon the recordation in the Office of the County Recorder of a notice of delinquent assessment ("Notice of Delinquent Assessment") as provided in California Civil Code Section 1367 and any successor statutes or laws. After its recordation, the Notice of Delinquent Assessment shall be mailed to all Owners of record as provided in California Civil Code Section 1367.1 and any successor statutes or laws.

6.13.5 Assignment. 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 where provided under California Civil Code Section 1367.1(g) and any successor statutes or laws.

**6.13.6 Notice of Default; Foreclosure.** The Board or its authorized representative can record a notice of default and can cause the Condominium with respect to which a notice of default has been recorded to be sold in the same manner as a sale is conducted under California Civil Code Sections 2924, 2924b and 2924c and any successor statutes or laws, or through judicial foreclosure, and as provided in California Civil Code Section 1367.1 and any successor statutes or laws. However, as a condition precedent to the holding of any such sale under Section 2924c, appropriate publication shall be made. In connection with any sale under Section 2924c, the Board is authorized to appoint its attorney, any officer or director, or any title insurance company authorized to do business in California as trustee for purposes of conducting the sale. The fee of the trustee shall not exceed the amounts prescribed in California Civil Code Sections 2924c and 2924d. If (a) a delinquency is cured before sale, or before completing a judicial foreclosure, or (b) if it is determined that a lien previously recorded against a Condominium was recorded in error, the Board or its authorized representative, within the time frame set forth in California Civil Code Section 1367.1 and any successor statutes or laws, shall cause to be recorded in the office of the County Recorder a certificate setting forth the satisfaction or rescission of such claim and release of such lien upon payment of actual expenses incurred, including reasonable attorneys' fees by any delinquent Owner. If the lien was satisfied, the Association shall provide the delinquent Owner a copy of the lien release or notice that the delinquent assessment has been satisfied and if the Association filed a rescission of the lien, then the Association shall provide such Owner with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission. Any payments made on delinquent assessments shall be applied in accordance with California Civil Code Section 1367.1 and any successor statutes or laws. On becoming delinquent in the payment of any assessments, or installments each delinquent Owner shall be deemed to have absolutely assigned all rent, issues and profits of his or her Condominium to the Association and shall further be deemed to have consented to the appointment of a receiver (which appointment may, at the election of the Association, be enforced by the Association through specific performance). The Association, acting on behalf of the Owners, shall have the power to bid upon the Condominium at foreclosure sale and to acquire, hold, lease, mortgage and convey the Condominium and vote as an Owner of the Condominium.

**6.13.7 Payments Under Protest.** Notwithstanding any other provisions set forth in this **Section 6.13**, the Owners shall have the right to make certain payments under protest and be entitled to alternative dispute resolution as provided in California Civil Code Sections 1354, 1366.3, 1367.1, and any successor statutes or laws, as provided in **Section 17.4** of this Declaration.

**6.13.8 Payment of Assessments.** Any payments of sums due under this Article shall first be applied to assessments owed, and only after assessments owed have been paid in full shall the payments be applied to the fees and costs of collections, attorney's fees, late charges or interest. If an Owner requests a receipt after payment of a delinquent assessment, the Association shall

provide a receipt which sets forth the date of payment and the individual who received such payment.

6.14 ADDITIONAL CHARGES. In addition to any other amounts due or any other relief or remedy obtained against an Owner who is delinquent subject to California Civil Code Section 1362.1(j) in the payment of any assessments, each Owner agrees to pay Additional Charges incurred or levied by the Board including such additional costs, fees, charges and expenditures as the Association may incur or levy in the process of collecting from that Owner monies due and delinquent. Additional Charges shall include, but not be limited to, the following:

6.14.1 Attorneys' Fees. Reasonable attorneys' fees and costs incurred in the event an attorney(s) is employed to collect any assessment or sum due, whether by suit or otherwise;

6.14.2 Late Charges. A late charge in an amount to be fixed by the Board in accordance with Civil Code Section 1366, or any successor statute or law, to compensate the Association for additional collection costs incurred in the event any assessment or other sum is not paid when due or within any "grace" period established by law;

6.14.3 Costs of Suit. Costs of suit and court costs incurred as are allowed by the court;

6.14.4 Interest. Interest to the extent permitted by law; and

6.14.5 Other. Any such other additional costs that the Association may incur in the process of collecting delinquent assessments or sums.

6.15 WAIVER OF EXEMPTIONS. Each Owner, to the extent permitted by law, waives, to the extent of any liens created pursuant to this Article, the benefit of any homestead or exemption laws of California in effect at the time any assessment or installment becomes delinquent or any lien is imposed.

6.16 SUBORDINATION OF LIEN TO FIRST MORTGAGES. When a Notice of Delinquent Assessment has been recorded, such assessment shall constitute a lien on such delinquent Owner's Condominium prior and superior to all other liens, except, (a) all taxes, (b) bonds, assessments and other levies which, by law, would be superior thereto, and (c) any First Mortgage now or hereafter placed upon any Condominium subject to assessment. The sale or transfer of any Condominium pursuant to judicial or nonjudicial foreclosure (excluding a transfer by a deed in lieu of foreclosure) of a First Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Condominium from any assessments thereafter becoming due or from the lien of any subsequent assessment. Where the Mortgagee of a First Mortgage or other purchaser of a Condominium obtains title to the same as a result of foreclosure (excluding a transfer by a deed in lieu of foreclosure), such acquiror of title, his or her successors and assigns, shall not be liable for the share of the Common Expenses

or assessments by the Association chargeable to such Condominium that became due prior to the acquisition of title to such Condominium by such acquiror, except for a share of such charges or assessments resulting from a reallocation of such charges or assessments which are made against all Condominiums.

6.17 NO OFFSETS. All assessments shall be payable in the amounts specified by the particular assessment and no offsets against such amount shall be permitted for any reasons, including, without limitation, a claim that the Association is not properly exercising its duties of maintenance, operation or enforcement.

6.18 PERSONAL LIABILITY OF OWNER. No Owner may exempt himself or herself from personal liability for assessments, nor any part thereof, levied by the Association, nor release the Condominium owned by him or her from the liens and charges hereof by waiver of the use and enjoyment of the Common Area and Association Property and facilities thereof, or by abandonment of such Owner's Condominium.

6.19 TRANSFER OF PROPERTY. After transfer or sale of property within the Project, the selling Owner or Owners shall not be liable for any assessment levied on such Owner or Owner's Condominium after the date of such transfer of ownership if written notice of such transfer is delivered to the Association. The selling Owner shall still be responsible for all assessments and charges levied on his or her property prior to any such transfer.

6.20 FAILURE TO FIX ASSESSMENTS. The omission by the Board to fix the assessments hereunder before the expiration of any year, for that or the next year, shall not be deemed either a waiver or modification in any respect of the provisions of this Declaration or a release of the Owner from the obligation to pay the assessments or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed.

6.21 PROPERTY EXEMPT FROM ASSESSMENTS. The Association Property shall be exempt from the assessments, charges and liens created herein.

6.22 INITIAL CAPITAL CONTRIBUTIONS. Upon acquisition of record title to a Residential Condominium from Declarant, each Owner shall contribute to the capital of the Association an amount equal to Fifty Dollars (\$50). This amount shall be deposited by the Owner into the purchase and sale escrow for his or her Condominium and disbursed therefrom to the Association.

## ARTICLE 7

## USE RESTRICTIONS

7.1 RESIDENTIAL USE. The Condominiums shall be used for residential purposes only; provided, however, any Condominiums may be used incidentally for the purpose of operating a home based small business if, and only if, (a) the business is operated solely within the Condominiums, (b) the business is limited to arts and crafts, the rendition of professional services or other similar activities, (c) the business is operated by the Owner of the Residential Condominiums whose principal residence is the Residential Condominiums, by a tenant whose principal residence is the Residential Condominiums or by a member of such Owner's or tenant's family whose principal residence is the Residential Condominiums, (d) the operation of the business is permitted by, and is at all times in compliance with, all applicable laws, and (e) the operation of the business does not result in (i) the violation of any of the other provisions of this Declaration, (ii) any unreasonable increase in the flow of traffic within the Property, (iii) any odor, noise, or vibration outside of the Condominiums, or (iv) parking problems within the Project. No other use shall be allowed except as specifically permitted by local ordinance; provided, however, Declarant may use any of the Condominiums owned by Declarant as model homes and sales offices for the Project during that period of time commencing when the Condominiums are first sold or offered for sale to the public and ending when all the Condominiums in the Project are sold and conveyed by Declarant to separate owners thereof.

7.2 COMMERCIAL USE. Except as otherwise provided in this Declaration, including without limitation **Section 7.1** above, no part of the Project 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 such non-residential purpose.

7.3 RENTAL OF CONDOMINIUMS. An Owner shall be entitled to rent the Owner's entire Condominium (but not a portion thereof) subject to the restrictions contained in this Declaration. Any rental or leasing agreement shall be in writing, shall provide that the lease or rental is subject to the Governing Documents and shall provide that any failure to comply with any provision of this Declaration or the Governing Documents shall be a default under the terms of the lease agreement. A copy of this Declaration shall be made available to each tenant or lessee by the Owner so renting or leasing. The Owners shall, at all times, be responsible for their tenant's or lessee's compliance with all of the provisions of this Declaration pursuant to the occupancy and use of the Condominium. A lessee shall have no obligation to the Association to pay assessments imposed by the Association nor shall any lessee have any voting rights in the Association. No Owner may lease a Condominium situated thereon for hotel, motel or transient purposes or any other purpose inconsistent with the provisions of this Declaration. All Owners who rent their Condominiums shall submit names and contact numbers for their tenants to the management company for the Project. The restrictions contained in this section shall not apply to the Association Guest Unit.

7.4 ANIMALS. No livestock, poultry or reptiles shall be kept, maintained, or bred in any Residential Unit or elsewhere within the Project. An Owner shall not maintain or keep in its Residential Unit or other portion of the Project more than a total of two (2) dogs (other than dogs which in the reasonable determination of the Board are determined to be a threat to the safety of the occupants of the Project, which shall not be allowed under any circumstances in the Project) and/or cats, provided such animals are not kept, bred or raised for commercial purposes. Domestic birds and fish in an aquarium shall be permitted so long as such animals are kept in the interior of a Residential Unit and are (a) kept as household pets, (b) are not so excessively noisy as to disturb the quiet enjoyment by each Owner of his or her Residential Unit, (c) are not kept, bred or raised for commercial purposes or, as determined by the Board, in unreasonable numbers, (d) do not constitute a nuisance or threat to the personal safety of other Owners and their Invitees in the Project and (e) with respect to any fish in an aquarium or other container, no Owner shall maintain any aquarium or other container which contains or can hold more than thirty (30) gallons of water. Notwithstanding the foregoing, the Project Handbook may further limit or restrict the keeping of such pets. The Board shall specifically have the power to prohibit the keeping or maintenance of any animal, which, in the opinion of the Board, after Notice and Hearing, is deemed by the Board to constitute a nuisance to any other Owner in the sole and exclusive opinion of the Board. Each person bringing or keeping a pet within the Project shall be absolutely liable to other Owners and their Invitees for any damage to persons or property caused by any pet brought upon or kept upon the Project by such person or by members of his or her family, his or her guests or Invitees and it shall be the duty and responsibility of each such Owner to clean up after such animals that have deposited droppings or otherwise used any portion of the Project or public street abutting or visible from the Property. Animals belonging to Owners or Invitees of any Owner must be kept within an enclosure or on a leash held by a person capable of controlling the animal. Nothing contained herein shall constitute a restriction on seeing eye dogs.

#### 7.5 INSTALLATIONS.

7.5.1 Mechanics Liens. No Owner may cause or permit any mechanic's lien to be filed against the Project for labor or materials alleged to have been furnished or delivered to the Project or any Condominium for such Owner, and any Owner who does so shall immediately cause the lien to be discharged within five (5) days after notice to the Owner from the Board. If any Owner fails to remove such mechanic's lien, the Board may, discharge the lien and charge the Owner a Special Assessment for such cost of discharge.

7.5.2 Outside Installations. The following items are prohibited: (a) outside installations, including clotheslines, balcony, patio or deck covers, wiring, air conditioning equipment (except as installed by Declarant), water softeners, other machines and other Improvements, (b) Improvements to deck or balcony railings, and (c) other exterior additions or alterations to any Condominium unless installed by Declarant or approved by the Architectural Committee and permitted under the terms of the Design Covenants.

7.5.3 Inside Installations. Nothing may be done in any Condominium or in, on or to the Common Area or the Association Property which may impair the structural integrity of any building in the Project or which structurally alters any such building except as otherwise expressly approved by the Architectural Committee.

7.5.4 Outside Drying and Laundering. No exterior clothesline shall be erected or maintained or hung on balconies or railings within the Project and there shall be no exterior drying or laundering of clothes or any other items on any Common Area, Exclusive Use Easement Area or Association Property.

7.5.5 Storage. No Owner shall use any Exclusive Use Balcony Area or Exclusive Use Patio Area for storage purposes, including, without limitation, the storage of bicycles.

7.5.6 Vibrations. No Owner shall attach to the walls or ceilings of any Condominium any fixtures or equipment which will cause vibrations or noise or unreasonable annoyance to the Owners of the other Condominiums or to the Common Area or Association Property.

7.5.7 Water Beds and Limitations on Size of Aquariums. No water beds shall be permitted in any Condominium and as specified above, no Owner can maintain in his or her Condominium any aquarium or other container holding thirty (30) or more gallons of water. Each Owner acknowledges that substantial damage to other Residential Units, Association Property and/or Common Area may occur as a result of a violation of this restriction.

7.5.8 Water Supply System. No individual water supply, sewage disposal or water softener system is permitted in any Condominium unless such system is designed, located, constructed and equipped in accordance with the requirements, standards, and recommendations of any water district having jurisdiction, the City, Architectural Committee, and all other governmental authorities with jurisdiction.

7.5.9 Awnings, Etc. No awnings, ornamental screens, screen doors, sunshades, or umbrellas of any nature shall be erected or maintained on or around any portion of any structure or elsewhere within the Project except those that are installed in accordance with the original construction of the Project or as are authorized and approved by the Architectural Committee.

7.5.10 Exterior Lighting. Any exterior electrical, gas or other artificial lighting installed on any Residential Unit shall be positioned, screened, or otherwise directed or situated and of such controlled focus and intensity so as not to unreasonably disturb the residents of any other Residential Unit(s). Further rules regarding exterior lighting may be promulgated by the Board or, if appointed, Architectural Committee.



7.5.11 Window Coverings. All window coverings shall be of a neutral color harmonious with and not conflict with the color scheme of the exterior wall surface of the Condominium. Window tinting and coverings shall be subject to the approval of the Architectural Committee.

7.5.12 Antenna and Satellite Dishes. No television or radio poles, antennae, satellite dishes, or technological evolutions of the foregoing, or other external fixtures other than those originally installed by Declarant or approved by the Architectural Committee shall be constructed, erected or maintained on or within the Project; provided, however, that the foregoing restriction shall not be construed to limit the installation or use of video or television antennas within the Project, including a satellite dish (collectively, "Antenna"), except as otherwise prohibited or restricted by law, that is of a size and type consistent with the provisions of Section 1376 of the California Civil Code or any successor statute or law, so long as the following requirements are satisfied: (a) the Owner has submitted an application and notice to the Architectural Committee prior to the installation of the Antenna as provided in **Article 9** of this Declaration; and (b) the Owner has obtained approval of the Architectural Committee for the installation of the Antenna. The application for approval of an Antenna shall be processed by the Architectural Committee in the same manner as any other architectural modification within the Project, subject to the requirements of California Civil Code Section 1376. The Architectural Guidelines may impose further restrictions on the placement of such Antennae so long as such restriction does not violate Section 1376 of the California Civil Code or 74 U.S.C. Section 207 or any successor statutes or law. No wiring insulation, air-conditioning, or other machinery or equipment other than that originally installed by Declarant or approved by the Architectural Committee, and their replacements shall be constructed, erected or maintained on or within the Common Area and the Association Property including any structures on it.

