

10.3. **CONDEMNATION OF EXCLUSIVE USE AREA.** If there is a taking of all or any portion of an Exclusive Use Area, the award in condemnation shall be paid to the Owner of the Condominium to which the taken Exclusive Use Area was appurtenant; however, such award shall first be applied to the balance then due on any Mortgages encumbering such Owner's Condominium, in order of priority.

10.4. **CONDEMNATION OF CONDOMINIUMS.**

10.4.1. **Minor Takings within Limits.** If (a) there is a taking of a portion of one or more Units such that the intended use of the Units as residential dwellings is not substantially and adversely affected, and (b) restoration of such Units can be accomplished at a cost less than or equal to the sum of (1) the amount of the condemnation awards for such takings plus (2) any amounts the Owners of the taken Units wish to contribute to restoration plus (3) an amount less than or equal to five percent (5%) of the Budgeted gross expenses of the Association for that Fiscal Year (collectively, the "**Allowable Cost**"), then the Board shall contract for such restoration and levy a Reconstruction Assessment in an amount equal to the Allowable Cost minus the amount of the condemnation awards and Owners' contributions, and the condemnation awards, Owners' contributions and Reconstruction Assessment shall be applied to such restoration. If the restoration is accomplished at a cost less than the amount of the condemnation awards, then that portion of the condemnation awards which exceeds the restoration costs shall be paid to the Owners of the partially taken Units in proportion to the decreases in the fair market values of their Condominiums; however, such awards shall first be applied to the balance then due on any Mortgages encumbering such Owners' Condominiums, in order of priority.

10.4.2. **Minor Takings Exceeding Limits.** If (a) there is a taking of a portion of one or more Units such that the intended use of the Units as residential dwellings is not substantially and adversely affected, and (b) restoration cannot be accomplished at a cost less than or equal to the Allowable Cost, then the Board shall call a special meeting of the Owners. If more than fifty percent (50%) of the voting power of the Association is represented at such special meeting, either in person or by proxy, and a majority of the votes cast at such special meeting are in favor of levying a Reconstruction Assessment in an amount equal to the restoration costs minus the sum of the amount of the condemnation awards and the amounts the Owners of the taken Units wish to contribute to such restoration, then the Board shall contract for such restoration and levy a Reconstruction Assessment, and the condemnation awards, Owners' contributions and Reconstruction Assessment shall be applied to such restoration.

10.4.3. **Major Takings.** If neither Section 10.4.1 nor Section 10.4.2 applies to the taking of a Unit, then the award in condemnation shall be paid to the Owners of the taken Units; however, such award shall first be applied to the balance then due on any Mortgages encumbering such Owner's Condominium, in order of priority. The Board shall have the remaining portions of the taken Units razed. The remaining portions of the taken Units and appurtenant Exclusive Use Areas shall become part of the Association Property, and the Owners of such taken Units in any Phase, by acceptance of the award allotted to them in taking proceedings, relinquish (a) to the other Owners in such Phase, on the basis of their relative ownership of the Condominium Common Area therein, such Owners' undivided interest in the Condominium Common Area, and (b) to the Association, the remaining portions of the Units and the appurtenant Exclusive Use Areas. Each Owner relinquishing the Owner's interest in the

Condominium Common Area pursuant to this Section shall, at the Board's request and at the Association's expense, execute and acknowledge such deeds and other instruments which the Board considers necessary or convenient to evidence such relinquishment. Each Owner of a taken Unit is not liable for Assessments under this Declaration which accrue on or after the date such Owner accepts the Owner's condemnation award.

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

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

## **ARTICLE 11 RIGHTS OF MORTGAGEES**

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

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

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

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

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

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

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

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

11.2.7. **Intended Improvements.** All intended Improvements in any Phase must be substantially completed or the completion of such Improvements must be secured by a bond or other arrangement acceptable to the DRE before the first Close of Escrow in such Phase. All intended Improvements in any Phase other than Phase 1 shall be substantially consistent with the Improvements in Phase 1 in structure, type and quality of construction. The requirements of this Section are for the benefit of and may be enforced only by Fannie Mae.

11.2.8. **Payment of Taxes.** First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Association Property and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for Association Property, and the Association shall immediately reimburse First Mortgagees who made such payments.

11.2.9. **Availability of Association Documents; Audits.** Notwithstanding any requirements of the Bylaws, upon request by a First Mortgagee, owner, lender, holder, insurer or guarantor of a First Mortgage or prospective purchaser, the Association shall make available for inspection, during normal business hours, and on the same terms as members those documents listed in California Civil Code Section 4525. Notwithstanding the foregoing, within a reasonable

time after receipt of written request by a First Mortgagee, owner, lender, holder, insurer or guarantor of a First Mortgage or prospective purchaser, the Association shall prepare and furnish to such requesting party an audited financial statement of the Association for the immediately preceding fiscal year. The Association shall have the right to be reimbursed by such requesting party for its reasonable costs associated with furnishing an audited financial statement, and the reasonable costs associated with preparing an audited financial statement if the Association is not otherwise obligated to prepare such audited financial statement. For so long as VA is guaranteeing Mortgages in the Community, a Mortgagee Majority shall have the right to demand an audit of the Association's financial records.

11.2.10. **Contracts.** The Board may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of the VA, FHA, FHFA, Freddie Mac, Ginnie Mae, Fannie Mae or any similar entity, so as to allow for the purchase, insurance or guaranty of Condominiums, as the case may be, by such entities. Each Owner hereby agrees that it will benefit the Association and the Owners, as a class of potential Mortgage borrowers and potential sellers of their Units, if such agencies approve the Community as a qualifying subdivision under their respective policies, rules and regulations. Each Owner hereby authorizes his Mortgagees to furnish information to the Board concerning the status of any Mortgage encumbering a Unit.

## **ARTICLE 12 ENFORCEMENT AND DISPUTE RESOLUTION**

12.1. **ENFORCEMENT OF GOVERNING DOCUMENTS.** All violations of the Governing Documents, except for: those governed by Sections 12.2 or 12.3, shall be resolved in accordance with this Section 12.1. Disputes, claims and controversies subject to the Right to Repair Act are not subject to this Section 12.1, but shall be resolved in accordance with Declarant's dispute resolution process described in Section 12.4 below.

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

12.1.2. **Violations Identified by the Association.** If the Board or the Design Review Committee determines that there is a violation of the Governing Documents, other than nonpayment of any Assessment, then the Board shall give written notice to the responsible Owner identifying (a) the condition or violation complained of, and (b) the length of time the Owner has to remedy the violation including, if appropriate, the length of time the Owner has to submit plans to the Design Review Committee and the length of time the Owner has to complete the work proposed in the plans submitted to the Design Review Committee. This requirement shall apply notwithstanding the fact that this Declaration may duplicate City ordinances or regulations. If an Owner does not perform corrective action within the allotted time, the Board, after Notice and Hearing, may remedy such condition or violation complained of, and the cost thereof shall be charged to the Owner as a Special Assessment. If the violation involves

nonpayment of any Assessment, then the Board may collect such delinquent Assessment pursuant to the procedures established in Section 12.2.