7.6 USE OF EXCLUSIVE USE AREAS. Improvements including, without limitation, plants, fountains and other landscaping features within the Exclusive Use Patio Area, Exclusive Use Balcony Area and/or Exclusive Use Deck Area shall be subject to the Project Handbook and the Architectural Guidelines and any Improvements within such areas shall require the approval of the Architectural Committee. Unless installed by Declarant, no vegetation shall be permitted to extend beyond the railings, fences, walls and/or other boundaries of the Exclusive Use Balcony Area, Exclusive Use Patio Area or Exclusive Use Deck Area, except as approved by the Architectural Committee. No Owner shall change or alter the surface of any Exclusive Use Patio Area, or Exclusive Use Balcony Area or Exclusive Use Deck Area without the consent of the Architectural Committee. Each Owner acknowledges that, notwithstanding anything to the contrary set forth in this Declaration, the Association shall have the right to enter onto such Exclusive Use Areas to perform its maintenance and other obligations under this Declaration.

7.7 SIGNS. Subject to Civil Code Sections 712 and 713, no sign, advertising device or other display of any kind shall be displayed in the Project or on any public street in or abutting the Project except for the following signs, so long as they comply with law:

7.7.1 entry monuments, community identification signs, and traffic or parking control signs maintained by the Association;

7.7.2 for each Condominium, one (1) nameplate or similar Owner name or address identification sign which complies with any of the Architectural Guidelines;

7.7.3 for each Condominium, one (1) sign advising of the existence of security services protecting a Condominium which complies with the Architectural Guidelines;

7.7.4 for each Condominium, one (1) sign advertising the Condominium for sale or lease that complies with the following requirements:

(a) the sign is not larger than eighteen inches (18") by thirty inches (30") in size;

(b) the sign is of a color and style authorized by the Architectural Committee; and

7.7.5 other signs or displays authorized by the Architectural Committee.

7.8 DECORATING BY OWNER. Each Owner shall have the right, at his or her sole cost and expense, to maintain, repair, paint, paper, panel plaster, tile and finish the interior surfaces of the ceilings, floors, window frames, door frames, trim and perimeter walls of the Residential Unit, and the surfaces of the bearing walls and partitions located within the Residential Unit, subject to the Owner complying with any restrictions or limitations set forth in the Architectural Guidelines and, if such work will result in a penetration of the unfinished surfaces of the ceilings, walls or floors, obtaining the consent of the Architectural Committee.

7.9 DRAINAGE. There shall be no interference with the established drainage pattern over the Property, unless an adequate alternative provision is made for proper drainage with the prior written approval of the Architectural Committee. For the purpose hereof, "established drainage" means the drainage which (a) exists at the time of the first Close of Escrow, or (b) is shown on any plans approved by the Architectural Committee. Each Owner shall have the duty and obligation to maintain the drainage situated within any Exclusive Use Patio Area, Exclusive Use Balcony Area and/or Exclusive Use Deck Area free of debris and any other material which may impede the flow of water and to clean such drainage, as may be necessary. No Owner shall dispose of any Hazardous Materials in any drains. If such Owner fails to maintain such drainage and, as a result, imminent danger or damage to person or property may result to the other Owners, then the Association shall have the right of access onto such area for the purpose of clearing debris and other material so as to not impede the flow of water. This right of access shall be exercised only for the purpose of preventing damage to persons and property and the entering party ("Entering Party") shall use

reasonable care so as to not cause any damage to such areas. The Owner shall reimburse the Association for any costs and expenses incurred in clearing such debris pursuant to **Section 4.3.5** of this Declaration. Notwithstanding the foregoing, the Board and its agents shall, after giving reasonable notice, have the right to enter any deck or patio within an Exclusive Use Balcony Area, Exclusive Use Patio Area and Exclusive Use Deck Areas to conduct a cleaning of and to inspect the established system of drainage located thereon, provided that the Association repairs any damage which might result from such inspection.

7.10 PARKING SPACES. It is contemplated that all Exclusive Use Parking Spaces will be conveyed to the Owners of Condominiums by the deed conveying the Condominium to an Owner by Declarant or by a later conveyance. If there are any excess Exclusive Use Parking Spaces, Declarant shall have the right, in its discretion, to convey the excess Exclusive Use Parking Spaces to the current Owner(s) or convey the Exclusive Use Parking Spaces to the Association and, in such case, the Association shall have the right to lease, convey or otherwise control such spaces. The assignment of a Parking Space to an Owner of a Condominium shall entitle the Owner to store no more than one (1) motor vehicle within the Exclusive Use Parking Space for each Parking Space assigned. The Owner of a Condominium may lease to other Owners in the Project the Exclusive Use Parking Space(s) which is a part of his or her Condominium, subject to all the requirements of this Declaration and the Project Handbook, as such documents may be amended from time-to-time. The Owner of a Condominium may not lease an Exclusive Use Parking Space(s) to any Person who is not also an Owner of a Condominium in the Project. The conveyance of the Condominium by an Owner shall terminate the lease of a Parking Space. Rental of a Parking Space shall not give to any lessee the right to vote or any other rights of membership in the Association.

7.11 OFFENSIVE CONDUCT; NUISANCES. No noxious or offensive activities, shall be conducted within the Project. Nothing shall be done on or within the Project that may be or may become an annoyance or nuisance to the residents of the Project. No odorous matters shall be emitted upon or about the Project in such quantity as to be readily detectable outside the physical boundaries of the space within which such odor was generated.

7.12 TOXIC OR NOXIOUS MATTER. No person shall discharge into the Project's sewer system, storm drain or any toxic or noxious matter in such concentrations as to be detrimental to or endanger the public health, safety, welfare, violate any law, subject any Owner to liability under state and federal law for any clean-up or cause injury or damage to neighboring property or business elsewhere on the Project.

7.13 AIR POLLUTION. No air pollutants or contaminants sufficient to create a nuisance shall be discharged, and no processes which by their nature are likely to cause air pollution shall be undertaken or permitted unless there is available an adequate, economically feasible method of controlling the omission or contaminates, and such controls are applied by the Board.

7.14 STRUCTURAL ALTERATIONS. Except as permitted under **Section 9.6** of this Declaration, no structural alterations to the interior of or Common Area surrounding any Residential Unit shall be made and no plumbing, electrical or other work which would result in the penetration of the unfinished surfaces of the ceilings, walls or floors shall be performed by any Owner without the prior written consent of the Architectural Committee and, if required under **Section 9.6**, the Declarant. An Owner who acquires fee title to two (2) or more adjoining Residential Units, may be permitted to remove the demising wall dividing the two (2) or more Residential Units, so long as the Owner has complied with the requirements and obtained the approvals required under **Article 9** of this Declaration.

7.15 COMPLIANCE WITH LAWS, ETC. Nothing shall be done or kept in any Residential Unit or in the Common Area or the Association Property that might increase the rate of, or cause the cancellation of, insurance for the Project, or any portion of the Project. 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 body, including any laws, ordinances or statutes pertaining to the use or storage of any hazardous, contaminated or toxic materials. No Owner shall allow furniture, furnishings, or other personalty belonging to such Owner to remain within any portion of the Common Area or the Association Property except portions subject to Exclusive Use Easements appurtenant to such Owner's Condominium and except as may otherwise be permitted by the Board or the Project Handbook. Window tinting and coverings shall be subject to the approval of the Architectural Committee.

7.16 ROOF: ACCESS RESTRICTIONS. Owners and Invitees, shall not at any time or for any reason whatsoever enter upon or attempt to enter upon (i) the roof of the Project, (ii) any portion of the Common Area used by the Association for management, administrative, or other purposes; and (iii) utility closets and rooms, without the prior approval of the Board.

7.17 TRASH DISPOSAL. Trash, garbage or other waste shall be kept only in sanitary containers. No Owner shall permit or cause any trash or refuse to be kept on any portion of the Project other than in the receptacles customarily used for it, which, shall be located only in places specifically designated for such purpose in the Project Handbook except on the scheduled day for trash pickup.

7.18 EXCLUSIVE USE STORAGE AREAS. Exclusive Use Storage Areas shall be used only for the storage of personal property. In no event shall the Exclusive Use Storage Areas be used for the storage of any Hazardous Materials or any other noxious, toxic, or odorous substances.

7.19 HARD SURFACE FLOORS. Except for those hard surface floors installed by Declarant as part of the original construction of the Project, no Owner shall install any hard surface flooring (including without limitation tile or hardwood floors) or replace any flooring with any hard surface flooring unless the prior approval of the Architectural Committee has been obtained. As a condition to approving the installation or replacement of hard surface flooring, the Owner shall

submit to the Architectural Committee a construction drawing clearly indicating the type of flooring to be installed and the underlayment to be provided to mitigate against impact noises such as footfalls. The drawing must clearly identify all materials, their composition and thickness.

7.20 CONCRETE WALLS OR SLABS. Notwithstanding anything contained herein to the contrary, no Owner shall drill, penetrate or otherwise tamper with the concrete or other structural components of the Project, including the Exclusive Use Balcony Area and Exclusive Use Deck Areas. By accepting a grant deed to a Condominium in the Project, each Owner specifically covenants and agrees that: (1) such Owner shall not cut into or otherwise tamper with the concrete walls or slab; (2) such Owner shall not knowingly permit or allow any person to cut into or tamper with the concrete walls or slabs so long as such Owner owns any interest in the Condominium; and (3) such Owner shall indemnify, protect, defend and hold Declarant and its respective officers, employees, contractors and agents, free and harmless from and against any and all claims, damages, losses, or other liability (including, without limitation, attorneys' fees) arising from any breach of this Section.

7.21 INDEMNIFICATION. Each Owner shall be liable to the remaining Owners for any damage to the Common Area and the Association Property that may be sustained by reason of the negligence or wilful misconduct of that Owner, or the Owner's Invitees. Each Owner, by acceptance of his or her deed, agrees for such Owner and for the Owner's Invitees, to indemnify each and every other Owner, and to hold each Owner harmless from, and to defend such other Owner against, any claim of any person for personal injury or property damage caused by the negligence or wilful misconduct of such Owner, unless the injury or damage occurred by reason of the negligence or willful misconduct of any other Owner or the Association. Upon demand by the Association, each Owner shall be responsible for the payment of any deductible amount payable under the Association's insurance policy as a result of any claims arising as a result of the negligent or willful misconduct of such Owner or the Owner's Invitees.

7.22 WINDOW CLEANING. Each Owner will cooperate with the Association to provide access to the Association to clean such windows. The Association shall provide reasonable advance notice to the Owners and shall be responsible for any damage to the Residential Unit resulting from such entry.

7.23 HANDICAP PARKING SPACES. Certain parking spaces in the Parking Garage will be designated for use by handicapped persons ("Handicap Parking Spaces") and may be designated as such on the Condominium Plan. Such Handicap Parking Spaces may be assigned by Declarant to the Owners of particular Residential Units upon the initial sale of such Residential Units. Declarant shall, upon assigning a Handicap Parking Space to an Owner, designate such assignment in the records of the Association. The Owners who are assigned Handicap Parking Spaces shall be subject to the rights of the Association to re-assign such parking spaces as provided herein. If any Handicap Parking Spaces remain unassigned after the sale of all the Units in the Project, the Association shall have the right to assign and manage such spaces. The Association, upon

reasonable notice to the Owner who is an assignee of a Handicap Parking Space who is not, himself or herself, handicapped ("Non-Handicapped Owner"), shall have the right to assign to the Owner or occupant of another Unit in the Project who is or becomes handicapped for an extended and continuous period (regardless whether the handicapped Owner is a new Owner) ("Handicapped Owner"), the exclusive right to use such Handicap Parking Space; provided that the Handicapped Owner grants to such Non-Handicapped Owner the exclusive right of use of the Exclusive Use Parking Space appurtenant to the Handicapped Owner's Unit. Such grant of such Exclusive Use Parking Space shall be properly recorded in the Office of the Recorder of San Diego County, along with all necessary consents of Mortgagees. Evidence of handicap status shall be by distinguishing license plate or placard issued by the California Department of Motor Vehicles. The Association shall have the authority and be responsible for coordinating the assignment and exchange of parking spaces in the Parking Garage pursuant to this Section and shall adopt rules and regulations with respect thereto, including the procedure to be followed should an Owner or occupant become handicapped and wish to use a Handicap Parking Space, forms and methods of notice to be given to the Association and Owner, and procedures for review of the required evidence of handicap status. The Association shall maintain appropriate records of such assignment and exchanges, including a copy of the evidence provided. Any reassignment of parking spaces pursuant to this Section shall not constitute a severance from an Owner's Unit as set forth in **Section 13.5**. In no event shall the Declarant or the Association be held liable if the Declarant or the Association is unable to assign a Handicap Parking Space to a Handicapped Owner because all designated Handicap Parking Spaces have previously been assigned to other Handicapped Owners.

## ARTICLE 8

### MAINTENANCE

#### 8.1 MAINTENANCE OBLIGATIONS OF OWNERS.

8.1.1 Owners' Responsibilities. Subject to any provisions of the Governing Documents, each Owner shall maintain, repair and replace in a good condition and in accordance with all of the maintenance obligations and maintenance schedule set forth in the Homeowner Maintenance Manual, the following:

(a) All portions of such Owner's Residential Unit, including, without limitation, the interior surfaces of the Residential Unit;

(b) The utility systems and equipment, including without limitation, gas, plumbing, electrical, air conditioning, heating, telephone, other water heating equipment, and cable television servicing his or her Residential Unit and located either within or without the outside perimeter of the exterior walls, floors and ceilings thereof, so long as those systems are used exclusively by such Owner and not in common;

(c) Windows enclosing an Owner's Residential Unit, frames and tracks and exterior screens of glass doors and windows, if any, except that the Association shall clean the exterior of any windows within or bordering any Residential Unit and Exclusive Use Deck Area which are not located or bordering an Exclusive Use Balcony Area, Exclusive Use Patio Area;

(d) Maintenance of the interior of the doors enclosing an Owner's Residential Unit;

(e) All appliances, whether built in or free standing within the Residential Unit;

(f) The interior and the lock of the Exclusive Use Storage Areas, if applicable; and

(g) The maintenance of the decking and other areas, including the interior surfaces of any Exclusive Use Balcony Area and Exclusive Use Patio Area and Exclusive Use Deck Area; provided, however, that the Association shall maintain, repair and replace the exterior of any wall, fence, railing or roof bordering any such Exclusive Use Balcony Area and Exclusive Use Patio Area and Exclusive Use Deck Area (other than interior surfaces which shall be maintained by the Owner) and any trellises covering such Exclusive Use Balcony Area, Exclusive Use Patio Area and Exclusive Use Deck Area.

8.1.2 Sanitary Sewer Operation and Maintenance. The Project is serviced by a private sanitary sewer system which delivers waste from each Residential Unit to the public sewer lateral. Each Owner shall be responsible for the operation and maintenance of any portion of the private sanitary sewer system which lies within such Owner's Residential Unit. Any portion of such system which does not lie within a Residential Unit, up to the point where it connects to the public sewer lateral, will be the responsibility of the Association.

8.1.3 Standards of Maintenance. Any such maintenance, repair or replacement of any of the foregoing which is visible from outside of a Residential Unit shall be in conformance with the existing design, aesthetics and architecture of the Project and shall be approved by the Architectural Committee. Maintenance of any Exclusive Use Common Areas by an Owner shall be conducted in such a manner as shall be deemed necessary in the judgment of the Board to preserve the attractive appearance thereof, protect the value thereof and to maintain the established system of drainage (as described below).

8.1.4 Homeowner's Compliance with Maintenance Obligations. Each Owner will comply with the Maintenance Obligations and each Owner is further obligated to provide a copy of the Homeowner Maintenance Manual and any documents describing the Maintenance Obligation to any successor purchaser of such Owner's Condominium.

8.2 FAILURE TO MAINTAIN. If an Owner fails to maintain the areas and items as provided above or make repairs thereto in such manner as shall be deemed necessary in the judgment of the Board to preserve the attractive appearance thereof and protect the value thereof, the Board shall give written notice to such Owner, stating with particularity the work of maintenance or repair which the Board finds to be required and requesting that the same be carried out within a period of thirty (30) days from the giving of such notice. If the Owner fails to carry out such maintenance or repair within the period specified by the notice, the Board shall cause such work to be completed and shall assess the cost thereof to such Owner as an Enforcement Assessment in accordance with the procedures set forth in this Declaration.