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

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

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

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

**12.1.7. Limit on Expenditures.** The Association may not incur litigation expenses, including attorneys' fees, or borrow money to fund litigation, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings, unless the Association first obtains the consent of a majority of the Association's voting power (excluding the voting power of any Owner who would be a defendant in such proceedings) and, if applicable, complies with the requirements of California Civil Code Sections 5900, *et seq.*, 5925, *et seq.* Provided, however, that no such approval shall apply to any legal proceedings initiated (a) to enforce the use restrictions contained in Article 2, (b) to enforce the architectural and landscaping control provisions contained in Article 5, (c) to collect any unpaid Assessments levied pursuant to the Governing Documents, (d) for a claim, the total value of which is less than Five Hundred Thousand Dollars (\$500,000), (e) as a cross-complaint in litigation to which the Association is already a party, or (f) in connection with any Right to Repair Act Claim. If the Association decides to use or transfer Reserve Funds or borrow funds to pay for any litigation, the Association must notify the Owners of the decision by mail. Such notice shall provide an explanation of why the litigation is being initiated or defended, why Operating Funds cannot be

used, how and when the Reserve Funds will be replaced or the loan will be repaid, and a proposed budget for the litigation. The notice must state that the Owners have a right to review an accounting for the litigation which will be available at the Association's office. The accounting shall be updated monthly.

**12.1.8. No Preconditions to Board Authority to Pursue Certain Claims.** Notwithstanding Section 12.1.7 above, nothing in this Declaration or the other Governing Documents shall be interpreted to impose any precondition or limitation on the Board's authority to commence and pursue any of the matters described in California Civil Code Section 5986(b) against a Declarant Party, except as provided in California Civil Code Sections 5986(c) and 6150.

**12.1.9. City.** The City has the right, but not the obligation, to enforce any of the provisions of the Declaration.

## **12.2. DELINQUENT ASSESSMENTS.**

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

### **12.2.2. Creation and Release of Lien.**

(a) **Priority of Lien.** All liens levied in accordance with this Declaration shall be prior and superior to (1) any declaration of homestead Recorded after the Recordation of this Declaration, and (2) all other liens, except (A) all taxes, bonds, Assessments and other levies which, by law, would be superior thereto, and (B) the lien or charge of any First Mortgage made in good faith and for value and Recorded before the date on which the "Notice of Delinquent Assessment" (described in this Section) against the assessed Condominium was Recorded.

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

“IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION,” (7) a statement that the Owner shall not be liable to pay the charges, interest and costs of collection if it is determined the Assessment was paid on time to the Association, (8) a statement that the Owner has the right to request a meeting with the Board, as provided by California Civil Code Section 5705(b) and Section 12.2.2(g) below, (9) a statement concerning the Owner’s right to dispute the Assessment debt by submitting a written request for dispute resolution to the Association pursuant to the Association’s “meet and confer” program required in California Civil Code Section 5900, *et seq.* and (10) a statement concerning the Owner’s right to request alternative dispute resolution with a neutral third party pursuant to California Civil Code Section 5925 before the Association may initiate foreclosure against the Owner’s separate interest, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

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

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

(e) ***Board Approval.*** The decision to Record a Notice of Delinquent Assessment shall be made only by the Board and may not be delegated to an Association agent. The Board must approve the decision by a majority vote of the Board members in an open meeting. The Board shall record the vote in the minutes of that meeting.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

12.4. **WARRANTIES, DISCLAIMER OF WARRANTIES, RIGHT TO REPAIR ACT ACKNOWLEDGMENTS AND PROCEDURES AND DISPUTES WITH DECLARANT PARTIES.**

12.4.1. **Warranties; Disclaimer of Warranties.** Declarant may, but shall not have any obligation whatsoever, to extend a limited warranty to the original purchaser of a Condominium from Declarant, and to some or all of the Association Property transferred by the Declarant to the Association. Nothing in the limited warranty provided to an Owner or to the Association shall diminish any rights or obligations the Owner, the Association or the Declarant may have under the Right to Repair Act. The warranty period for a particular Condominium is set forth in the limited warranty. The subsequent resale of the Condominium will not extend the warranty period.

(a) **DISCLAIMER OF EXPRESS AND IMPLIED WARRANTIES.** TO THE FULLEST EXTENT PERMITTED BY LAW, DECLARANT EXPRESSLY DISCLAIMS ANY WARRANTIES OTHER THAN THE LIMITED WARRANTY, INCLUDING, BUT NOT LIMITED TO, STATUTORY AND IMPLIED WARRANTIES, WITH RESPECT TO THE CONDOMINIUM, COMMON PROPERTY AND THE COMMUNITY. THE LIMITED WARRANTY (IF ANY) IS SUBSTITUTED IN PLACE OF ALL SUCH WARRANTIES. EXAMPLES OF WARRANTIES THAT ARE DISCLAIMED BY DECLARANT INCLUDE, BUT ARE NOT LIMITED TO, STATUTORY WARRANTIES, IMPLIED WARRANTIES, IMPLIED WARRANTY OF QUALITY OR

FITNESS FOR USE OR A PARTICULAR PURPOSE, IMPLIED WARRANTY OF CONSTRUCTION IN A GOOD AND WORKMANLIKE MANNER, IMPLIED WARRANTY OF HABITABILITY, AND WARRANTY OF MERCHANTABILITY.

12.4.2. **Right to Repair Act Acknowledgments and Non-Adversarial Pre-Litigation Procedures.**

(a) **Right to Repair Act.** California Civil Code Section 895, *et seq.*, contained in Part 2 of Division 2, Title 7 of the California Civil Code ("**Right to Repair Act**") governs standards and procedures for the resolution of construction defect matters in residential developments. The legislative intent of the Right to Repair Act is, in part, to "improve the procedures for the administration of civil justice, including standards and procedures for early disposition of construction defects." The Right to Repair Act seeks to afford homeowners, homeowners associations and builders the opportunity for quick and fair resolution of construction defect claims. The Right to Repair Act (i) establishes statutory definitions and "functionality standards" for construction defects based upon how a home, common areas and their respective components should function ("**Performance Standards**"); (ii) divides the Performance Standards into categories such as water intrusion, structural and soils related issues, fire protection issues, plumbing and sewer issues, electrical systems and other areas of construction; (iii) specifies that the components of a home must meet the Performance Standards for specified periods that range from one (1) year to ten (10) years as set forth in the Right to Repair Act; (iv) excuses a builder from its obligations under the Right to Repair Act if a homeowner or Association (as applicable) fails to properly maintain the home or Common Property (as applicable), fails to promptly notify the builder of damage, fails to permit builder access to inspect the home or Common Property, or if damage to a component is caused by a third party or act of nature or under certain other circumstances specified in the Right to Repair Act; (v) provides builders an absolute right to repair violations of the Performance Standards before the homeowner or Association (as applicable) may file a suit or initiate alternative dispute resolution; (vi) establishes specific "pre-litigation" or "non-adversarial" procedures for handling claims for the violation of the Performance Standards (California Civil Code Sections 910 through 938, inclusive) ("**Act Dispute Procedures**") and strict time periods for a homebuilder to respond to a claim; and (vii) requires builders to maintain and provide to homeowners or the Association (as applicable) under certain circumstances specified information such as plans, specifications, reports and maintenance guidelines.