8.3 MAINTENANCE OBLIGATIONS OF ASSOCIATION.

8.3.1 Maintenance of Common Area and Association Property. Except for the maintenance responsibilities of Owners described in **Section 8.1**, the Association shall be responsible for maintaining, repairing, replacing and otherwise caring for all Common Area and Association Property (including, without limitation, the landscaping, fountains, fencing, hardscape, exterior furniture, walls and drainage situated within the Association Property and Common Area, but excluding the Exclusive Use Common Areas, except as otherwise provided for herein). The Association shall keep such Common Area and Association Property in good condition and repair, in accordance with the maintenance obligations and maintenance schedule set forth in the Association's Maintenance Manual, provide for all necessary maintenance services and cause all acts to be done which may be necessary or proper to assure the maintenance of such Common Area and Association Property in first-class condition. The Association maintenance and repair obligations shall include without limitation, the following:

(i) maintaining, repairing and replacing the Association Property, including the Exclusive Use Parking Spaces and the exterior doors of the Exclusive Use Storage Areas;

(ii) maintaining, repairing and replacing the Common Area, subject to the obligations of any Owners to maintain certain Exclusive Use Common Areas as provided in **Section 8.1** of this Declaration.

(iii) maintaining the exterior of and repairing and replacing any fences, walls, and railing bordering any Exclusive Use Patio Areas, Exclusive Use Balcony Areas and/or Exclusive Use Deck Areas;

(iv) maintaining, repairing and replacing the exterior of the doors to any Exclusive Use Storage Areas;



(v) maintaining the exterior of and repairing and replacing all doors on the exterior boundaries of a Residential Unit and all windows surrounding the Residential Units; and

(vi) cleaning of the exterior of any inaccessible windows which are not located in Exclusive Use Balcony Area and Exclusive Use Patio Areas and Exclusive Use Deck Areas in accordance with the schedule of cleaning provided for in the budget for the Association;

(vii) maintaining the portion of the sanitary sewer system between each Residential Unit and the connection to the public sewer lateral;

(viii) maintaining the "B" Street Entryway located within the Project pursuant to the Shared Entryway Declaration and the Street Cross-Easement Agreement; and

(ix) maintaining the portions of the Perimeter Easement Areas located within the Project and the Transit Platform pursuant to the Street Cross-Easement Agreement.

8.3.2 Damage by Owners. Notwithstanding the provisions of **Section 8.3.1**, if an Owner or Owner's Invitees causes damage to any portions of the Project which are otherwise the obligation of the Association to maintain, the Owner shall be responsible for reimbursing the Association for all costs of repairing such damage and the Association may levy an Enforcement Assessment.

8.3.3 Wood-Destroying Pests. The Association shall be responsible for the repair and maintenance of the Common Area and Association Property occasioned by the presence of wood-destroying pests or organisms. The Association may cause the temporary, summary removal of any occupant of the Project for such periods and at such times as may be necessary for prompt, effective treatment of wood-destroying pests or organisms. The costs of temporary relocation during the repair and maintenance by the Association shall be borne by the affected Owners and not the Association. The Association shall give notice of the need to temporarily vacate a Residential Unit to the occupants and to the Owner, not less than fifteen (15) days nor more than thirty (30) days prior to the date of the temporary relocation, the date and time of the beginning of treatment, the anticipated date and time of termination of treatment, and that the occupants will be responsible for their own accommodations during the temporary relocation. Notice by the Association shall be deemed complete upon either:

(a) Personal delivery of a copy of the notice to the occupants, and sending a copy of the notice to the Owner, if different than the occupants, by first-class mail, postage pre-paid at the most current address shown on the books of the Association, or

(b) By sending a copy of the notice to the occupants at the Residential Unit address and a copy of the notice to the Owner, if different than the occupants, by first-class mail, postage prepaid at the most current address shown on the books of the Association.

8.3.4 Association's Compliance with Maintenance Obligations. The Association will comply with all of the Maintenance Obligations for the Association Property and Common Area.

8.4 FUTURE CONSTRUCTION. Nothing in this Declaration shall limit the right of Declarant to complete construction of Improvements to the Common Area and Association Property and to Condominiums owned by Declarant or to alter them or to construct additional Improvements as Declarant deems advisable before completion and sale of the entire Project.

8.5 COMPLIANCE WITH REQUIREMENTS REGARDING PROJECT STORM WATER POLLUTION. Each Owner acknowledges that water that enters a storm drain flows directly to natural sources of water, including waterways, creeks, drains, rivers, lakes and that erosion has an impact on the environment. Unlike the water in the sewer system in the residence which is being purchased by Owner, which flows to wastewater treatment plants, water that enters a storm drain flows directly, without any treatment, to waterways, creeks, streams, rivers, lakes and/or oceans. Accordingly, the National Pollutant Discharge Elimination System ("NPDES"), the Federal Clean Water Act, and the policies and ordinances of the City prohibit discharging anything other than natural rain water into storm drainage systems, including gutters and streets which drain into storm drains. Toxic chemicals or hydrocarbon compounds such as gasoline, motor oil, antifreeze, solvents, paints, paint thinners, wood preservatives, fertilizers, lawn clippings, yard waste, detergents, pet waste, paints and other such materials and pollutants shall not be discharged into any street, public or private, gutters, or into storm drains or storm water conveyance systems. Owner further acknowledges that the disposal of such pollutants and materials into a storm drain system may result in significant penalties and fines and that such Owner may be responsible for any activities by Owner's contractors (e.g., painters, landscapers, etc.) who dispose of such pollutants from an Owner's Residential Unit or Exclusive Use Easement Area into a storm drain system. Use and disposal of pesticides, fungicides, herbicides, insecticides, fertilizers, and other such chemicals shall meet all federal, state, and City requirements and requirements of any other governmental agencies having jurisdiction over the Property. All Owners within the Project and the Association are required to comply with such restrictions. Owners are encouraged to consult with the City, and other governmental authorities, concerning the proper disposal of any toxic or hazardous materials. Dumping any such materials into sewers, gutters or storm drains is against the law.

8.5.1 Storm Water Pollution Prevention Best Management Practices. To comply with the requirements of the City in connection with the storm water pollution prevention best management practices, each Owner agrees that it will, at all times, maintain all Improvements located on a Residential Unit or Exclusive Use Easement Area in a clean, safe and attractive condition, free and clear of any and all debris. All landscaping shall be maintained by the

Association in a manner that will prevent soil erosion and minimize sediment transport. To the extent that the Declarant has installed any erosion protection devices (e.g., sandbags) the Association shall not remove such devices unless and until all landscaping has been installed, and has been sufficiently grown so as to prevent soil erosion and transport of any sediment. All trash receptacles within the Project shall be covered and closed at all times. The Association and the Owners shall comply with all applicable Best Management Practices ("BMP") and perform all maintenance that may be imposed by any water quality management plan that may affect the Property. The costs of the Association's portion of such maintenance, if any, shall be treated as Common Expenses.

8.5.2 Liability to Declarant. So long as Declarant owns any Residential Unit within the Project, if an Owner or the Association is not in compliance with the provisions of this Section and as a result, Declarant may incur any liability, Declarant shall have the right but not the obligation to enter upon the applicable portion of the Project to correct such violation. Any Owner who violates the requirements of this Section shall indemnify, protect, defend and hold Declarant and Declarant's officers, directors, successors and assigns entirely free and harmless from and against any liabilities, penalties, costs, expenses and actions, including, without limitation, attorneys' fees and costs arising from or attributed to a violation of the provisions of this Section and shall, within fifteen (15) days after request from Declarant, reimburse Declarant for any costs and expenses incurred by Declarant in correcting any violation by any Owner of this Section.

8.6 INSPECTIONS. The Association shall regularly inspect, maintain and repair the landscaping, irrigation, drainage systems serving or within and any Improvements constructed upon the Association Property and Common Area in accordance with the Association's Maintenance Manual. The Association shall employ the services of a professional landscape architect, maintenance contractor or other such professional person to assist the Association in performing such inspections. The inspector shall provide written reports of their inspections to the Association and, if requested by the Declarant, to the Declarant promptly following completion thereof. If requested by Declarant, Declarant shall be invited to attend any such inspections. The written reports shall identify any items of maintenance or repair which either require current action by the Association or will need further review and analysis. Such written reports shall specifically include a review of all irrigation and drainage systems on the Project. The Board shall report the contents of such written reports to Declarant (if not already provided by the inspector directly) so requested by Declarant and to the Members of the Association at the next meeting of the Members following receipt of such written reports or as soon thereafter as reasonably practicable and shall include such written reports in the minutes of the Association. The Board shall promptly cause all matters identified as requiring attention to be maintained, repaired, or otherwise pursued in accordance with prudent business practices and the recommendations of the inspectors and shall keep a record of all such matters in the Board's minutes. Should such inspector require the inspection of any Exclusive Use Common Area, there is hereby created a nonexclusive easement in favor of the Association, and its officers, agents, employees and independent contractors, to conduct such inspections and to provide such maintenance, repair and replacement, provided that entrance is made at reasonable hours and with at least three (3) days advance notice to the Owner, except in case of emergency.

Any damage to any structure, landscaping or other improvements caused by the Association, or any of its officers, agents, employees or independent contractors, while performing such maintenance, repair or replacement work shall be repaired by the Association at its sole cost and expense.

## ARTICLE 9

### ARCHITECTURAL REVIEW

9.1 ARCHITECTURAL COMMITTEE APPROVAL. Each Owner, other than Declarant, shall obtain the approval of the Architectural Committee for any Improvements in accordance with the provisions set forth below. In addition, the Association shall be responsible for obtaining any approvals under the Design Covenants required to be obtained by either the Association or an Owner.

9.2 ORGANIZATION. There shall be an Architectural Committee consisting of three (3) persons. There shall also be one (1) alternate member who may be designated by the Architectural Committee to act as a substitute on the Architectural Committee in the event of absence or disability of any member. The members of the Architectural Committee shall be appointed as provided in **Section 9.3** below.

#### 9.3 DESIGNATION OF MEMBERS AND TERMS OF OFFICE.

9.3.1 Initial Members. The initial members of the Architectural Committee shall be appointed by Declarant prior to the conveyance of the first Condominium to a member of the public. Such designation shall be reflected in the minutes of the Association. Declarant shall designate one member to serve a term of one (1) year; one member to serve a term of (2) years and one member to serve a term of three (3) years from the date of appointment. The alternate member shall serve a term of three (3) years. Each of said Architectural Committee members shall serve the length of said terms specified unless they have resigned or have been removed from office. Thereafter, the terms of all Architectural Committee members appointed shall be three (3) years. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term.

9.3.2 Appointment and Removal. Until the date which is ten (10) years after the conveyance of the last Residential Unit within the Project to an Owner, under authority of a Public Report, the right to appoint and remove all Architectural Committee members and alternate committee members of the Architectural Committee shall be, and is hereby, vested solely in Declarant unless prior to said time Declarant waives its rights hereunder by notice in writing to the Association; provided, however, that after one (1) year from the issuance of the Public Report for the Project, the Board shall have the right to appoint one (1) member to the Architectural Committee. When Declarant waives or no longer has the right to appoint and remove the members of the Architectural Committee, said right shall be vested solely in the Board. The Board, in selecting

members for the Architectural Committee shall endeavor to appoint individuals who have sufficient expertise to evaluate the effect of any Improvements on the architectural design and structural integrity of the Project. The appointment and removal of Architectural Committee members shall be specified in the minutes of the Association.

9.3.3 Resignations. Any member or alternate member of the Architectural Committee may at any time resign from the Architectural Committee upon written notice delivered to Declarant or to the Board, whichever then has the right to appoint Architectural Committee members.

9.3.4 Vacancies. Vacancies on the Architectural Committee, however caused, shall be filled by the Declarant or the Board, whichever then has the power to appoint Architectural Committee members.

9.4 DUTIES. The Architectural Committee shall consider and act upon such proposals or plans submitted to it pursuant to the terms of this **Article 9**. In making its decisions hereunder, the Architectural Committee shall, among other matters, consider the following: (a) whether the proposed Improvements will impair the structural integrity of the Project, or (b) whether the proposed Improvements will adversely impact or increase the costs of operating the heating, ventilating and air conditioning system or the plumbing, electrical or mechanical systems, or (c) whether the proposed Improvements will adversely impact the sound insulation or sound transmissions within the Project, or (d) whether the proposed Improvement will comply with the Design Covenants, or (e) whether the proposed Improvements must be submitted for review and approval under the Design Covenants.

9.5 MEETINGS. The Architectural Committee shall meet from time to time as necessary to properly perform its duties hereunder. The vote or written consent of any two (2) members of the Architectural Committee shall constitute an act by the Architectural Committee unless the unanimous decision of its members is otherwise required by this Declaration. The Architectural Committee shall keep and maintain a record of all actions taken by it at such meeting or otherwise.

9.6 SCOPE OF ARCHITECTURAL REVIEW. No Improvements of any kind whatsoever shall be commenced, erected, placed or altered upon or around any Residential Unit or any Exclusive Use Common Area until the Owner has submitted complete plans and specifications showing the nature, kind, shape, height and materials, including the color and any other requirements set forth in the Architectural Guidelines ("Plans and Specifications"), have been submitted to and approved in writing by the Architectural Committee as provided in **Section 9.8** below. The Architectural Committee shall not approve any Plans and Specifications without first submitting such Plans and Specifications to an architect, landscape architect, engineer or other consultants as deemed appropriate in the determination of the Architectural Committee based on the nature of the proposed Improvements (collectively the "Outside Consultant"), which Outside Consultant is duly qualified and licensed in the State of California and has no current financial or ownership interest

in the Project for review and comment at each stage of approval by the Architectural Committee described in **Section 9.8** hereof. The determination of the Architectural Committee as to the Outside Consultants shall be deemed to be final. All fees, costs and expenses associated with retaining the Outside Consultant shall be borne by the submitting Owner as provided in **Section 9.12** hereof. In addition, any alteration, modification or removal of any Designated Exclusive Use Common Area Walls or Floors or other work involving the penetration of the unfinished surfaces of the ceilings, walls or floors shall, for a period of ten (10) years after the date a certificate of occupancy is issued for the last Residential Unit in the Project, require the prior written consent of the Declarant unless Declarant has notified the Association, in writing, that it (i) waives its consent to the particular work of Improvement or (ii) no longer desires to exercise such right of review and approval for any future works of Improvement. In this case, the Architectural Committee shall not grant approval unless an Outside Consultant consisting of both an architect and structural engineer licensed in the State of California has approved the Plans and Specifications for such Improvements. In addition, so long as the removal of a demising wall or floor between two (2) or more adjoining Residential Units which are owned by one (1) Owner does not adversely impact the structural integrity of the Project, and the Plans and Specifications are otherwise in conformance with the requirements of this Declaration and the Architectural Guidelines, and, if required above, the consent of the Declarant and a licensed architect and structural engineer retained by the Architectural Committee as provided above has been obtained with respect to the removal of the demising wall or floor, approval may be granted by the Architectural Committee.

9.7 **ARCHITECTURAL GUIDELINES.** The Board may, from time to time, adopt, amend and repeal, by unanimous vote, architectural standards and procedures for review and approval of Plans and Specifications to be known as "Architectural Guidelines" to ensure that the proposed plans and Improvements delineated therein are in conformance with and are harmonious with the exterior design and existing materials within the Project. The Architectural Guidelines adopted shall include guidelines applicable to the Residential Units. The Architectural Guidelines can be amended, changed, or modified from time to time by the Board of Directors without a vote of the Members, however, the Board of Directors must, so long as Declarant owns any Condominiums, obtain the Declarant's written consent to such amendment, change or modification. The Architectural Guidelines adopted by the Board of Directors must also comply with the approval procedures provided in the Design Covenants.

9.7.1 **Time Limitations.** The Architectural Guidelines shall set forth the periods for review and approval of plans. The Architectural Guidelines may also set forth time limitations for the completion of any Improvements for which approval is required pursuant to the Architectural Guidelines.

9.7.2 **Procedures.** The Architectural Guidelines may also set forth procedures for the submittal and/or review of plans by an Owner. Additionally, the Architectural Guidelines may also set forth procedures for the submittal by the Architectural Committee of the Plans and Specifications of an Owner to Catellus Development Corporation, or their appointed representative,

for review and approval, when necessary, under the Design Covenant. In the event of any inconsistency between the Architectural Guidelines and this **Article 9**, the Architectural Guidelines shall control.