(b) **Copy of Right to Repair Act; Notices.** Pursuant to the Right to Repair Act (California Civil Code Section 912(g)), Declarant has provided to each initial Owner a copy of Part 2 of Division 2 of the California Civil Code which contains the Right to Repair Act (California Civil Code Sections 895 through 945.5, inclusive). The Owners and the Association are hereby notified of the existence of the Right to Repair Act and the Act Dispute Procedures and that the Right to Repair Act and the Act Dispute Procedures impact the legal rights of Owners and the Association. The general description of certain provisions of the Right to Repair Act set forth in Section 12.4.2(a) above is only a brief, non-exclusive list, and each Owner is responsible to carefully read the entire text of the Right to Repair Act to understand all terms and conditions.

(c) **Notice of Compliance with the Standards.** The Performance Standards include forty-five (45) separate standards in seven (7) different categories and provide broad protection for California homeowners. Under the Right to Repair Act, Declarant is entitled to adopt performance standards other than the Performance Standards; however, Declarant has elected not to adopt such alternate standards and to comply with the Performance Standards. Therefore the Performance Standards shall govern the rights and obligations of Owners, the Association and Declarant with respect to any construction defect claims regarding the Community.

(d) **Agent for Notice of Right to Repair Act Claim.** The Act Dispute Procedures require that if an Owner or the Association makes a claim for damages arising from the violation of any of the Performance Standards, Owner or the Association (as applicable) shall provide (i) the required notice to Declarant's agent for notice of claims under the Right to Repair Act at the following address:

Taylor Morrison  
Attn: Vice President of Construction  
4695 MacArthur Court, 8<sup>th</sup> Floor  
Newport Beach, CA 92660

(See California Civil Code Section 910) by certified mail, overnight mail or personal delivery, and (ii) access to the Condominium or Common Property in accordance with the Right to Repair Act for Declarant to conduct inspections and testing and to perform repairs. The failure of an Owner or the Association to provide Declarant with reasonable and timely access for inspections and repairs may limit a claimant's ability to recover damages for a claim (California Civil Code Section 945.5(b)). The foregoing notice requirements do not preclude an Owner or the Association from seeking redress through Declarant's normal customer service procedures or under Declarant's limited warranty and any manufacturers' limited warranties, if any were provided (California Civil Code Section 910(b)).

(e) **Notice of Compliance with and Election to use Act Dispute Procedures.** Although the Right to Repair Act at California Civil Code Section 914 allows Declarant to "opt out" of the Act Dispute Procedures and to require the use of alternative non-adversarial contractual provisions for the resolution of Disputes governed by the Right to Repair Act (each, a "**Right to Repair Act Claim**"), Declarant has elected to use the Act Dispute Procedures for the resolution of Right to Repair Act Claims brought by Owners (and, except as provided by Section 12.4.3(c)(xv) below, Right to Repair Act Claims brought by the Association) before they are submitted to binding arbitration. If, for any reason, a Right to Repair Act Claim is not resolved after submittal for resolution under the Act Dispute Procedures, then it may be submitted for resolution in accordance with the binding arbitration procedure set forth in Section 12.4.3(c) below. Declarant also requires the other parties defined as "Declarant Parties" in Section 12.4.3 below to (i) comply with the Right to Repair Act pursuant to the terms of its contracts with such parties, and (ii) cooperate in good faith with Declarant in resolving Right to Repair Act Claims. Each Owner and the Association acknowledges that Declarant has notified each Owner and the Association that Declarant will be bound by the Act Dispute Procedures for the resolution of construction defect claims regarding the Community. Each Owner and the Association acknowledges that this Declaration recorded against the Community

includes a notice of the existence of the Act Dispute Procedures and a notice that such Procedures impact the legal rights of each Owner and the Association as it pertains to the Community, as required by California Civil Code Section 912(f). Each Owner has had the opportunity to read the Act Dispute Procedures, understands same and acknowledges that the Act Dispute Procedures impact their legal rights with respect to the Community.

(f) **Applicability to California Civil Code Section 6000.** As to any Dispute (defined below) covered by this Declaration that involves the Common Property or any other areas of the Community that the Association is required to maintain, repair or replace, as set forth in the Declaration or any Supplemental Declaration, and prior to the commencement of any arbitration proceedings as set forth in Section 12.4.3(c) below, the Association shall serve on Declarant a "Notice of Commencement of Legal Proceedings" as set forth in California Civil Code Section 6000, as may be amended from time to time. Except as modified herein (and specifically, Section 12.4.3(c)(xv), below, allowing access and repair rights to Declarant) or as may be precluded by Section 910, *et seq.*, of the Right to Repair Act, Association and Declarant agree that as to Disputes within the purview and scope of California Civil Code Section 6000 between Association and Declarant, the pre-litigation procedures of California Civil Code Section 6000 shall control prior to the commencement of the arbitration proceedings in Section 12.4.3(c). However, because Declarant has elected to utilize the provisions of the Right to Repair Act, pursuant to California Civil Code Section 910, *et seq.*, such access and repair protocol shall take precedence and, to the extent allowed by law, be part of and included within the pre-litigation procedures of California Civil Code Section 6000 to avoid duplication.

(g) **Receipt of Documents.** Each Owner acknowledges that they have received and may in the future receive certain agreements, disclosures and documents in connection with Owner's purchase of a Condominium ("**Documents**"). Owners shall maintain a full and complete copy of the Documents. Owners shall provide any subsequent buyer of a Condominium a complete copy of the Documents as required by the Right to Repair Act (California Civil Code Section 912(h)), including, without limitation, a copy of the homeowners maintenance manual or other maintenance or preventative maintenance information provided or to be provided by Declarant to Owners; all manufactured products maintenance, preventative maintenance and limited warranty information provided by Declarant to Owners and the limited warranty provided by Declarant. Each Owner shall instruct subsequent buyers of the Condominium to provide to their subsequent buyers a complete copy of the Documents. Similarly, the Association acknowledges that Declarant has instructed the Association to provide any documents provided to the Association in conjunction with the original transfer of any Common Property to any subsequent transferee, and the Association hereby covenants to provide all of such documents to any subsequent transferee of the Common Property.

(h) **Maintenance Requirements.** Each Owner, as to such Owner's respective Condominium, and the Association, as to the Common Property, acknowledges that Declarant has provided each Owner and the Association with the maintenance and preventative maintenance schedules and obligations pertaining to the Owner's Condominium and the Association's Common Property. Notwithstanding the foregoing, Declarant reserves the right, by written notice to Owner or to the Association, as applicable, to supplement and/or amend such maintenance and preventative maintenance schedules and obligations from time to time. Each Owner and the Association also acknowledges that by law, each Owner is obligated to follow all

reasonable maintenance and preventative maintenance schedules and obligations communicated in writing by Declarant as well as all commonly accepted maintenance practices. Each Owner and the Association covenants to faithfully follow all maintenance and preventative maintenance schedules and obligations applicable to the Condominium or the Common Property, as the case may be, and each Owner shall require and cause any tenant or lessee of the Condominium, to follow all such schedules and obligations.

(i) ***Manufactured Products Maintenance and Limited Warranty Information.*** Each Owner, as to such Owner's respective Condominium, and the Association, as to the Common Property, acknowledges that Declarant has provided such Owner and the Association with the manufactured product maintenance, preventative maintenance and limited warranty information (as applicable) pertaining to such Owner's Condominium, or the Common Property. Notwithstanding the foregoing, Declarant reserves the right, by written notice to each Owner, or to the Association, as applicable, to supplement and/or amend such manufactured product maintenance, preventative maintenance and limited warranty information from time to time. Each Owner and the Association also acknowledge that by law, such Owner and Association are obligated to follow all reasonable maintenance and preventative maintenance schedules and obligations communicated in writing from Declarant as well as commonly accepted maintenance practices. Each Owner and the Association covenants to faithfully follow all such maintenance and preventative maintenance schedules and obligations contained in all such manufactured product maintenance, preventative maintenance and limited warranty information (as applicable), and each Owner shall require and cause any tenant or lessee of the Condominium to follow all such schedules and obligations.

#### 12.4.3. Declarant Dispute Procedures.

(a) ***In General.*** This Section 12.4.3 sets out the procedure for the resolution of disputes between an Owner and/or the Association, on the one hand, and the Declarant, Declarant's affiliated and related entities, and each of their respective employees, officers, directors, agents, representatives, contractors, subcontractors, consultants, agents, vendors, suppliers, design professionals, insurers and any other person whom any Owner or the Association contends is responsible for any of the matters described in Section 12.4.3(b) below, on the other hand (each, a "***Declarant Party***"). The dispute resolution procedures in this Section 12.4.3 do not replace Declarant's customer or warranty service procedures, and Owners and the Association are encouraged to resolve disputes through those procedures prior to initiating any procedures hereunder.

(b) ***Applicability.*** ANY AND ALL CLAIMS, CONTROVERSIES, BREACHES OR DISPUTES BY OR BETWEEN ANY OWNER(S) OR THE ASSOCIATION, ON THE ONE HAND, AND DECLARANT, ON THE OTHER HAND, ARISING OUT OF OR RELATED TO THE PURCHASE AGREEMENT FOR THE PURCHASE OF A RESIDENCE, THE CONDOMINIUM, RESIDENCE, COMMON PROPERTY, THE COMMUNITY OF WHICH THE CONDOMINIUM, RESIDENCE AND COMMON PROPERTY ARE A PART, THE SALE AND CONVEYANCE OF CONDOMINIUMS, RESIDENCES AND COMMON PROPERTY BY DECLARANT, OR ANY TRANSACTION RELATED HERETO, WHETHER SUCH DISPUTE IS BASED ON CONTRACT, TORT, STATUTE, OR EQUITY, INCLUDING WITHOUT LIMITATION, ANY DISPUTE OVER:

- (i) THE DISPOSITION OF ANY DEPOSITS;
- (ii) BREACH OF CONTRACT;
- (iii) NEGLIGENT OR INTENTIONAL MISREPRESENTATION OR FRAUD;
- (iv) NONDISCLOSURE;
- (v) BREACH OF ANY ALLEGED DUTY OF GOOD FAITH AND FAIR DEALING;
- (vi) ALLEGATIONS OF LATENT OR PATENT DESIGN OR CONSTRUCTION DEFECTS, INCLUDING WITHOUT LIMITATION, PURSUANT TO THE RIGHT TO REPAIR ACT, BUT ONLY TO THE EXTENT NOT FIRST RESOLVED BY THE ACT DISPUTE PROCEDURES OF THE RIGHT TO REPAIR ACT (AS DEFINED IN SECTION 12.4.2(a) ABOVE);
- (vii) ANY AND ALL ACTUAL DAMAGES OR HARM TO THE CONDOMINIUM OR RESIDENCE OR COMMON PROPERTY ALLEGED TO HAVE BEEN INCURRED OR SUFFERED;
- (viii) THE COMMUNITY, INCLUDING WITHOUT LIMITATION, THE PLANNING, SURVEYING, DESIGN, ENGINEERING, GRADING, SPECIFICATIONS, CONSTRUCTION OR OTHER DEVELOPMENT OF THE COMMUNITY OR PARCEL/TRACT OF WHICH THE COMMUNITY IS A PART;
- (ix) DECEPTIVE TRADE PRACTICES;
- (x) ANY LIMITED WARRANTY PROVIDED BY DECLARANT TO THE INITIAL OWNER OF A CONDOMINIUM; OR
- (xi) ANY OTHER MATTER ARISING OUT OF OR RELATED TO THE INTERPRETATION OF ANY TERM OR PROVISION OF THE PURCHASE AGREEMENT BETWEEN DECLARANT AND ANY OWNER, OR ANY DEFENSE GOING TO THE FORMATION OR VALIDITY OF THE PURCHASE AGREEMENT, OR ANY PROVISION OF THE PURCHASE AGREEMENT, INCLUDING DEPOSIT DISPUTES, THE ARBITRATION PROVISION, ALLEGATIONS OF UNCONSCIONABILITY, FRAUD IN THE INDUCEMENT, OR FRAUD IN THE EXECUTION, WHETHER SUCH DISPUTE ARISES BEFORE OR AFTER THE CLOSE OF ESCROW, (EACH A "**DISPUTE**"), SHALL BE ARBITRATED PURSUANT TO THE FEDERAL ARBITRATION ACT IN ACCORDANCE WITH THE BINDING ARBITRATION PROCESS DESCRIBED IN SECTION 12.4.3(c) BELOW.

(c) **ARBITRATION OF DISPUTES.** THIS ARBITRATION PROVISION SHALL BE DEEMED TO BE SELF-EXECUTING. ANY DISPUTE CONCERNING THE INTERPRETATION OR THE ENFORCEABILITY OF THIS ARBITRATION PROVISION, INCLUDING WITHOUT LIMITATION, ITS



REVOCABILITY OR VOIDABILITY FOR ANY CAUSE, ANY CHALLENGES TO THE ENFORCEMENT OR THE VALIDITY OF THE PURCHASE AGREEMENT BETWEEN DECLARANT AND ANY OWNER, OR ANY AGREEMENT BETWEEN DECLARANT AND THE ASSOCIATION, OR THIS ARBITRATION PROVISION, OR THE SCOPE OF ARBITRABLE ISSUES UNDER THIS ARBITRATION PROVISION, AND ANY DEFENSE RELATING TO THE ENFORCEMENT OF THIS ARBITRATION PROVISION, INCLUDING WITHOUT LIMITATION, WAIVER, ESTOPPEL, OR LACHES, SHALL BE DECIDED BY THE SUPERIOR COURT FOR THE COUNTY IN WHICH THE CONDOMINIUM IS LOCATED.