9.7.3 Other Limitations. The Architectural Guidelines may include such other limitations and restrictions as the Board in its reasonable discretion shall adopt including, without limitation, regulations of the following: construction, reconstruction, exterior addition, change or alteration to or the maintenance of any building, structure, wall or fence, including, without limitation, the nature, kind, shape, height, materials, exterior color and surface and location of any Residential Unit, or other Improvements of any kind.

9.8 APPEAL. If the Architectural Committee disapproves any Plans and Specifications submitted by an Owner pursuant to this Article, the party or parties making such submission may appeal in writing to the Board. The Board must receive the written request not more than thirty (30) days following the final decision of the Architectural Committee. Within thirty (30) days following receipt of the written request for appeal, the Board shall render its written decision. The failure of the Board to render a decision within the thirty (30) day period shall be deemed a decision against the appellant. The decision of the Board shall be binding and final.

9.9 INSPECTION AND CORRECTION OF WORK. Inspection of work and correction of defects therein shall proceed as follows:

9.9.1 Right of Inspection During Course of Construction. The Architectural Committee or its duly authorized representative may enter into any Residential Unit, from time to time, as provided below during the course of construction or installation of any Improvements for the purpose of inspecting such construction and/or installation. If the Architectural Committee determines that such construction and/or installation is not being done in substantial compliance with the approved Plans and Specifications, it shall notify the Owner of the subject Residential Unit of such non-compliance. The Architectural Committee may not enter into a Residential Unit without obtaining the prior permission of the Owner or occupant of such Residential Unit; provided, however, that such permission shall not be unreasonably withheld and shall be given for entry by the Architectural Committee during the daylight hours within forty-eight (48) hours of the request for entry.

9.9.2 Notice of Completion. Upon the completion of any construction or reconstruction or the alteration or refinishing of any Improvements, or upon the completion of any other work for which approved Plans and Specifications are required under this Article, the Owner shall give written notice of completion thereof to the Architectural Committee.

9.9.3 Inspection. Within thirty (30) days thereafter the Architectural Committee, or its duly authorized representative, shall have the right to enter into Residential Unit, as provided in **Subsection 9.9.1** above, to inspect such Improvement to determine whether it was constructed,

reconstructed, altered or refinished to substantial compliance with the approved Plans and Specifications. If the Architectural Committee finds that such construction, reconstruction, alteration or refinishing was not done in substantial compliance with the approved Plans and Specifications, it shall notify the Owner in writing of such non-compliance within such thirty (30) day period, specifying particulars of non-compliance, and shall require the Owner to remedy such non-compliance.

9.9.4 Non-Compliance. If, upon the expiration of thirty (30) days from the date of such notification, the Owner shall have failed to remedy such non-compliance, the Architectural Committee shall notify the Board in writing of such failure. After affording such Owner Notice and Hearing, the Board shall determine whether there is a non-compliance, and if so, the nature thereof and the estimated cost of correcting or removing the same. If non-compliance exists, the Board shall require the Owner to remedy or remove the same within a period of not more than thirty (30) days from the date of the Board ruling. If the Owner does not comply with the Board ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board, at its option, may either remove the non-complying Improvement or remedy the non-compliance and the Owner shall reimburse the Association for all expenses incurred in connection therewith upon demand. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy an Enforcement Assessment against such Owner for reimbursement.

9.9.5 Failure to Notify. If for any reason the Architectural Committee fails to notify the Owner of any non-compliance within sixty (60) days after receipt of said notice of completion from the Owner, the Improvement shall be deemed to be in accordance with said approved Plans and Specifications.

9.10 GOVERNMENT REGULATIONS. If there is any conflict between the requirements or actions of the Architectural Committee and the mandatory regulations or ordinances of any governmental entity relating to the Property, the government regulation or ordinance, to the extent that such regulations and ordinances are more restrictive, shall control and the Architectural Committee shall modify its requirements or actions to conform to the government regulation or ordinance; provided, however, that if the governmental rules or regulations are less restrictive, the provisions of this Declaration shall nonetheless apply. The application by an Owner for review and approval by the Architectural Committee of any Plans and Specifications or other submittals by such Owner shall in no way be deemed to be satisfaction of compliance with any applicable statute or law, or governmental rule or regulation or public utility requirement (hereinafter collectively referred to as "Additional Requirements"); provided, however, if the additional requirements are less restrictive than the provisions of this Declaration, the provisions of this Declaration shall nonetheless apply.

9.11 DILIGENCE IN CONSTRUCTION. Upon final approval of any Plans and Specifications, the Owners shall promptly commence construction and diligently pursue the same to completion.



9.12 FEE FOR REVIEW. The Architectural Committee shall have the right to establish a fee for the review and approval of Plans and Specifications which must be submitted to the Architectural Committee pursuant to the provisions of this Article. The Architectural Committee may also require an Owner to pay any fees, costs or expenses associated with the review and approval of the Owner's Plans and Specifications by an Outside Consultant or any costs associated with the review of the Plans and Specifications by any architect on the Architectural Committee.

9.13 COMPENSATION. The members of the Architectural Committee shall receive no compensation for services rendered, other than reimbursement by the Association for expenses incurred by them in the performance of their duties hereunder, unless the Association retains a professional architect, engineer or designer as a member of the Architectural Committee for the purpose of providing professional services, in which event reasonable compensation for such member shall be approved by the Board or may be required to be paid by an Owner pursuant to **Section 9.12** above. The Architectural Committee shall have the right to hire any engineer or other consultant, the opinion of which the Architectural Committee deems necessary in connection with its review of any plans submitted by any Owner and such Owner shall be liable for payment of such engineer's and/or consultant's fee.

9.14 INTERPRETATION. All questions of interpretation or construction of any of the terms or conditions herein shall be resolved by the Architectural Committee, and its decision shall be final, binding and conclusive on all of the parties affected.

9.15 WAIVER. The approval by the Architectural Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Committee under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

9.16 ESTOPPEL CERTIFICATE. Within thirty (30) days after written demand is delivered to the Architectural Committee by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Association), the Architectural Committee shall record an estoppel certificate, executed by any two (2) of its members, certifying (with respect to any Residential Unit of said Owner) that as of the date thereof, either: (a) all Improvements made and other work completed by said Owner comply with this Declaration, or (b) such Improvements or work do not so comply, in which event the certificate shall also identify the non-complying Improvements or work and set forth with particularity the basis of such non-compliance. Any purchaser from the Owner, or from anyone deriving any interest in said Residential Unit through him, shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, Declarant and all Owners and such persons deriving any interest through them.

9.17 LIABILITY. Neither the Board, Architectural Committee nor any member thereof shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (c) the Project of any property within the Project; or (d) the execution and filing of an estoppel certificate pursuant to **Section 9.16**, whether or not the facts therein are correct- provided, however, that such Architectural Committee member has acted in good faith on the basis of such information as may be possessed by him. Without in any way limiting the generality of the foregoing, the Architectural Committee, or any member thereof, may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications or any other proposal submitted to the Architectural Committee.

9.18 NON-APPLICABILITY TO DECLARANT. The provisions of this Article shall not apply to any Improvements installed by the Declarant and neither the Board nor the Architectural Committee shall have any rights of review or approval with respect thereto.

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

9.20 AMENDMENTS. Notwithstanding the Article hereof entitled "Amendments," no amendment, verification or rescission of this Article may be had, nor shall Declarant, or any successor thereof, be prohibited from completing the construction of the Project prior to the conveyance by Declarant, or its successor, of the last Condominium within the Property without the (i) written consent of Declarant, and the (ii) recording of such consent in the Office of the County Recorder. Such written consent shall not be required after the conveyance by Declarant (or its successors) of all the Condominiums.

9.21 VARIANCES. The Architectural Committee may authorize variances from compliance with any of the architectural provisions of this Declaration. Such variances must be evidenced in writing, must be signed by at least two (2) members of the Architectural Committee, and shall become effective upon recordation in the Office of the County Recorder. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular Residential Unit and the particular provision hereof covered by the variance, nor shall it affect in anyway the Owner's obligation to comply with all governmental laws and regulations affecting its use of the Residential Unit, including, but not limited to, zoning ordinances or other requirements imposed by the City or any other governmental authority.

## ARTICLE 10

## DEVELOPMENT RIGHTS

10.1 LIMITATIONS OF RESTRICTIONS. Declarant is undertaking the work of developing Residential Units and other Improvements within the Project. The completion of the development work and the marketing and sale, rental and other disposition of the Residential Units is essential to the establishment and marketing of the Property as a first-class condominium community. In order that the work may be completed, nothing in this Declaration shall be interpreted to deny Declarant the rights set forth in this Article.

10.2 ACCESS. Declarant, its contractors and subcontractors shall have the right to obtain access over and across the Common Area and Association Property of the Project or do within any Residential Unit owned by it whatever is reasonably necessary or advisable in connection with the completion of the Project and the development, marketing and maintenance thereof.

10.3 RIGHTS TO COMPLETE CONSTRUCTION. Until the seventh (7th) anniversary of the original issuance of a Public Report for the Project, Declarant, its contractors and subcontractors shall have the rights set forth below.

10.3.1 Construct Improvements. Declarant, its contractors and subcontractors shall have the right to erect, construct and maintain on the Common Area and the Association Property of the Project or within any Residential Unit owned by it such structures or Improvements, including, but not limited to, sales offices and signs, as may be reasonably necessary for the conduct of its business to complete the work, establish the Project as a residential community and dispose of the Project in parcels by sale, lease or otherwise, as determined by Declarant in its sole discretion.

10.3.2 Grant Easements. Declarant, its contractors and subcontractors shall have the right to establish and/or grant over and across said Common Area and the Association Property such easements and rights of way on, over, under or across all or any part thereof to or for the benefit of the State of California, the City, the County or any other political subdivision or public organization, or any public utility entity or cable television provider, for the purpose of constructing, erecting, operating and maintaining Improvements thereon, therein or thereunder at that time or at any time in the future, including: (i) roads, streets, walks, driveways, trails, parkways and park areas; (ii) poles, wires and conduits for transmission of electricity, providing telephone service and cable television service to the Project and for the necessary attachments in connection therewith; and (iii) public and private sewers, sewage disposal systems, storm water drains, land drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any and all equipment in connection therewith. The Common Area and the Association Property shall be subject to any dedication stated in any subdivision map, Condominium Plan for the Project of an easement for public use for installation, maintenance and operation of facilities for public utilities over all of the

Common Area and the Association Property. Said public utilities easement shall inure and run to all franchised utility companies and to the City, the County and the State and shall include the right of ingress and egress over the Common Area and the Association Property by vehicles of the City, the County and the State and such utility companies to properly install, maintain, repair, replace and otherwise service such utility facilities. The grant of said public utility easement shall not be interpreted to imply any obligation or responsibility of any such utility company or the City, the County or the State for maintenance or operation of any of the Common Area and the Association Property or the facilities located thereon or the repair, replacement or reconstruction thereof except as occasioned by such utility companies or City or County of the Utility Facilities for which they are responsible. Except for lawful and proper fences, structures and facilities placed upon the Common Area and the Association Property by utility companies, the Common Area Association Property subject to the public utility easement shall be kept open and free from buildings and structures. The City and County furthermore is granted an easement across the Common Area/ Association Property for ingress and egress for use by emergency vehicles of the City or County.

10.4 SIZE AND APPEARANCE OF PROJECT. Declarant shall not be prevented from increasing or decreasing the number of Residential Units that may be annexed to the Project or from changing the exterior appearance of the Association Property structures, the landscaping or any other matter directly or indirectly connected with the Project in any manner deemed desirable by Declarant, if Declarant obtains governmental consents required by law.

10.5 MARKETING RIGHTS.

10.5.1 General Rights. Subject to the limitations of this Declaration, Declarant shall have the right to: (i) maintain model homes, sales offices, storage areas and related facilities in any unsold Residential Units or Common Area and the Association Property within the Project as are necessary or reasonable, in the opinion of Declarant, for the sale or disposition of the Residential Units; (ii) make reasonable use of the Common Area and the Association Property and facilities for the marketing of Residential Units (including without limitation, granting rights of ingress and egress over the Association Property and the Common Areas to prospective purchasers and tenants in connection with such marketing activities; (iii) post signs, flags and banners in connection with its marketing; and (iv) conduct its business of disposing of Residential Units by sale, lease or otherwise.

10.5.2 Agreement for Extended Use. If following the fifth (5th) anniversary of the original issuance of a Public Report, Declarant requires exclusive use of any portion of the Common Area and the Association Property for marketing purposes, Declarant may use the Common Area and the Association Property only if an agreement is entered into between Declarant and the Association. The agreement must specifically provide for a limited duration for such use and must provide for a specific reasonable rate of compensation to the Association by Declarant. Compensation shall be commensurate with the nature, extent and duration of the use proposed by

Declarant. In no event, however, shall Declarant be denied the rights to use the Common Area and the Association Property and any Residential Units owned by Declarant as an Owner.

10.6 TITLE RIGHTS. The rights of Declarant under this Declaration may be assigned to any successor(s) by an express assignment in a recorded instrument, including without limitation, a deed, option or lease. This Declaration shall not be construed to limit the right of Declarant at any time prior to such an assignment to establish additional licenses, reservations and rights-of-way to itself, to utility companies, to the City, to the County, to the State, or to others as may be reasonably necessary to the proper development and disposal of property owned by Declarant.

10.7 AMENDMENT. The provisions of this Article may not be amended without the consent of Declarant until all of the Residential Units in the Project owned by Declarant have been conveyed.

## ARTICLE 11

### INSURANCE

11.1 LIABILITY INSURANCE. The Association shall obtain and maintain comprehensive public liability insurance insuring the Association, the Board and the Architectural Committee, any manager, the Declarant and the Owners and occupants of Condominiums and their Invitees against any liability incident to the ownership or use of the Common Area and the Association Property and the performance by the Association if its duties under this Declaration. Such policy shall include, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than Three Million Dollars (\$3,000,000) and shall at all times be in conformance with the requirements of Section 1365.9 of the California Civil Code and the requirements set forth in the Street Cross-Easement Agreement. Such insurance shall cover all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, property of others and any other liability or risk customarily covered with respect to projects similar in construction, location, and use.

11.2 PROPERTY INSURANCE. The Association shall keep (i) any Improvements within the Common Area and the Association Property to be maintained by the Association insured against loss by fire and the risks covered by a "Standard All-Risk of Loss or Perils" insurance policy under an extended coverage casualty policy in the amount of the maximum insurable replacement value thereof (except that there may be lower dollar limits for specified items as is customarily provided in property insurance policies) and (ii) all personalty owned by the Association insured with coverage in the maximum insurable fair market value of such personalty as determined annually by an insurance carrier selected by the Association. Insurance proceeds for Improvements in the Common Area and the Association Property (excluding Residential Units) and personalty owned by the Association shall be payable to the Association. In the event of any loss, damage or

destruction to the Common Area and the Association Property, the Association shall cause the same to be replaced, repaired or rebuilt in accordance with the provisions of this Declaration.

11.2.1 Description of Policy Coverages. The policy shall cover the following real and personal property:

(a) Common Area and the Association Property. All Improvements within the Common Area and the Association Property and all Improvements within the Common Area and the Association Property, including buildings and any additions or extensions thereto; all fixtures, machinery and equipment permanently affixed to the Condominium building and not located within a Residential Unit; fences; monuments; lighting fixtures; exterior signs; personal property owned or maintained by the Association; and recreational facilities; but excluding land, foundations, excavations, and other items typically excluded from property insurance coverage; and

(b) Landscaping. Lawn, trees, shrubs and plants located in the Common Area and the Association Property.

11.2.2 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.

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

11.2.4 Endorsements. The policy shall contain the following endorsements or their equivalents: agreed amount, boiler and machinery (to the extent applicable), inflation guard, ordinance or law, and replacement cost, and such other endorsements as the Board in its discretion shall elect.

11.2.5 Waiver of Subrogation. Except as provided in **Section 7.21** of this Declaration, the Association waives all rights of subrogation between the Association and the Owners and their Invitees. All insurance policies obtained by the Association shall include a waiver of subrogation rights against any Owner and their Invitees; provided that a failure or inability of the Association to obtain such a waiver shall not defeat or impair the waiver of subrogation rights between the Association and the Owners and their Invitees set forth herein. Insurance proceeds for Improvements in the Common Area and Association Property and personalty owned by the Association shall be payable to the Association.

11.2.6 Additional Insureds. The policies shall name as insured the Association, the Owners, the Declarant, as long as Declarant is the Owner of any Condominium and/or has any rights under **Article 9** of this Declaration, the management company of the Association, if requested by the Association, and all Mortgagees as their respective interests may appear, and may contain a loss payable endorsement in favor of the Trustee (as defined below).

11.3 INDIVIDUAL INSURANCE. Each Owner shall maintain property insurance against losses to personal property located within the Residential Unit and to any upgrades or Improvements located within the Residential Unit and liability insurance against any liability resulting from any injury or damage occurring within the Residential Unit. The Association's insurance policies will not provide coverage against any of the foregoing. All Owners hereby waive all rights of subrogation against the Association, and any insurance maintained by an Owner must contain a waiver of subrogation rights by the insurer as to the Association provided, however, that a failure or inability of an Owner to obtain such a waiver shall not defeat or impair the waiver of subrogation rights between the Owners and the Association set forth herein. No Owner shall separately insure any property covered by the Association's property insurance policy as described 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.

11.4 FIDELITY BOND. The Association shall maintain a fidelity bond in an amount equal to at least the estimated maximum of funds, including reserves, in the custody of the Association or a management agent at any given time during the term of the fidelity bond; provided, however, that the bond shall not be less than a sum equal to three (3) months aggregate of the Regular Assessments on all Residential Units plus reserve funds of the annual assessments naming the Association as obligee and insuring against loss by reason of the acts of the Board, officers and employees of the Association, and any management agent and its employees, whether or not such persons are compensated for their services.

11.5 WORKER'S COMPENSATION INSURANCE. The Association shall maintain worker's compensation insurance to the extent necessary to comply with all applicable laws of the State of California or the regulations of any governmental body or authority having jurisdiction over the Project.

11.6 ERRORS AND OMISSIONS INSURANCE. The Association shall maintain a policy insuring the Association's officers and directors against liability for their negligent acts or omissions well acting their capacity as officers and directors. The limits of such insurance shall be not less than One Million Dollars for all claims arising out of a single occurrence or such other minimum amount which meets the requirements of California Civil Code Section 1365.7.

11.7 OTHER INSURANCE. The Association shall maintain other types of insurance as the Board determines to be necessary to fully protect the interests of the Owners.

11.8 COPIES OF POLICIES. Copies of all such insurance policies of the Association (or certificates thereof showing the premiums thereon to have been paid) shall be retained by the Association and open for inspection by Owners at reasonable times. All such insurance policies

shall (i) provide that they shall not be cancelable or substantially modified by the insurer without first giving at least ten (10) days' prior notice in writing to the Association, and (ii) contain a waiver of subrogation by the insurer(s) against the Association and First Mortgagees, Board and Owners. In addition to the foregoing, the Association shall provide such information regarding the insurance of the Association as may be required by applicable law or under the Bylaws.

11.9 REVIEW OF INSURANCE. The Board shall review the adequacy of all insurance at least once every year. The review shall include a replacement cost appraisal of all insurable Association Property Improvements without respect to depreciation. The Board shall adjust and modify the policies to provide coverage and protection that is customarily carried by and reasonably available to prudent owners of similar property in the area in which the Project is situated.

11.10 BOARD'S AUTHORITY TO REVISE INSURANCE COVERAGE. Subject to the provisions of **Section 11.1** and the requirements regarding insurance set forth in the Bylaws, the Board shall have the power and right to deviate from the insurance requirements contained in this **Article 11** in any manner that the Board, in its reasonable business 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 11**, the Board shall make all reasonable efforts to notify the Members of the reduction in coverage and the reasons therefor at least thirty (30) days prior to the effective date of the reduction; provided, however, the Board shall not have the authority to reduce the amount of the liability insurance required under **Section 11.1** of this Declaration. The Association, and its directors and officers, shall have no liability to any Owner or Mortgagee if, after a good faith effort, the Association is unable to obtain any insurance required hereunder because the insurance is no longer available, or, if available, the insurance can be obtained only at a cost that the Board, in its sole discretion, determines is unreasonable under the circumstances, or the Members fail to approve any assessment increase needed to fund the insurance premiums.

11.11 TRUSTEE. All insurance proceeds payable under **Sections 11.2** and **11.3**, subject to the rights of Mortgagees under **Section 11.12**, may be paid to a trustee (the "Trustee"), to be held and expended for the benefit of the Owners, Mortgagees and others, as their respective interests shall appear. The Trustee shall be a commercial bank in the County that agrees in writing to accept such trust. If repair or reconstruction is authorized, the Board shall have the duty to contract for such work as provided for in this Declaration.

11.12 ADJUSTMENT OF LOSSES. The Board is appointed attorney-in-fact by each Owner, to negotiate and agree on the value and extent of any loss under any policy carried by the Association pursuant to **Sections 11.1** and **11.2**. The Board is granted full right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.



11.13 DISTRIBUTION TO MORTGAGEES. Any Mortgagee has the option to apply insurance proceeds payable directly to an Owner on account of a Condominium as provided in this Declaration in reduction of the obligation secured by the Mortgage of such Mortgagee.

11.14 COMPLIANCE WITH FEDERAL REGULATIONS. Notwithstanding any other provisions contained herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for condominium projects established by the Federal National Mortgage Association ("FNMA"), the Government National Mortgage Association ("GNMA"), and the Federal Home Loan Mortgage Corporation ("FHLMC"), so long as any of the above is a Mortgagee or an Owner of a Condominium, except to the extent such coverage is not available or has been waived in writing by the FNMA, GNMA, and FHLMC as applicable. If the FNMA or FHLMC requirements conflict, the more stringent requirements shall be met.

## ARTICLE 12

### DESTRUCTION OF IMPROVEMENTS AND CONDEMNATION

12.1 RESTORATION DEFINED. As used in this **Article 12**, the term "restore" shall mean repairing, rebuilding or reconstructing damaged Improvements to substantially the same condition and appearance in which it existed prior to fire or other casualty damage.

12.2 INSURED CASUALTY. If any Improvement required to be maintained by the Association is damaged or destroyed from a risk covered by the insurance required to be maintained by the Association, then the Association shall, to the extent permitted under existing laws, restore the Improvement to the same condition as it was in immediately prior to the damage or destruction. 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 12.5**.

### 12.3 RESTORATION PROCEEDS.

12.3.1 Sufficient Proceeds. The costs of restoration of the damaged Improvement shall be paid first from any insurance proceeds paid to the Association under existing insurance policies. 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. If the insurance proceeds are insufficient to restore the damaged Improvement, the Board shall then add to the 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 against all Owners in which the damage has occurred 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.

12.3.2 Insufficient Proceeds. 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 Subsection (a) below; and second to use a plan of alternative reconstruction pursuant to Subsection (b) below. If the Members do not approve such actions, then the entire building of which the damaged Improvement is a part shall be sold pursuant to Subsection (c) below.

(a) Additional Special Assessment. If the total funds available to restore the damaged Improvement as provided in **Section 12.3.2** 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"). If the amount of the additional Special Assessment approved by the Members and the amounts available pursuant to **Section 12.3.1** 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 Subsection (b).

(b) 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 12.3.2** and Subsection (a) above ("Alternative Reconstruction"). All proposals shall be presented to the Owners. If two-thirds of the voting power of the Owners whose Residential Units 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 Subsection (c) shall apply.

(c) Sale of Building. If the damaged Improvement is part of a Condominium building ("Damaged Building"), the damage renders one or more of the Condominiums uninhabitable, and the Improvements will not be restored in accordance with the provisions of Subsections (a), (b) and (c) above, the Board, as the attorney-in-fact for each Owner of a Condominium in the Damaged Building, shall be empowered to sell the Damaged Building, including all Residential Units therein, 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 (including foundations), grade the Project, and appropriately landscape or otherwise improve the Project, or (iii) 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 12** and the provisions of this Declaration. In lieu of selling the Damaged Building to a third Person, the Association may purchase the Condominium building on satisfaction of the following conditions:

(i) Members holding sixty-seven percent (67%) of the total Voting Power (including the votes allocated to the Condominiums within the Damaged Building) approve of the purchase;

(ii) the purchase price is the fair market value of the Damaged Building as of the date of sale as determined by an appraisal made by a qualified and independent real estate appraiser;

(iii) any special assessment needed to fund the purchase price shall be levied against all Condominiums, including the Condominiums within the Damaged Building;

(iv) the Association has an adequate source of funds to repair, renovate or rebuild all or a portion of the Damaged Building and/or to remove and appropriately landscape the remaining portions of the Project. For this purpose, no Condominium that is being purchased shall be subject to any assessment intended to be used as a source of such funds.

(d) Distribution of Proceeds. The proceeds from the sale, together with the insurance proceeds received and any reserve funds allocated to the Damaged Building, after deducting therefrom the Association's sale expenses, including commissions, title and recording fees, and legal costs, 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 adjust the property interests of the remaining Condominium Owners and to effect such amendments as may be necessary to the Declaration, the Condominium Plan and the Final Subdivision Map to reflect the revised property interests and other related changes.

12.4 REBUILDING CONTRACT. If there is a determination to restore, the Board or its authorized representative shall obtain bids from at least two (2) 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 insurance proceeds 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 one hundred eighty (180) days

after the event requiring reconstruction and shall thereafter be diligently prosecuted to completion. Such construction shall return the Project to substantially the same condition and appearance in which it existed prior to the damage or destruction.

12.5 INSURANCE TRUSTEE. All property insurance proceeds payable to the Association under the policy described in **Section 11.2**, subject to the rights of Mortgagees under **Article 14**, 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 country in which the project 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.

12.6 AUTHORITY TO EFFECT CHANGES. If any building or portion thereof containing Condominiums is damaged or destroyed or in need of renovation or rehabilitation and the building is repaired or reconstructed, the Condominium building may be repaired or reconstructed in a manner that alters the boundaries of the Residential Units or Common Area and Association Property provided the following conditions are satisfied.

(i) the alteration has been approved by the Board of Directors, by Members holding a majority of the total voting power of the Association, by the holders of any First Mortgages to the extent required herein; and by the necessary party under the Design Covenants, if applicable.

(ii) the Board of Directors 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 Residential Unit or materially reduce the size of any Residential Unit without the consent of the Owner and the holders of any First Mortgages thereon. For purposes herein, a material reduction in the size of the Residential Unit shall mean any alteration that increases or decreases the square footage of the interior floor space of the Residential Unit by more than 10% from that which was originally constructed by Declarant.

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

(v) the Condominium Plan is amended to reflect the alteration to the Residential Units or Common Area and Association Property.

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

12.7 MINOR REPAIR AND RECONSTRUCTION. The Board shall have the duty to repair and reconstruct Improvements, without the consent of Members and irrespective of the amount of available insurance proceeds, in all cases of partial destruction when the estimated cost of repair and reconstruction does not exceed five (5%) percent of the annual budgeted gross expenses of the Association. The Board is expressly empowered to levy a Reconstruction Assessment for the cost of repairing and reconstructing improvements to the extent insurance proceeds are unavailable, such assessment to be levied as described above (but without the consent or approval of Members, despite any contrary provisions in this Declaration).

12.8 DAMAGE OR DESTRUCTION TO A RESIDENTIAL UNIT. If there is damage or destruction to any Residential Unit, the Owner thereof shall, at its own cost and expense, perform interior repair and restoration which shall be completed as promptly as practical and in a lawful and workmanlike manner, and, to the extent required under **Article 9** and the Architectural Guidelines, in accordance with plans approved by the Architectural Committee as provided in **Article 9** herein.

12.9 CONDEMNATION OF COMMON AREA/ASSOCIATION PROPERTY. If any portion of the Common Area and/or the Association Property is taken by condemnation, eminent domain or any proceeding in lieu thereof, then the Owners of the Common Area and Association Property, and their Mortgagees as their respective interests then appear, shall be entitled to receive a distribution from the award for such taking in the same proportion as insurance proceeds would be distributed pursuant to the provisions above; provided, however, that should it be determined to repair or rebuild any portion of the Common Area and/or the Association Property, such proceeds shall be paid to the Association for that purpose in the same manner and subject to the same terms, conditions and limitations as are set forth above in this Article for repairing damaged or destroyed portions of the Common Area and/or the Association Property. A decision to repair or rebuild shall be made in the same manner and subject to the same conditions and limitations as provided above in this Article for determining whether to rebuild or repair following damage or destruction.

## ARTICLE 13

### PARTITION AND SEVERABILITY OF INTERESTS

13.1 SUSPENSION. The right of partition is suspended pursuant to California Civil Code Section 1359 as to the Project. Nothing in this Declaration shall prevent partition or division of interest between joint or common owners of any Condominium.

13.2 PARTITION. Notwithstanding the foregoing, judicial partition shall be permitted as set forth below.

13.2.1 No Partition. There shall be no termination of the Project and the Common Area of the Project shall remain undivided with no judicial partition thereof except:

(a) With the approval, after substantial destruction or condemnation of the Project occurs, of at least sixty-seven percent (67%) of the total voting power of the Association and approval by Eligible Holders who represent at least fifty-one percent (51%) of the Condominiums that are subject to Mortgages held by Eligible Holders; or

(b) With the approval, for reasons other than substantial destruction or condemnation of the Project, of at least sixty-seven percent (67%) of the total voting power of the Association and approval by Eligible Holders who represent at least sixty-seven percent (67%) of the Condominiums that are subject to Mortgages held by Eligible Holders; or

(c) As allowed by California law, including Civil Code Section 1359, as the same may be amended from time to time.

An Eligible Holder who receives a written request to give such approvals who does not deliver or mail the requesting party a negative response within thirty (30) days shall be deemed to have given such approval provided such written request was delivered by certified mail or registered mail with "return receipt" requested.

Nothing in this Section shall be deemed to prohibit partition of a cotenancy in a Condominium.

13.3 DISTRIBUTION OF PROCEEDS. Proceeds or property resulting from a partition shall be distributed to and among the respective Owners and their Mortgagees as specified or apportioned in the judgment of partition, or if not so specified, as their interests appear in proportion to the fair market value of the Residential Units at the date of the sale as determined by an independent appraisal conducted by a member of the American Institute of Real Estate Appraisers with the designation of a Member Appraisal Institute (M.A.I.) or if such institute no longer exists, an appraiser of comparable experience.

13.4 POWER OF ATTORNEY. Each of the Owners irrevocably appoints the Association as attorney-in-fact and irrevocably grants to the Association full power in the name and stead of such Owner to sell the entire Project, and to execute deeds and conveyances to it, in one or more transactions, for the benefit of all Owners when partition of the Project may be had under California Civil Code Section 1359 or any successor statute or law. The power of attorney shall:

13.4.1 Be binding on all Owners, whether they assume the obligations under this Declaration or not;

13.4.2 Be exercisable by a majority of the Board acting on behalf of the Association, subject to obtaining the prior approval by vote or written consent of seventy-five percent (75%) of the Owners and seventy-five percent (75%) of all Institutional Mortgagees; and

13.4.3 Be exercisable only after recordation with the County Recorder of a certificate executed by those who have power to exercise the power of attorney that the power of attorney is properly exercisable under the authority of this Declaration. This certificate shall be conclusive evidence of proper exercise in favor of any person relying on it in good faith.

13.5 PROHIBITION AGAINST SEVERANCE. An Owner shall not be entitled to sever such Owner's Residential Unit from such Owner's membership in the Association, and shall not be entitled to sever such Owner's Residential Unit and such Owner's membership from such Owner's undivided interest in the Common Area and Association Property for any purpose. None of the component interests in a Condominium can be severally sold, conveyed, encumbered, hypothecated or otherwise dealt with, and any violation or attempted violation of this provision shall be void. Similarly, no Owner can sever any exclusive easement appurtenant to such Owner's Residential Unit over the Common Area and Association Property from such Owner's Condominium, and any attempt to do so shall be void. It is intended hereby to restrict severability pursuant to California Civil Code Section 1358 or any successor statute or law. Notwithstanding the foregoing, the suspension of such right of severability contained herein shall not extend beyond the period set forth in **Section 13.2** in which the right to partition the Project is suspended thereunder.