(i) Rules and Procedures. Disputes shall be resolved by and pursuant to the arbitration rules and procedures of Judicial Arbitration and Mediation Services (“*JAMS*”) in effect at the time the request for arbitration is submitted so long as the rules and procedures are equivalent to the rules and procedures of the American Arbitration Association (“*AAA*”). In the event *JAMS* is for any reason unwilling or unable to serve as the arbitration service, then the parties shall select another reputable arbitration service. If the parties are unable to agree on an alternative service, then either party may petition any court of competent jurisdiction in the county in which the Community is located to appoint such an alternative service, which shall be binding on the parties. The rules and procedures of such alternative service in effect at the time the request for arbitration is submitted must be equivalent to the rules and procedures of the *AAA* and shall be followed.

(ii) Federal Arbitration Act. The Association and each Owner, on behalf of themselves and their successors and assigns, expressly acknowledge that the purchase, sale and/or conveyance of the real property and Improvements herein involves and concerns interstate commerce and is governed by the provisions of the Federal Arbitration Act (9 U.S.C. Section 1, *et seq.*) now in effect and as the same may from time to time be amended, to the exclusion of any different or inconsistent state or local law, ordinance, regulation, or judicial rule. Accordingly, any and all Disputes as defined in Section 12.4.3(b) shall be arbitrated – which arbitration shall be mandatory and binding – pursuant to the Federal Arbitration Act.

(iii) Participation by Other Parties. The Association, each Owner and Declarant agree that any such arbitration shall only be between such Owner or the Association, as applicable, and Declarant and shall not be joined or consolidated with the claims or arbitration of any other party unless specifically agreed to in writing by such Owner or the Association, as applicable, and Declarant, and agree the arbitrator is not authorized to permit any consolidation or joinder with any other party. Notwithstanding the preceding sentence, either Owner or the Association, as applicable, or Declarant may join subcontractors and suppliers involved in the design and construction of the Improvements to the Condominium, Common Property or Community. This arbitration provision shall inure to the benefit of, and be enforceable by, Declarant, Declarant’s affiliated and related entities, and each of their respective employees, officers, directors, agents, representatives, contractors, subcontractors, consultants, agents, vendors, suppliers, design professionals, insurers and any other person whom an Owner or the Association contends is responsible for any alleged defect in or to the Condominium or Common Property or any Improvement or appurtenance thereto. The participation by any party, or any party whom an Owner or the Association contends is responsible for a Dispute, in any judicial proceeding concerning this arbitration provision or any matter arbitrable hereunder shall

not be asserted or accepted as a reason to delay, to refuse to participate in arbitration, or to refuse to compel arbitration, including instances in which the judicial proceeding involves parties not subject to this arbitration provision and/or who cannot otherwise be compelled to arbitrate.

(iv) Costs and Attorney's Fees. In the event any Dispute arises under the terms of the purchase agreement or any limited warranty provided by Declarant to the initial Owner of a Condominium or the Association or in the event of the bringing of any arbitration action by a party hereto against another party hereunder by reason of any breach of any of the covenants, agreements or provisions on the part of the other party arising out of the purchase agreement or the limited warranty, then all fees and costs shall be borne separately between the parties, including, but not limited to, all attorneys' fees, arbitration fees and expert witness costs resulting from the Dispute. The foregoing provision does not modify any provision of any contract between Declarant and any third party requiring indemnification or establishing a different allocation of fees and costs between Declarant and such third party. Notwithstanding the foregoing, the filing fees to initiate arbitration shall be advanced by Declarant in accordance with JAMS or AAA equivalent fee schedule.

(v) Available Remedies. The arbitrator shall be authorized to provide all recognized remedies available in law or in equity for any cause of action that is the basis of the arbitration.

(vi) Final and Binding Award. The decision of the arbitrator shall be final and binding. Owner and/or the Association and Declarant Parties expressly agree that should either party fail to satisfy the arbitrator's decision within thirty (30) days of receipt of notice of the decision, then an application to confirm, vacate, modify, or correct an award rendered by the arbitrator shall be filed in any court of competent jurisdiction in the County in which the Community is located.

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

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

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

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

(xi) Discovery. Notwithstanding anything inconsistent in the rules and procedures of the arbitration service, the parties to the arbitration shall have the right to conduct a reasonable amount of discovery, including written discovery, depositions and inspections and testing, all as approved and coordinated by the arbitrator.

(xii) Conflict. If any provision of this Section 12.4.3(c) is in conflict with or is different than any alternative dispute resolution provision of the purchase agreement between Declarant and the initial Owner of a Condominium, then the alternative dispute resolution provision of the purchase agreement shall control concerning Disputes between the Declarant and initial Owner. However, any and all Disputes between Declarant and any subsequent Owner of a Condominium shall be resolved in accordance with this Section 12.4.3(c).

(xiii) CLASS AND GROUP ACTIONS NOT AVAILABLE. THE PARTIES HAVE AGREED TO ARBITRATE DISPUTES UNDER THE FEDERAL ARBITRATION ACT DUE TO THE MUTUAL ADVANTAGES OF ARBITRATION OVER BRINGING AN ACTION IN COURT TO RESOLVE A DISPUTE. THE ASSOCIATION, AND EACH OWNER, ON BEHALF OF THEMSELVES AND THEIR SUCCESSORS AND ASSIGNS, ACKNOWLEDGES THAT GROUP AND CLASS ACTION CLAIMS ARE INCONSISTENT WITH ARBITRATION UNDER THE FEDERAL ARBITRATION ACT. ARBITRATION OF A GROUP OR CLASS ACTION DESTROYS THE ADVANTAGES OF THE ARBITRATION PROCESS SUCH AS SPEED, EFFICIENCY, AND LOWER COSTS DUE TO THE COMPLEXITIES INVOLVED IN A GROUP OR CLASS ACTION. FOR THESE REASONS, THE ASSOCIATION, EACH OWNER AND DECLARANT MUTUALLY AGREE TO WAIVE THE RIGHT TO BRING A GROUP OR CLASS ACTION CLAIM IN THE ARBITRATION, INCLUDING, WITHOUT LIMITATION, CLAIMS BROUGHT AS A CLASS REPRESENTATIVE, CLASS MEMBER, REPRESENTATIVE ON BEHALF OF OTHERS OR PRIVATE ATTORNEY GENERAL ON BEHALF OF THE GENERAL PUBLIC.

(xiv) Notification. The Association and each Owner agrees to provide Declarant with written notice of any matters relating to a Dispute as soon as is reasonably possible after the Association or an Owner becomes aware, or should have become aware, of such matters and Dispute. Notice to Declarant under this Subsection does not constitute notice of a claim, or any other notice, under the Right to Repair Act.

(xv) Cooperation; Access; Repair. The Association and each Owner, on behalf of themselves, successors and assigns, expressly agree to provide Declarant, Declarant Parties and their representatives, contractors, and others as Declarant may request, with prompt, reasonable cooperation, which may, for example, include access to all portions of the Community, Condominium, Residence and/or Common Property, in order to facilitate Declarant's investigation regarding a Dispute including, without limitation, for purposes of inspecting, testing, repairing, replacing, correcting, or otherwise addressing matters related to the Dispute. If the Dispute arises out of or relates to the planning, surveying, design, engineering, grading, specifications, construction, or other development of the Community, Condominium, Residence and/or Common Property, Declarant Parties are hereby granted the irrevocable right, but are under no obligation, to inspect, repair and/or replace any and all affected parts of the Community, Condominium, Residence and/or Common Property. The right, but not obligation, to access, inspect, repair and/or replace any and all affected parts of the Community, Condominium, Residence and/or Common Property may be exercised by the applicable Declarant Party at any time prior to the initiation of arbitration proceedings as set forth above.