13.6 CONVEYANCES. After the initial sales of the Condominiums, any conveyance of a Condominium by an Owner shall be presumed to convey the entire Condominium. However, nothing contained in this Section shall preclude the Owner of any Condominium from creating an estate for life or years, cotenancy or joint tenancy in the ownership of the Condominium with any other person or persons.

## ARTICLE 14

### RIGHTS OF MORTGAGEES

14.1 CONFLICT. Notwithstanding any contrary provision contained elsewhere in the Governing Documents, the provisions of this Article shall control with respect to the rights and obligations of Mortgagees as specified herein.

14.2 LIABILITY FOR UNPAID ASSESSMENTS. Any Institutional Mortgagee who obtains title to a Condominium pursuant to the remedies provided in the First Mortgage (except upon a voluntary conveyance to the Institutional Mortgagee) or by foreclosure of the First Mortgage shall

take the property free of any claims for unpaid assessments or charges against the Condominium which accrue prior to the acquisition of title to the Condominium by the Institutional Mortgagee.

14.3 PAYMENT OF TAXES AND INSURANCE. All taxes, assessments and charges that may become a lien prior to the lien of any First Mortgagee shall be levied only to the individual condominium and not the Project as a whole. Institutional Mortgagees may, jointly or singly, pay taxes or other charges that are in default and that may or have become a charge against any Common Area or Improvements situated thereon and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for such Common Area. Institutional Mortgagees making such payments shall be owed immediate reimbursement for such expenditures from the Association and, on demand, the Association shall execute an agreement in favor of all Institutional Mortgagees reflecting entitlement to reimbursement.

14.4 NOTICE TO ELIGIBLE HOLDERS. An Eligible Holder is entitled to timely written notice of the following events:

14.4.1 Any condemnation loss or casualty loss that affects either a material portion of the Project or the Residential Unit on which the Eligible Holder holds a First Mortgage;

14.4.2 Any delinquency in the payment of assessments or charges owed by the Owner of a Condominium that is subject to a First Mortgage held by the Eligible Holder if the delinquency is not cured within sixty (60) days after its due date;

14.4.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

14.4.4 Any proposal to take any action specified in this Article or in the Article hereof entitled "Destruction of Improvements and Condemnation;"

14.4.5 Any default by the Owner-Mortgagor of a Condominium that is subject to a First Mortgage held by the Eligible Holder in the performance of his or her obligations under this Declaration or the Bylaws which is not cured within sixty (60) days; or

14.4.6 Any proposed action that requires the consent of a specified percentage of the Eligible Holders.

14.5 RESERVE FUND. The Association shall maintain as a reserve fund a reserve account fund sufficient to pay for maintenance, repair and periodic replacement of the Common Area and Association Property Improvements that the Association is obligated to maintain.

14.6 INSPECTION OF BOOKS AND RECORDS. Upon request, any Owner or First Mortgagee shall be entitled to inspect the books, records and financial statements of the Association,



the Governing Documents and any amendments thereto during normal business hours or under other reasonable circumstances.

14.7 FINANCIAL STATEMENTS. The Association, at its expense, shall prepare an audited financial statement for the immediately preceding fiscal year and furnish the same within one hundred twenty (120) days after written request from any Institutional Mortgagee.

14.8 VOTING RIGHTS OF MORTGAGEES. For purpose of this Section a Mortgagee shall be entitled to one (1) vote for each First Mortgage owned.

14.9 ACTIONS REQUIRING ELIGIBLE HOLDER APPROVAL. Unless at least sixty-seven percent (67%) of the Eligible Holders and sixty-seven percent (67%) of the Owners other than Declarant have given their prior written approval, the Association shall not be entitled to:

- (a) By act or omission, seek to abandon or terminate the Project;
- (b) By act or omission abandon, partition, subdivide, encumber, sell or transfer any property or improvements owned, directly or indirectly, by the Association for the benefit of the Condominiums and the Owners. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Project by the Association and Owners shall not be deemed a transfer within the meaning of this Section);
- (c) By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to architectural design or exterior appearance of Residential Units, the exterior maintenance of Residential Units, or the upkeep of lawns, plantings or other landscaping in the Project;
- (d) By act or omission change the method of determining the obligations, assessments, dues or other charges that may be levied against an Owner;
- (e) Partition or subdivide a Condominium;
- (f) Fail to maintain fire and extended coverage insurance on insurable portions of the Common Area or Association Property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value based on current replacement cost; and
- (g) Use hazard insurance proceeds for losses to any property or Improvements owned by the Association other than for the repair, replacement or reconstruction of such property and Improvements.

14.10 VOTES FOR TERMINATION OF PROJECT. Any election to terminate the legal status of the Project as a Condominium project shall require:

14.10.1 The approval of at least fifty-one percent (51%) of the Eligible Holders and sixty-seven percent (67%) of the total voting power of the Association if the election to terminate the legal status is a result of substantial destruction or a substantial taking in condemnation of the property within the Project; or

14.10.2 The approval of sixty-seven percent (67%) of the total voting power of the Association and sixty-seven percent (67%) of the Eligible Holders, if **Section 14.10.1** is not applicable.

14.11 CONDEMNATION OR DESTRUCTION. In the event a portion of the Project is either condemned or destroyed or damaged by a hazard that is insured against, restoration or repair shall be performed substantially in accordance with the provisions of the Declaration and the original plans and specifications for the Project unless fifty-one percent (51%) of the Eligible Holders approve the taking of other action by the Association.

14.12 SELF-MANAGEMENT. The vote or approval by written ballot of sixty-seven percent (67%) of the total voting power of the Association and fifty-one percent (51%) of the Eligible Holders shall be required to assume self-management of the Project if professional management of the Project has been required by an Eligible Holder at any time.

14.13 MORTGAGEE PROTECTION. A breach of any of the conditions contained in this Declaration shall not defeat nor render invalid the lien of any First Mortgage made in good faith and for value as to any Condominium in the Project; provided, however, that the conditions contained in this Declaration shall be binding upon and effective against any Owner of a Condominium if the Condominium is acquired by foreclosure, trustee's sale or otherwise.

14.14 SUBORDINATION. The lien of the assessments, including interest, costs (including attorneys' fees), and late charges subject to the limitations of California Civil Code Section 1367, and any successor statutes or laws, provided for herein shall be subordinate to the lien of any First Mortgage with respect to any Condominiums. Sale or transfer of any Condominiums shall not effect the assessment lien.

14.15 DISTRIBUTION OF INSURANCE AND CONDEMNATION PROCEEDS. No Owner, or any other party, shall have priority over any right of Institutional Mortgagees of Condominiums pursuant to their Mortgages in case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Condominiums or Common Area or Association Property. Any provision to the contrary in this Declaration or in the Bylaws or other documents relating to the Project is to such extent void. All applicable fire and all physical loss or extended

coverage insurance policies shall contain loss payable clauses acceptable to the affected Institutional Mortgagees naming the Mortgagees, as their interests may appear.

14.16 VOTING RIGHTS ON DEFAULT. In case of default by any Owner in any payment due under the terms of any Institutional Mortgage encumbering such Owner's Condominium, or the promissory note secured by the Mortgage, the Mortgagee or his representative, on giving written notice to such defaulting Owner or Owners, and placing of record a notice of default, is hereby granted a proxy and can exercise the voting rights of such defaulting Owner attributable to such Condominium at any regular or special meeting of the Members held during such time as such default may continue.

14.17 FORECLOSURE. If any Condominium is encumbered by a First Mortgage made in good faith and for value, the foreclosure of any lien created by any provision set forth in this Declaration for assessments, or installments of assessments, shall not affect or impair the lien of the First Mortgage. On foreclosure of the Mortgage, the lien for assessments, or installments, that has accrued up to the time of foreclosure shall be subordinate to the lien of the Mortgage, with the foreclosure-purchaser taking title to the Condominium free of the lien for assessments, or installments, that has accrued up to the time of the foreclosure sale. On taking title to the Condominium the foreclosure-purchaser shall only be obligated to pay assessments or other charges levied or assessed by the Association after the foreclosure-purchaser acquired title to the Condominium. The subsequently accrued assessments or other charges may include previously unpaid assessments provided all Owners, including the foreclosure-purchaser, and his successors and assigns are required to pay their proportionate share as provided in this Section.

14.18 NON-CURABLE BREACH. Any Mortgagee who acquires title to a Condominium by foreclosure or by deed in lieu of foreclosure or assignment-in-lieu of foreclosure shall not be obligated to cure any breach of this Declaration that is non-curable or that is not practical or feasible to cure.

14.19 LOAN TO FACILITATE. Any Mortgage given to secure a loan to facilitate the resale of a Condominium after acquisition by foreclosure or by a deed-in-lieu of foreclosure or by an assignment-in-lieu of foreclosure shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protections of this Article.

14.20 APPEARANCE AT MEETINGS. Because of its financial interest in the Project, any Mortgagee may appear (but cannot vote except as may be provided for herein) at meetings of the Members and the Board to draw attention to violations of this Declaration that have not been corrected or made the subject of remedial proceedings or assessments.

14.21 RIGHT TO FURNISH INFORMATION. Any Mortgagee can furnish information to the Board concerning the status of any Mortgage.

14.22 INAPPLICABILITY OF RIGHT OF FIRST REFUSAL TO MORTGAGEE. No right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey the Owner's Condominium shall be granted to the Association without the written consent of any Mortgagee of the Condominium. Any right of first refusal or option to purchase a Condominium that may be granted to the Association (or other person, firm or entity) shall not apply to any conveyance or transfer of title to such Condominium, whether voluntary or involuntary, to a Mortgagee that acquires title to or Ownership of the Condominium pursuant to the remedies provided in its Mortgage or by reason of foreclosure of the Mortgage or deed or assignment in lieu of foreclosure.

## ARTICLE 15

### AMENDMENTS

15.1 AMENDMENT BEFORE THE CLOSE OF FIRST SALE. Before the close of the first sale of a Residential Unit to a purchaser other than Declarant, this Declaration and any amendments to it may be amended in any respect or revoked by the execution by Declarant and any Mortgagee of record of an instrument amending or revoking the Declaration. The amending or revoking instrument shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the Office of the County Recorder.

15.2 AMENDMENTS AFTER THE CLOSE OF FIRST SALE. Except as may otherwise be stated in this Declaration, after the close of the first sale of a Residential Unit in the Project to an Owner other than Declarant and during the period of time prior to conversion of the Class B membership in the Association to Class A membership, this Declaration may be amended at any time and from time to time provided that the vote or approval by written ballot of at least sixty-seven percent (67%) of the voting power of each class of Members of the Association has been obtained. After conversion of the Class B membership in the Association to Class A membership, the Declaration may be amended at any time and from time to time, provided that the vote or approval by written ballot of at least (a) fifty-one percent (51%) of the total Voting Power of the Association and (b) at least sixty-seven (67%) of the voting power of the Members of the Association, other than Declarant, has been obtained. Such amendment shall become effective upon the recording of a Certificate of Amendment signed and acknowledged by the President or Vice President of the Association and the Secretary or Assistant Secretary of the Association certifying that such votes or approval by written ballot have been obtained. For the purposes of recording such instrument, the President or Vice-President and Secretary or Assistant Secretary of the Association are hereby granted an irrevocable power of attorney to act for and on behalf of each and every Owner in certifying and executing and recording said amendment with the Office of the County Recorder. In addition to the foregoing, in the case of any material amendment, the vote of a majority of the Eligible Holders (based on one vote for each Mortgage owned) and sixty-seven percent (67%) of the voting power of each class of Members (or sixty-seven percent (67%) of the Owners) shall also be

required. "Material Amendment" shall mean, for the purposes of this **Section 15.2**, any amendments to provisions of this Declaration governing any of the following subjects:

15.2.1 The fundamental purpose for which the Project was created (such as a change from residential use to a different use);

15.2.2 Assessments, collection of assessments, assessment liens and subordination thereof;

15.2.3 The reserve for repair and replacement of the Common Area and Association Property;

15.2.4 Property maintenance obligations;

15.2.5 Casualty and liability insurance or fidelity bond requirements;

15.2.6 Reconstruction in the event of damage or destruction;

15.2.7 Rights to use the Common Area and the Association Property;

15.2.8 Reallocation of any interests in the Common Area;

15.2.9 Voting;

15.2.10 Any provision that, by its terms, is specifically for the benefit of Eligible Holders, or specifically confers rights on Eligible Holders;

15.2.11 Expansion or contraction of the Project or the addition or withdrawal of property to or from the Project, the redefinition of Residential Unit boundaries or the conversion of a Residential Unit or Residential Units into Association Property; and

15.2.12 Imposition of any restriction on any Owner's right to lease, sell or transfer his Residential Unit.

Anything herein stated to the contrary notwithstanding, no amendment to provisions contained in **Sections 15.2.1, 15.2.6, 15.2.8, 15.2.9, 15.2.10, 15.2.11 and 15.2.12** may be made to this Declaration without the prior written consent of sixty-seven percent (67%) or more of the Eligible Holders (based upon (1) vote for each such Eligible Holder). Any Eligible Holder who receives written request to consent to additions or amendments requiring consent under this provision who does not deliver to the requesting party a negative response within thirty (30) days after receipt of a notice delivered by certified or registered mail, return receipt requested, shall be deemed to have consented to such request. If any provision of this Declaration requires a greater or lesser percentage of the voting

rights of any class of Members in order to take affirmative or negative action under such provision, the same percentage of such class or classes of Members 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. Any amendment or revocation subsequent to the close of such first sale shall be evidenced by an instrument certified by the Secretary or other duly authorized officer of the Association and shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the office of the County Recorder.

15.3 FURTHER APPROVALS REGARDING AMENDMENTS. Notwithstanding anything to the contrary contained in this Declaration, **Sections 4.3.17, 4.4.5, 4.4.12, 5.2, 8.1.4, 8.3.4, 8.6 and 17.4** of this Declaration shall not be amended without the vote or approval by written ballot of at least (a) ninety percent (90%) of the voting power of the Members of the Association other than Declarant, and (b) at least ninety percent (90%) of the Mortgagees.

15.4 CONFLICT WITH ARTICLE 14 OR OTHER PROVISIONS OF THIS DECLARATION. To the extent any provisions of this Article conflict with the provisions of **Article 14** or any other provision of this Declaration except those contained in **Section 15.2 and 15.3**, the provisions of **Article 14** or the other provisions shall control.

15.5 BUSINESS AND PROFESSIONS CODE SECTION 11018.7. All amendments or revocations of this Declaration shall comply with the provisions of California Business and Professions Code Section 11018.7 and any successor statutes or laws, to the extent such Section is applicable.

15.6 RELIANCE ON AMENDMENTS. Any amendments made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith.

## ARTICLE 16

### SUPPLEMENTARY DECLARATION

16.1 SUPPLEMENTARY DECLARATION. Only Declarant shall have the right and power to record a Supplementary Declaration. A Supplementary Declaration may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration and as are not inconsistent with the plan of this Declaration or to make technical or minor corrections to this Declaration or any of the Governing Documents. In no event, however, shall any such Supplementary Declaration or any merger or consolidation revoke, modify or add to the covenants established by this Declaration, change the general common plan created by this Declaration, nor affect the provisions hereof or thereof as covenants running with the land or equitable servitudes.

## ARTICLE 17

## ENFORCEMENT

17.1 TERM. The covenants, conditions and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Association or any Member, their respective legal representatives, heirs, successors and assigns, for a term of sixty (60) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each, unless an instrument, signed by sixty-seven percent (67%) of the then Members has been recorded, at least one (1) year prior to the end of any such period in the manner required for a conveyance of real property, in which it is agreed that this Declaration shall terminate at the end of the then applicable term.

17.2 ENFORCEMENT AND NONWAIVER.

17.2.1 Rights of Enforcement of Governing Documents. The Association or any Owner shall have a right of action against any Owner, and any Owner shall have a right of action against the Association, to enforce by proceedings at law or in equity, all covenants, conditions and restrictions, now or hereafter imposed by the provisions of the Governing Documents or any amendment thereto, including the right to prevent the violation of such covenants, conditions and restrictions and the right to recover damages or other dues for such violation except that Owners shall not have any right of enforcement concerning Assessment Liens. The Association shall have the exclusive right to the enforcement of provisions relating to architectural control and the Project Handbook, unless the Association refuses or is unable to effectuate such enforcement, in which case any Owner who otherwise has standing shall have the right to undertake such enforcement. Failure of the Association, Declarant or any Owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

17.2.2 Procedure for Enforcement. Notwithstanding anything to the contrary set forth in Section 17.2.1, in enforcing any action under the Governing Documents for injunctive relief, declaratory relief and/or monetary damages, the parties shall comply with the provisions of California Civil Code Section 1354 and any successor statutes or laws. The Board shall annually provide to the Members a summary of the provisions of California Civil Code Section 1354 and any successor statutes or laws, which shall include the language required and shall be delivered in the manner provided in Civil Code Section 1365. The exception for disputes related to Association assessments set forth in Section 1354 shall not apply to disputes between an Member and the Association regarding assessments imposed by the Association, if the Member chooses to pay in full the Association all of the assessments as specified in California Civil Code Section 1366.3 and any successor statutes or laws.