(xvi) NOTICE. BY ACCEPTING INDIVIDUAL GRANT DEEDS AND/OR ACKNOWLEDGEMENT OF RECEIPT OF THE GOVERNING DOCUMENTS, THE ASSOCIATION AND EACH OWNER, ALONG WITH DECLARANT, AGREE TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THIS SECTION 12.4.3 DECIDED BY NEUTRAL, BINDING ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS NOT INCONSISTENT WITH THE FEDERAL ARBITRATION ACT, AND THE ASSOCIATION, EACH OWNER AND DECLARANT PARTIES ARE GIVING UP ANY RIGHTS THE ASSOCIATION, EACH OWNER AND DECLARANT PARTIES MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL OR OTHER PROCEEDING. IN ADDITION, THE ASSOCIATION, EACH OWNER AND DECLARANT ARE GIVING UP THEIR RESPECTIVE JUDICIAL AND/OR STATUTORY RIGHTS TO DISCOVERY, TRIAL AND APPEAL, EXCEPT TO WHATEVER EXTENT ANY RIGHTS ARE SPECIFICALLY INCLUDED IN THIS AGREEMENT TO ARBITRATE. IF THE ASSOCIATION, ANY OWNER AND/OR DECLARANT OR OTHER DECLARANT PARTY REFUSE TO SUBMIT TO ARBITRATION, 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 NOT INCONSISTENT WITH THE FEDERAL ARBITRATION ACT, AND/OR ARBITRATION MAY GO FORWARD IN THE ABSENCE OF THE REFUSING PARTY. THE PARTIES' AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

(d) *Affirmative Defenses Applicable to Disputes*. Each Declarant Party shall have available to it, without limitation, the following non-exclusive list of affirmative defenses in response to a claimed violation of the provisions of the Right to Repair Act, or any other standards, laws, ordinances, rules or regulations, pursued by the Association or any Owner under this Section 12.4.

(i) Unforeseen Acts of Nature. To the extent any obligation, damage, loss or liability is caused by an unforeseen act of nature which caused the Improvement not to meet the standard. For purposes of this Section, an "unforeseen act of nature" means a weather condition, earthquake, or manmade event such as war, terrorism, or vandalism, in excess of the design criteria expressed by the applicable building codes, regulations, and ordinances in effect at the time of original construction.

(ii) Failure to Mitigate. To the extent any obligation, damage, loss or liability is caused by the unreasonable failure to minimize or prevent those damages in a timely manner, including the failure to allow reasonable and timely access for inspections and repairs under this section. This includes the failure to give timely notice to the Declarant after discovery of a violation, but does not include damages due to the untimely or inadequate response of Declarant Parties to the claim.

(iii) Failure to Maintain. To the extent any obligation, damage, loss or liability is caused by the Association or an Owner, or their agent, employee, subcontractor, independent contractor, or consultant by virtue of their failure to follow

Declarant's or manufacturer's Maintenance Guidelines, or commonly accepted maintenance practices.

(iv) Alterations, Misuse, Abuse or Neglect. To the extent any obligation, damage, loss or liability is caused by the Association or any Owner, or their agent's or an independent third party's alterations, ordinary wear and tear, misuse, abuse, or neglect, or by the Improvement's use for something other than its intended purpose.

(v) Statutes of Limitation. To the extent that the time period for filing actions bars filing a claim concerning the claimed violation.

(vi) Release of Declarant Party. As to a particular violation for which Declarant or a Declarant Party has obtained a valid release.

(vii) Successful Repair by Declarant Party. To the extent that the repair was successful in correcting the particular violation of the applicable standard.

(viii) Wear and Tear. To the extent that the claimed damage was caused by or due to ordinary wear and tear.

(ix) Materials Furnished or Installed by the Association or Owner. Any damage caused by or due to materials or Improvements furnished or installed by or at the request of the Association or an Owner, including any work done by anyone other than the applicable Declarant Party or the employees, agents, or subcontractors expressly selected by the Declarant Party.

(x) Variations in Natural Materials. Variations in natural materials, such as stone, marble, wood grain and color of stained wood used in cabinets, paneling, siding, doors and wood trim. These variations are inherent characteristics of natural materials and are not a defect.

(xi) Failure to Give Timely Notice. Any defect, loss or damage caused or made worse by the Association or an Owner's failure to timely notify Declarant of any such defect, loss or damage.

(xii) Refusal to Allow Repair. Any defect, loss or damage caused by the Association or an Owner's failure and refusal to allow reasonable and timely access for inspections and/or repairs.

(xiii) Association, Owner or Third Party Negligence. Any defect, loss or damage caused or made worse by the negligence of the Association, an Owner (or his/her agents, employees, subcontractors, independent contractors or consultants) or a third party (such as a guest or invitee).

(e) Admissibility of Communications. Any and all communications by and between the parties, whether written or oral, which are delivered by the parties or their attorneys or other representatives in an effort to settle the claim shall be considered communications undertaken in the course of effecting a settlement or compromise

and as such shall not be admissible as the admission on the part of any party or any representative or agent of the party to be utilized for any such purpose in any action or proceeding.

12.4.4. **Statute of Limitations.** Nothing herein shall be considered to reduce or extend any applicable statute of limitations.

12.4.5. **Covenant Regarding Proceeds.** If the Association or any Owner prevails in a Dispute, and the judgment thereon or settlement terms thereof includes a monetary award, then the proceeds of the award shall be first applied to the remediation of the condition that gave rise to the Dispute.

12.4.6. **No Enhanced Protection Agreement.** Nothing in this Declaration constitutes an "enhanced protection agreement" under California Civil Code Section 901 or alternative nonadversarial contractual provisions under California Civil Code Section 914, and nothing herein diminishes the rights and obligations of the Association, Owner and Declarant under the nonadversarial dispute resolution procedures set forth in California Civil Code Sections 910 through 938 with respect to any Right to Repair Act Claim.

12.4.7. **Approval of Amendments.** No amendment may be made to Section 12.4 without the prior written approval of Declarant.

### **ARTICLE 13 DURATION AND AMENDMENT**

13.1. **DURATION.** This Declaration shall continue in full force unless a declaration of termination satisfying the requirements of an amendment to this Declaration established in Section 13.2 is Recorded.