17.3 NOTICE OF ACTIONS AGAINST DECLARANT. Subject to the provisions of **Section 17.4** hereof, the Association shall comply with the provisions of Civil Code Section 1368.4, Civil Code Sections 910 through 938, and any successor statutes or laws, prior to the filing of any civil action by the Association against the Declarant or other developer of the Project for either alleged damage to the Association Property or other property within the Project that the Association is obligated to maintain or repair, or alleged damage to any other portion of the Project that arises out of, or is integrally related to, such damage to the Association Property or other property within the Project that the Association is obligated to maintain or repair. Such notice shall specify all of the matters set forth in Section 1368.4 and/or Civil Code Sections 910 through 938, as applicable, and any successor statutes or laws.

17.4 ALTERNATIVE DISPUTE RESOLUTION. The purpose of this **Section 17.4** is to provide an expedited means of resolving any claims, disputes and disagreements which may arise between Owner and the Association and Declarant after the close of escrow or other conveyance of any portion of the Property by Declarant concerning the Property and/or the Fit and Finish Warranty that are not resolved pursuant to any applicable statutory dispute resolution procedures (individually referenced to herein as "Dispute" and collectively as "Disputes"). Initially, Declarant will attempt to resolve any Dispute asserted by an Owner or the Association of which it is given notice. If the Dispute cannot be resolved between the parties in this manner, it will be decided through the arbitration procedure as set forth below. Alternatively, Declarant, an Owner or the Association may elect to resolve such Disputes through a small claims court proceeding. **THIS PROCESS INVOLVES WAIVER OF THE RIGHT TO A JURY TRIAL. BY EXECUTING THIS DECLARATION AND BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, RESPECTIVELY, DECLARANT, EACH OWNER AND THE ASSOCIATION, AGREE TO BE BOUND BY THE PROVISIONS OF THIS SECTION 17.4.**

17.4.1 Mediation. Subject to the provisions of **Section 17.4.2 (h)** below, and except for actions in small claims court or Disputes that have already been mediated, Owner, Association and Declarant agree to submit any and all disputes to non-binding mediation before commencing arbitration. The cost of mediation shall be paid by the Declarant. Each party to the mediation shall bear its own attorneys' fees and costs in connection with such mediation.

17.4.2 Arbitration.

(a) Agreement to Arbitrate. The Association, each Owner and Declarant shall resolve any Dispute not resolved as provided above exclusively through binding arbitration in the county in which the Property is located. This arbitration provision shall apply to Disputes of any kind or nature regardless of when the Dispute first arose or the nature of the relief sought.

(b) Waiver of Trial by Judge or Jury. By agreeing to resolve all Disputes through binding arbitration, the Association, each Owner and Declarant each give up the right to



have their respective claims and defenses decided by a judge or a jury. All claims and Disputes shall instead be decided by the arbitrator.

(c) Rules Applicable to All Cases. The arbitration will be conducted by Judicial Arbitration and Mediation Services ("JAMS") in accordance with the rules of JAMS in effect as of the initiation of the arbitration ("JAMS Rules"), as supplemented by this Addendum. The following supplemental rules shall apply to all arbitration proceedings and shall govern in the event of a conflict between the rules set forth below and the JAMS Rules.

(d) Qualifications of Arbitrators. The arbitrator shall be neutral and impartial and either a retired judge or a member or former member of the California State Bar with at least 15 years experience as a practicing lawyer.

(e) Appointment of Arbitrator. The arbitrator to preside over the Dispute shall be selected in accordance with the JAMS Rules, but no later than sixty (60) days after a notice of claim is filed.

(f) Expenses. All fees charged by JAMS and the arbitrator shall be advanced by the Declarant. If the Declarant is the prevailing party in the arbitration, the arbitrator may, in his or her discretion and only to the extent permitted by law and the JAMS Minimum Standards of Procedural Fairness, direct the Owner or Association to reimburse the Declarant for Owner's or the Association's, as applicable, pro rata share of the JAMS fee and arbitrator's fee advanced by the Declarant.

(g) Venue. The venue of the arbitration shall be in the County where the Project is located unless the parties agree in writing to another location.

(h) Preliminary Procedures. If state or federal law requires the Association or an Owner or Declarant to take steps or procedures before commencing an action in court, then the Owner or Declarant must take such steps or follow such procedures, as the case may be, before commencing the arbitration. For example, any claims or Disputes pursuant to California Civil Code Section 895 et. seq. as hereafter amended may be subject to the non-adversarial procedures set forth in California Civil Code Section 910 through 938, prior to the initiation of any arbitration or small claims court proceeding against Declarant. In addition, nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code Sections 1368.4, 1375, 1375.05 or 1375.1.

(i) Participation by Other Parties. The Association, an Owner and Declarant, to the extent any such party is defending a claim in the arbitration, may, if it chooses, have all necessary and appropriate parties included as parties to the arbitration.

(j) Rules of Law. The arbitrator must follow California substantive law (including statutes of limitations) but strict conformity with the rules of evidence is not required, except that the arbitrator shall apply applicable law relating to privilege and work product. The arbitrator shall be authorized to provide all recognized remedies available at law or equity for any cause of action.

(k) Attorneys' Fees and Costs. Each party shall bear its own attorneys fees and costs (including expert witness costs) in the arbitration.

17.4.3 Additional Rules Applicable To Certain Cases. In any arbitration in which a claim of Owner, the Association or Declarant exceeds \$250,000 in value, the following additional rules will supplement the JAMS Rules and govern in the event of a conflict between the following rules and the rules set forth above, the JAMS Rules, or both.

(a) Qualifications of Arbitrator. In addition to the requirements of Section 17.4.2(d) above, the arbitrator shall be a retired judge of the California Superior Court, a California Court of Appeal, or the California Supreme Court.

(b) Rules of Law. The California Evidence Code shall apply.

(c) Written Decision. Within thirty (30) days after the hearing is closed, the arbitrator must issue a written decision. If either Owner or Declarant requests it, the arbitrator must issue a reasoned award.

17.4.4 Procedure for Appeal of Certain Cases. In any arbitration in which a claim or arbitration award of Owner or Declarant exceeds \$500,000 in value, Owner and Declarant hereby adopt and agree to the JAMS Optional Appeal Procedure. The following additional rules will supplement the JAMS Optional Appeal Procedure and govern in the event of a conflict between the following rules and the JAMS Optional Appeal Procedure.

(a) Right of Appeal. There shall be no right to appeal unless the oral evidence received by the arbitrator was preserved in a manner such that it can be converted to an accurate and reliable written transcript.

(b) Appellate Panel. An appeal shall be decided by one (1) neutral appeal arbitrator unless either party, within the time permitted for the appointment of the appeal arbitrator, elects to have the appeal decided by a panel of three (3) appeal arbitrators. Any party who elects to have an appeal decided by a panel of three (3) appeal arbitrators agrees to be solely responsible for the cost of having two (2) additional appeal arbitrators. The sole appeal arbitrator, or at least one member of any panel of three (3) arbitrators, shall have prior experience as a member of an appellate panel of the California Court of Appeal.

(c) Issues on Appeal. The only issues that may be considered on appeal are: (1) the award of money was excessive; (2) the award of money was insufficient; (3) the arbitrator awarded non-monetary relief that was inappropriate; (4) a party who received non-monetary relief should have received other or additional relief. A majority of the appeal arbitrators may affirm the arbitration award or make any alternative award they find to be just, but they must not reject the arbitrator's decisions (a) that a particular party is entitled to relief of some nature or amount or (b) that a particular party is responsible to provide relief of some nature or amount.

(d) Expenses and Costs on Appeal. The fees charged by JAMS and the appeal arbitrator(s) shall be advanced by the Declarant, except as provided in **Section 17.4.4(b)** above. The party who files the appeal must, at its sole expense, provide JAMS and all non-appealing parties with a certified copy of the hearing transcript, and must provide JAMS with copies of all documentary evidence and all other tangible evidence received by the arbitrator. If more than one party appeals, the appealing parties must share equally the cost of the transcript and copies of all other documentary and tangible evidence received by the arbitrator. The appeal arbitrators may, within thirty (30) days of the award costs of the nature provided in the Federal Rules of Appellate Procedure. If the Declarant is the prevailing party on appeal, the appeal arbitrator(s) may, in his, her or their discretion and only to the extent permitted by law and JAMS Minimum Standards Of Procedural Fairness, include the non-prevailing party(ies) pro rata share of the JAMS fee and arbitrator's fee advanced by the Declarant in the award of costs on appeal.

(e) New Evidence. The appeal arbitrators must not receive new evidence. The appeal arbitrators must make their decision based only on the evidence that was presented to the arbitrator, except that the appeal arbitrators may visit any site involved in the Dispute.

17.4.5 Federal Arbitration Act. Because many of the materials and products incorporated into the home are manufactured in other states, the development and conveyance of the Property evidences a transaction involving interstate commerce and the Federal Arbitration Act (9 U.S.C. §1, et seq.) now in effect and as it may be hereafter amended will govern the interpretation and enforcement of the arbitration provisions of this Agreement.

#### **17.4.6 AGREEMENT TO ARBITRATE AND WAIVER OF JURY TRIAL.**

**(a) ARBITRATION OF DISPUTES. EACH OWNER AND THE ASSOCIATION AGREE TO HAVE ANY DISPUTE DECIDED BY NEUTRAL ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT, AND OWNER AND DECLARANT ARE GIVING UP ANY RIGHTS DECLARANT, OWNER AND THE ASSOCIATION MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. DECLARANT, OWNER AND ASSOCIATION ARE GIVING**

UP THEIR RESPECTIVE JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THIS SECTION 17.4. IF DECLARANT, ANY OWNER OR THE ASSOCIATION REFUSED TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, SUCH PARTY MAY BE COMPELLED TO ARBITRATE UNDER THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT.

(b) WAIVER OF JURY TRIAL. IN THE EVENT THE FOREGOING ARBITRATION PROVISION IS HELD NOT TO APPLY OR IS HELD INVALID, VOID OR UNENFORCEABLE IN ITS ENTIRETY FOR ANY REASON, ALL DISPUTES SHALL BE TRIED BEFORE A JUDGE IN A COURT OF COMPETENT JURISDICTION WITHOUT A JURY. THE JUDGE IN SUCH COURT OF COMPETENT JURISDICTION SHALL HAVE THE POWER TO GRANT ALL LEGAL AND EQUITABLE REMEDIES AND AWARD COMPENSATORY DAMAGES. DECLARANT, BY EXECUTING THIS DECLARATION AND EACH OWNER AND THE ASSOCIATION BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, HEREBY WAIVE AND COVENANT NOT TO ASSERT THEIR CONSTITUTIONAL RIGHT TO TRIAL BY JURY OF ANY DISPUTES, INCLUDING, BUT NOT LIMITED TO, DISPUTES RELATING TO CONSTRUCTION DEFECTS, MISREPRESENTATION OR DECLARANT'S FAILURE TO DISCLOSE MATERIAL FACTS. THIS MUTUAL WAIVER OF JURY TRIAL SHALL BE BINDING UPON THE RESPECTIVE SUCCESSORS AND ASSIGNS OF SUCH PARTIES AND UPON ALL PERSONS AND ENTITIES ASSERTING RIGHTS OR CLAIMS OR OTHERWISE ACTING ON BEHALF OF DECLARANT, ANY OWNER, THE ASSOCIATION OR THEIR RESPECTIVE SUCCESSORS AND ASSIGNS.

17.4.7 Final and Binding Award. The decision of the arbitrator or, if an appeal is heard, the decision of the appeal arbitrators, shall be final and binding. A petition to confirm, vacate, modify or correct an award may be filed in any court of competent jurisdiction in the county in which the Property is located, but the award may be vacated, modified or corrected only as permitted by the Federal Arbitration Act.

17.4.8 Severability. In addition to and without limiting the effect of any general severability provisions of this Agreement, if the arbitrator or any court determines that any provision of this Section 17.4 is unenforceable for any reason, that provision shall be severed, and proceedings agreed to in this Section 17.4 shall be conducted under the remaining enforceable terms of this Section 17.4.

17.4.9 Application of Award. Any proceeds awarded to the Association arising from any Dispute by settlement, award or otherwise shall be applied in accordance with the provisions of Section 4.4.7 of this Declaration.

## ARTICLE 18

## GENERAL PROVISIONS

18.1 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.

18.2 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 of it shall not invalidate any other provisions.

18.3 CUMULATIVE REMEDIES. Each remedy provided for in this Declaration shall be cumulative and not exclusive. Failure to exercise any remedy provided for in this Declaration shall not, under any circumstances, be construed as a waiver.

18.4 VIOLATIONS AS NUISANCE. Every act or omission in violation of the provisions of this Declaration shall constitute a nuisance and, in addition to all other remedies herein set forth, may be abated or enjoined by any Owner, any Member of the Board, the manager, or the Association.

18.5 NO RACIAL RESTRICTION. No Owner shall execute or cause to be recorded any instrument which imposes a restriction upon the sale, leasing or occupancy of his Residential Unit on the basis of race, sex, color or creed.

18.6 ACCESS TO BOOKS. Declarant may, at any reasonable time and upon reasonable notice to the Board or manager at his or her own expense, cause an audit or inspection to be made of the books and financial records of the Association.

18.7 LIBERAL CONSTRUCTION. The provisions of this Declaration shall be liberally construed to effectuate its purpose. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision thereafter.

18.8 NOTIFICATION OF SALE OF CONDOMINIUM. Concurrently with the consummation of the sale of any Condominium under circumstances whereby the transferee becomes an Owner thereof, or within five (5) business days thereafter, the transferee shall notify the Board in writing of such sale. Such notification shall set forth the name of the transferee and his or her Mortgagee and transferor, the common address of the Condominium purchased by the transferee, the transferee's and the Mortgagee's mailing address, and the date of sale. Prior to the receipt of such notification, any and all communications required or permitted to be given by the Association, the board or the manager shall be deemed to be duly made and given to the transferee if duly and timely made and given to said transferee's transferor. Mailing addresses may be changed at any time upon

written notification to the Board. Notices shall be deemed received forty-eight (48) hours after mailing if mailed to the transferee, or to his or her transferor if the Board has received no notice of transfer as above provided, by certified mail return receipt requested, at the mailing address above specified. Notices shall also be deemed received twenty-four (24) hours after being sent by overnight courier or upon delivery if delivered personally to any occupant of a Condominium over the age of twelve (12) years.

18.9 NUMBER, GENDER. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine or neuter, as the context requires.

18.10 EXHIBITS. All exhibits referred to in this Declaration are attached to this Declaration and incorporated by reference.

18.11 BINDING EFFECT. This Declaration shall inure to the benefit of and be binding on the successors and assigns of the Declarant, and the heirs, personal representatives, grantees, tenants, successors and assigns of the Owners.

18.12 EASEMENTS RESERVED AND GRANTED. Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in the first deed by Declarant to any Condominium.


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IN WITNESS WHEREOF, Declarant has executed this instrument as of the date first above written.

DECLARANT:

BOSA DEVELOPMENT CALIFORNIA,  
INC., a California corporation

By:   
Name: ERIC MARTIN  
Title: VP. Sec.