#### **13.2. TERMINATION AND AMENDMENT.**

13.2.1. **Amendment Approval.** Notice of the subject matter of a proposed amendment to this Neighborhood Declaration including "material amendments" and an "extraordinary action" (both defined below) in reasonably detailed form must be included in the notice of any Association meeting or election at which a proposed amendment is to be considered. To be effective, a proposed amendment (other than an amendment by Declarant or by the Board, as described in Sections 13.2.6 or 13.2.7 respectively) or an extraordinary action must be (a) adopted by the vote, in person or by proxy, or written consent of Owners representing not less than (1) sixty-seven percent (67%) of the voting power of each Class of the Association and (2) sixty-seven percent (67%) of the Association's voting power represented by Owners other than Declarant, provided that the specified percentage of the Association's voting power necessary to amend a specific provision of this Declaration may not be less than the percentage of affirmative votes prescribed for action to be taken under the provision that is the subject of the proposed amendment or extraordinary action, and (b) approved by the requisite percentage of First Mortgagees of matters described in Sections 13.2.2(a) and 13.2.2(b) below, and (2) termination of the Declaration as described in Section 13.2.3. In addition to the foregoing, until the conversion of the Class B membership to Class A, all material amendments

and extraordinary actions must have the approval of VA, if VA has guaranteed any Mortgages secured by Condominiums in the Community.

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

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

- (i) Assessment basis or Assessment liens;
- (ii) Any method of imposing or determining any charges to be levied against an Owner;
- (iii) Any scheme of regulation or enforcement or standards for maintenance, architectural design or exterior appearance of Improvements on the Condominiums (as applicable);
- (iv) The addition, annexation or withdrawal of land to or from the Community;
- (v) Voting rights;
- (vi) Increases in Assessments that raise the existing Assessment by more than 25%, Assessment liens or the priority of Assessment liens;
- (vii) Reductions in reserves for maintenance, repair and replacement of the Common Property;
- (viii) Responsibility for maintenance and repairs;
- (ix) Reallocation of interest in the Condominium Common Area, reallocation of liability for Common Expenses, or reallocation of rights to the use of Association Property;
- (x) Redefinition of any Unit or Exclusive Use Area boundaries
- (xi) Convertibility of Units into Association Property or vice versa;
- (xii) Any amendment relating to (i) the insurance provisions in Article 8, (ii) the application of insurance proceeds in Article 9, or (iii) the disposition of any money received in any taking under condemnation proceedings.
- (xiii) Imposing restrictions on leasing or sale of Units;

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

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

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

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

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

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

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

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

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

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

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

(iv) Expansion or contraction of the Community or the addition, annexation or deannexation of real property to or from the Community other than by Declarant under Sections 16.1 and 16.5 of this Declaration which increases the overall land area of the Community or the number of Units by more than 10%; or



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

**13.2.3. Amendment of Right to Repair Act Provisions.** Neither this Section 13.2.3 nor Sections 1.1.50, 1.1.75, 1.1.76, 2.1, 2.1.6, 2.4 2.5, 2.6, 3.32, 4.2.7, 4.2.19, 4.5.2 12.1.7, 13.2.6, or 15.7, may be amended without the prior written approval of Declarant until the expiration of all applicable statutes of limitation or repose for the filing of a complaint or suit or other legal remedies against Declarant or its affiliates under the Right to Repair Act (including tolling periods). References herein to Sections include their respective subparts.

**13.2.4. Termination Approval.** Termination of this Declaration or the status of the Community as a "condominium project" as defined in California Civil Code Section 4125 requires approval of (a) sixty-seven percent (67%) of the First Mortgagees, (b) the Owners as provided in Section 13.2.1, and (c) Declarant (until the expiration of all applicable statutes of limitation or repose for the filing of a complaint or suit or other legal remedies against Declarant or its affiliates under the Right to Repair Act); provided however, in the event a material portion of the Community is affected by either damage or destruction (as described in Article 9) or a taking (as described in Article 10), then any election to terminate the status of the Community as a "condominium project" as defined in California Civil Code Section 4125 requires approval of a Mortgage Majority and the Owner and Declarant approvals described above.

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

**13.2.6. Amendment or Termination by Declarant.**

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

(b) **Minor Corrections.** Notwithstanding any other provisions of this Article, Declarant (as long as Declarant owns any portion of the Community or the Annexable Area) may unilaterally amend this Declaration, a Notice of Addition, or a Supplemental Declaration by Recording a written instrument signed by Declarant to:

(i) Conform this Declaration, a Notice of Addition or a Supplemental Declaration to the rules, regulations or requirements of FHFA, VA, FHA, DRE, Fannie Mae, Ginnie Mae, Freddie Mac, the County or City;

(ii) Amend, replace or substitute any exhibit to correct typographical or engineering errors;

(iii) Include any exhibit that was inadvertently omitted at the time of Recording;

(iv) Comply with any City, County, State, or Federal laws or regulations;

(v) Correct typographical errors in any provision of this Declaration, a Notice of Addition, or Supplemental Declaration;

(vi) Supplement this Declaration, a Notice of Addition, or a Supplemental Declaration with provisions which pertain to rights and obligations of Declarant, the Association or Owners arising under the Right to Repair Act;

(vii) Re-Phase any portion of the Community;

(viii) Change any exhibit or provision of this Declaration, a Notice of Addition, or Supplemental Declaration to conform to as-built conditions; and

(ix) Amend any provision or exhibit of this Declaration, a Notice of Addition, or Supplemental Declaration for consistency with revisions to a Condominium Plan made pursuant to Section 15.8 below

Nothing in this Section 13.2.6 may be amended or terminated without the prior written approval of Declarant until the expiration of all applicable statutes of limitation or repose for the filing of a complaint or suit or other legal remedies against Declarant or its affiliates under the Right to Repair Act (including tolling periods).

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

**13.2.8. Termination and Amendments Requiring City Approval.** Termination of the Declaration or any amendment to the Declaration that affects the City's rights

or conflicts with the Conditions of Approval shall require prior approval of the City's Director of Development Services. Written notice, including details of the proposed action and all related documents, shall be given to the City's Director of Development Services at least thirty (30) days prior to the date when approval is required and shall be deemed approved unless specifically disapproved by the City in writing within said thirty (30) day period.

#### **ARTICLE 14 GENERAL PROVISIONS**

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

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

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

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

**ARTICLE 15**  
**DECLARANT'S RIGHTS AND RESERVATIONS**

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

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

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

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

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

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

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

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

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

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

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

15.8. **POWER OF ATTORNEY.** Each Owner of a Condominium in the Community, by accepting a deed to a Condominium, shall be deemed to have:

(a) Agreed and acknowledged that neither the Owners nor the Association own any interest in the Annexable Area;

(b) Agreed and acknowledged that the Annexable Area may be developed, if at all, by Declarant in its sole and absolute discretion, in accordance with Declarant's development plans; and

(c) Constituted and irrevocably appointed Declarant, for so long as Declarant owns all or any portion of the Annexable Area, as his attorney-in-fact, for the Owner and each of the Owner's Mortgagees, optionees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, and thereby to have conveyed a power of attorney coupled with an interest to Declarant as the Owner's attorney-in-fact to prepare, execute, acknowledge and Record any instrument for all or any portion of the Annexable Area, or any amendment to or restatement of the Condominium Plan to correct errors, to conform to as-built conditions, or to bring the Condominium Plan into compliance with any City, County, State or Federal law or regulations, and to make such revisions to this Declaration, a Notice of Addition, or Supplemental Declaration, as Declarant deems to be reasonably necessary in light of the amendment or restatement of the Condominium Plan.