23819

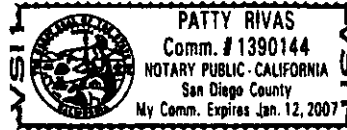
STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF SAN DIEGO )

On October 2, 2003 before me, PATTY RIVAS, Notary Public, personally appeared ERIC MARTIN personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name(s) are/is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, 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 Patty Rivas

(SEAL)





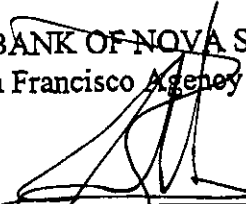
23820

SUBORDINATION AGREEMENT

The undersigned ("Beneficiary") holds the beneficial interest in that certain Deed of Trust dated November 13, 2002 and recorded in the Office of the County Recorder of San Diego County on November 15, 2002 as Instrument No. 2002-1024471, which Deed of Trust encumbers all or a portion of the real property covered by the Amended and Restated Declaration of Covenants, Conditions and Restrictions of The Grande South at Santa Fe Place ("Declaration"). Beneficiary now subordinates the Deed of Trust and its beneficial interest thereunder to (a) the foregoing Declaration, (b) any Supplemental Declaration which is recorded pursuant to the Declaration (c) any amendment or restatement of any Supplementary Declaration and (d) all easements to be conveyed to The Grande South at Santa Fe Place Homeowners Association in accordance with any Supplementary Declaration.

Dated: November 25, 2003

THE BANK OF NOVA SCOTIA, acting through its San Francisco Agency

By:   
Name: JEAN RICHARDSON  
Title: DIRECTOR

Bosa/The Grande South at Santa Fe Place  
CC&Rs  
26343-13 -1822494.2

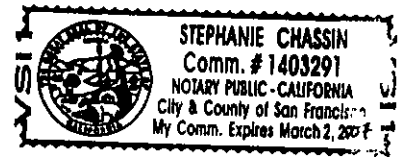
23821

STATE OF CALIFORNIA )  
COUNTY OF San Francisco ) ss.

On November 5 2003 before me, Stephanie Chassin, personally appeared Jed Richardson personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name(s) ~~are~~ is subscribed to the within instrument and acknowledged to me that he/~~she~~ they executed the same in his/~~her~~ their authorized capacity, 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 Stephanie Chassin (SEAL)



Boas/The Grande South at Santa Fe Place  
CC&Rs  
26343-13 -1822494.2

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SUBORDINATION AGREEMENT

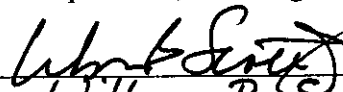
The undersigned ("Beneficiary") holds the beneficial interest in that certain (i) Repurchase Option Agreement and Escrow Instructions dated July 30, 2001 and recorded in the Office of the County Recorder of San Diego County on July 30, 2001 as Instrument No. 2001-0529870 ("Parcel 3 Repurchase Option"), (ii) First Amendment to Repurchase Option Agreement and Escrow Instructions dated July 31, 2002 dated and recorded in the Office of the County Recorder of San Diego County on August 5, 2002 as Instrument No. 2002-0659801 ("Parcel 3 First Amendment"), and (iii) Repurchase Option Agreement and Escrow Instructions For Santa Fe Place Parcel 2 dated May 30, 2001 and recorded in the Office of the County Recorder of San Diego County on August 5, 2002 as Instrument No. 2002-0659798 ("Parcel 2 Repurchase Option"), which encumbers all or a portion of the real property covered by the Amended and Restated Declaration of Covenants, Conditions and Restrictions of The Grande South at Santa Fe Place ("Declaration"). Beneficiary now subordinates the Parcel 3 Repurchase Option, Parcel 3 First Amendment and the Parcel 2 Repurchase Option and its beneficial interest thereunder to: (a) the foregoing Declaration, (b) any Supplemental Declaration which is recorded pursuant to the Declaration affecting the Annexable Property described in Exhibit "B" thereto, (c) any amendment or restatement of any Supplementary Declaration and (d) all easements to be conveyed to The Grande South at Santa Fe Place Homeowners Association in accordance with any Supplementary Declaration.

Dated: 12/24/03

CATELLUS OPERATING LIMITED  
PARTNERSHIP, a Delaware limited  
partnership (as successor by merger to Catellus  
Development Corporation, a Delaware  
corporation)

By: Catellus Development Corporation, a  
Delaware corporation (formerly known  
as Catellus SubCo, Inc., a Delaware  
corporation), its sole general partner

By: Catellus Urban Development  
Corporation, a Delaware  
corporation, as its Agent

By:   
Name: William B. Slott, Jr.  
Title: SR VP

23823

STATE OF CALIFORNIA )  
COUNTY OF San Diego ) ss.

On 12/24, 2002 before me, Rachael Fuller, personally appeared William B. Scott personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name(s) are is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, 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 Rachael Fuller (SEAL)



EXHIBITS

Exhibit "A" ..... Legal Description of the Property

Exhibit "B" ..... The Grande North Property

Exhibit "C" ..... "C" Street Entryway

Exhibit "D" ..... Northerly Adjacent Property

Exhibit "E" ..... Perimeter Easement Areas

Exhibit "F" ..... Southerly Adjacent Property

Exhibit "G" ..... Transit Courtyard Tax Area

Exhibit "H" ..... Transit Platform

Exhibit "I" ..... Variable Expenses

**23825**

**EXHIBIT "A"**

**Legal Description of the Property**

Lot 2 of THE GRANDE AT SANTA FE PLACE, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 14467, as filed in the Office of the County Recorder of San Diego County on October 7, 2002.

Excepting therefrom all right, title and interest in and to all water rights, coal, oil, gas and other hydrocarbons, geothermal resources, precious metals ores, base metals ores, industrial-grade silicates and carbonates, fissionable minerals of every kind and character, metallic or otherwise, whether or not presently known to science or industry, now known to exist or hereafter discovered upon, within or underlying the surface of said land regardless of the depth below the surface at which any such substance may be found; however, no rights for any purpose whatsoever to enter upon, into or through the surface or the first 500 feet of the subsurface of the property were granted in connection therewith as reserved on the Grant Deed recorded May 31, 2001 as File No. 2001-0353568 of Official Records.

**23826**

**EXHIBIT "B"**

**The Grande North Property**

Lot 1 of THE GRANDE AT SANTA PLACE, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 14467, as filed in the Office of the County Recorder of San Diego County October 7, 2002.

Excepting therefrom all right, title and interest in and to all water rights, coal, oil, gas and other hydrocarbons, geothermal resources, precious metals ores, base metals ores, industrial-grade silicates and carbonates, fissionable minerals of every kind and character, metallic or otherwise, whether or not presently known to science or industry, now known to exist or hereafter discovered upon, within or underlying the surface of said land regardless of the depth below the surface at which any such substance may be found; however, no rights for any purpose whatsoever to enter upon, into or through the surface or the first 500 feet of the subsurface of the property were granted in connection therewith as reserved on the Grant Deed recorded May 31, 2001 as File No. 2001-0353568 of Official Records.

23827

Exhibit "C"

"C" Street Entryway

Southerly 40 feet of Lot 2 of The Grande at Santa Fe Place in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 14467 recorded in the Office of the San Diego County Recorder on October 7, 2002, together with the Northerly 40 feet of Parcel 1 of Parcel Map No. 18898 in the City of San Diego, County of San Diego, State of California, filed February 1, 2002 as File No. 2002-88451.



23828

Exhibit "D"

Northerly Adjacent Property

Lots 1 thru 12, inclusive, in Block 293 of Middletown, according to Partition Map thereof made by J.E. Jackson on file in the Office of the County Recorder of San Diego County, together with the northerly ½ of "A" Street, adjoining said land on the south, as said street was closed and vacated to public use on June 28th, 2001 as File No. 2001-439065.

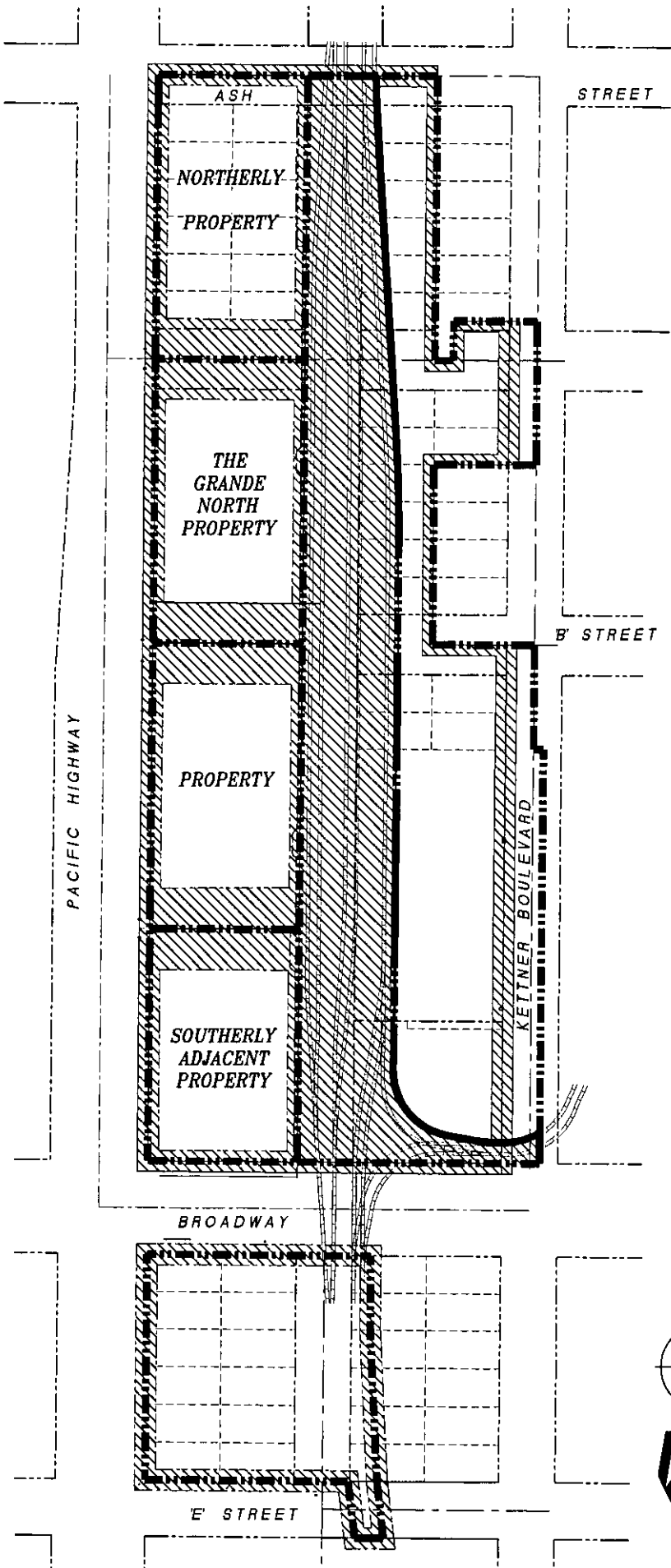
**23829**


EXHIBIT "E"

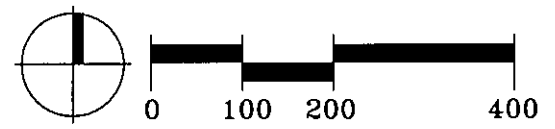
Perimeter Easement Areas

[Attached Hereto]

23830



 PERIMETER EASEMENT AREAS



 **PROJECT DESIGN CONSULTANTS**  
 PLANNING • ENVIRONMENTAL • ENGINEERING • SURVEY/GPS  
 701 B Street, Suite 800, San Diego, CA 92101  
 619-235-6471 FAX 619-234-0349

T:\Eng\596\OWNERSHIP\Exhibits\Exib01-Esm\AreaNorth-01.dwg  
 Mar 11, 2003 - 2:15pm  
 J.N. 596.21

**23831**

EXHIBIT "F"

Southerly Adjacent Property

Parcel 1 of Parcel Map 18898, filed in the Office of the County Recorder of San Diego, California on February 1, 2002 as File No. 2002-88451.

23832

EXHIBIT "G"

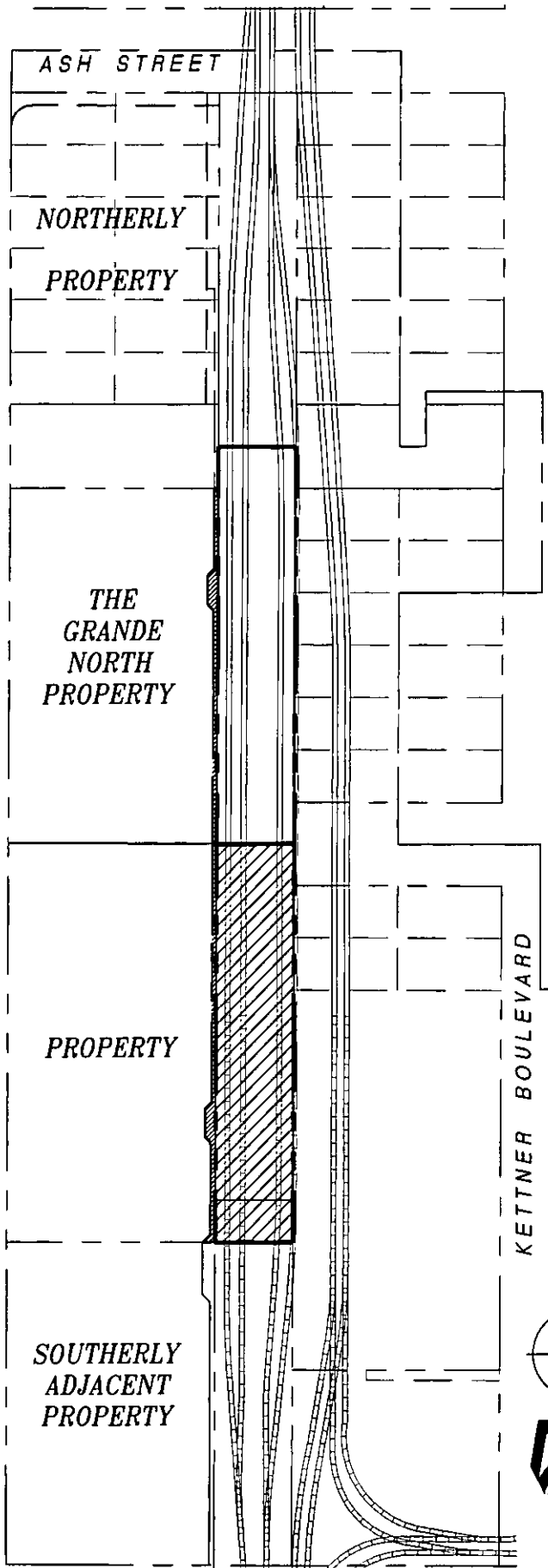
Transit Courtyard Tax Area

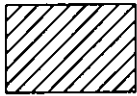
[Attached Hereto]

Bosa/The Grande South at Santa Fe Place  
CC&Rs  
26343-13 -1822494.2

EXHIBIT "H"

23833



 TRANSIT  
COURTYARD  
TAX AREA  
28,536 SF

PACIFIC HIGHWAY

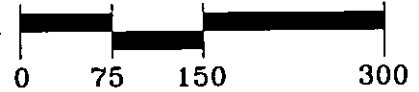
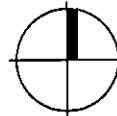
KETTNER BOULEVARD

SOUTHERLY  
ADJACENT  
PROPERTY

THE  
GRANDE  
NORTH  
PROPERTY

NORTHERLY  
PROPERTY

ASH STREET



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**23834**

EXHIBIT "H"

Transit Platform

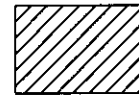
[Attached Hereto]

23835

THE GRANDE NORTH PROPERTY

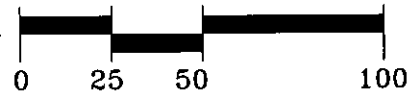
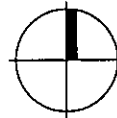
PACIFIC HIGHWAY

PROPERTY



TRANSIT PLATFORM

SOUTHERLY  
ADJACENT  
PROPERTY



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EXHIBIT "I"

Variable Expenses\*

**RESIDENTIAL UNIT PLAN\*\***

T1	0.461%
T2	0.579%
T3	0.601%
A1	0.490%
A2	0.506%
A3	0.538%
A4	0.538%
B1	0.404%
B2	0.400%
C1	0.272%
D1	0.310%
D2	0.321%
E1	0.583%
E2	0.592%

\*In the event of conveyance of the Association Guest Unit the Board will make an equitable change to the Variable Expenses.

\*\* The Residential Unit plans are shown on the Condominium Plan