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

#### 15.9. **COOPERATION AND PARTICIPATION.**

15.9.1. **Notice of Transfers; Other Notices.** Until the date of expiration of all applicable statutes of limitations or repose for the filing of a complaint or suit or other legal remedies against Declarant by the Association under the Right to Repair Act (including any tolling periods), the Association shall provide Declarant with written notice of the transfer of any Condominium and all notices and other documents to which a Mortgagee is entitled pursuant to this Declaration, provided that Declarant shall not be required to make written request for such notices and other documents.

15.9.2. **Observation of Open Meetings.** In furtherance of Declarant's rights and the performance of the obligations of Declarant, the Association and Owners under the Right to Repair Act, Declarant shall have the right to observe and speak at open meetings of the Board in accordance with this Section 15.9.2.

(a) **Attendance and Limited Participation.** Commencing on the date on which Declarant no longer has a representative on the Board, and continuing until the date of expiration of all applicable statutes of limitations or repose for the filing of a complaint or suit or other legal remedies against Declarant by the Association under the Right to Repair Act (including any tolling periods):

(i) The Association shall provide Declarant with written notice of all meetings of the Board that any Owner is entitled to attend (each, an “*Open Meeting*”), as if Declarant was an Owner;

(ii) Declarant shall be entitled to have its representatives attend all Open Meetings and speak (during the Owner comment period) on matters governed by the Right to Repair Act, including maintenance and repair of Common Property and the Condominiums and Improvements thereon; and

(iii) Declarant representatives shall be entitled to receive copies of the minutes, proposed minutes and summary minutes of all Open Meetings and meetings of members, as well as copies of books, financial records, Governing Documents, or maintenance records, upon request for, and reimbursement of, the actual costs to copy and mail such materials.

(b) **Rights of Board.** Notwithstanding the foregoing, the Board shall have the unilateral right to exclude Declarant and its representatives from any Open Meeting or portion thereof, and to decline to provide Declarant or its representatives with minutes, proposed minutes or summary minutes if, in the good faith judgment of the Board, the presence of Declarant or its representatives at an Open Meeting, or delivery of minutes to Declarant or its representatives would not be in the best interest of the Association. Such determination may be made if:

(i) the presence of Declarant or its representatives at an Open Meeting or portion thereof would adversely affect the attorney-client privilege between the Association and its counsel; or

(ii) Declarant or its representatives would have access to confidential information received or developed by the Association or its consultants.

(c) **Further Limitations.** This Section creates no right in representatives of Declarant to attend executive sessions of the Board or to participate in deliberations by the Board. Declarant representatives shall attend any Open Meeting they are permitted to attend under this Section 15.9.2 in an observer capacity only, and they shall not have any right to vote on matters coming before the Board.

## 15.10. DECLARANT APPROVAL OF ACTIONS.

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

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

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

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

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

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

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

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

## **ARTICLE 16 ANNEXATION OF ADDITIONAL PROPERTY**

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

16.1. **ADDITIONS BY DECLARANT.** Declarant may add the Annexable Area to the Community and bring such added area under the general plan of this Declaration without the approval of the Association, the Board, or Owners, as long as Declarant owns any portion of the Annexable Area. No amendment may be made to this Section 16.1 without the prior written approval of Declarant until Declarant no longer owns any portion of the Community or Annexable Area. As each Phase is developed, Declarant may, with respect thereto and as the owner thereof, Record a Supplemental Declaration which may supplement this Declaration with such additional covenants, conditions, restrictions, reservations and easements as Declarant may deem appropriate for the Phase.

Notwithstanding the foregoing, if FHA is insuring any Mortgages in the Community at the time the Annexable Area is to be annexed, (a) Declarant shall obtain the prior written approval of FHA to such annexation, and (b) the quality of construction of Improvements in the Annexable Area shall be consistent with that of the Improvements in the initial Phases, and (c) the right to add the Annexable Area shall remain in effect until the later to occur of the seventh



anniversary of the Recordation of the Declaration or the fifth anniversary of the Recordation of the latest Notice of Addition.

Notwithstanding the foregoing, if VA is guaranteeing any Mortgages in the Community, the Declarant may, until the later to occur of the seventh anniversary of the Recordation of the Declaration or the fifth anniversary of Recordation of the latest Notice of Addition, add any or all of the Annexable Area to the Community and bring such Annexable Area under the general plan of this Declaration without the approval of the Association, the Board, or Owners; provided, however, that Declarant obtains the prior written approval of VA to such annexation if VA is guaranteeing any Mortgages in the Community at the time the Annexable Area is to be annexed. Until the conversion of the Class B membership to Class A, no amendment may be made to this Section 16.1 without the prior written approval of Declarant.

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

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

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

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

***[SIGNATURES ON NEXT PAGE]***

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

This Declaration is dated for identification purposes February 10, 2021

WILLIAM LYON HOMES, INC.  
a California corporation

By: 

Print Name: Bryan A. Bergeron

Title: Vice President

*Declarant*

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

STATE OF CALIFORNIA

COUNTY OF Orange

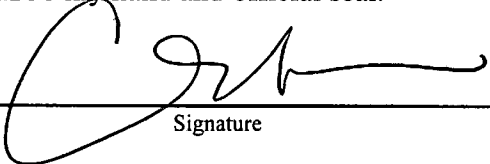
On February 10, 2021, before me, Crystal Rose Nash, Notary Public  
(here insert name and title of the officer)

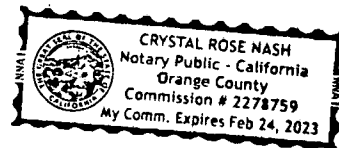
personally appeared Bryan A. Bergeron

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

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

WITNESS my hand and official seal.

  
\_\_\_\_\_  
Signature (Seal)



## **EXHIBIT A**

### **LEGAL DESCRIPTION OF ANNEXABLE AREA**

That certain real property in the City of Santee, County of San Diego, California, described as follows:

Lot 1 of Santee Tract No. 2018-01, according to Map thereof No. 16395, Filed in the Office of the County Recorder of San Diego County on May 1, 2020 as File No. 2020-7000113 of Official Records, excepting Phase 1 therefrom.

**EXHIBIT B**  
**ARTICLES OF INCORPORATION OF THE ASSOCIATION**

**ARTICLES OF INCORPORATION  
OF  
RIVERVIEW COMMUNITY ASSOCIATION**

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

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

**THREE:** The Corporation's initial agent for service of process is National Registered Agents, Inc.

**FOUR:** The Corporation's street and mailing address is 4695 MacArthur Court, 8<sup>th</sup> Floor, Newport Beach, CA 92660.

**FIVE:** The Corporation is organized and operated exclusively as a homeowner's association within the meaning of Section 23701t of the California Revenue and Taxation Code and Section 528 of the Internal Revenue Code, and it shall have and exercise any and all powers, rights and privileges which a corporation organized under the California Nonprofit Mutual Benefit Corporation Law may now or hereafter have or exercise, provided that the Corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purpose of the Corporation, which is to operate a homeowners association and to manage a common interest development under the Davis-Stirling Common Interest Development Act. The Corporation does not have a corporate office. The common interest development is near the intersection of Riverview Parkway and Town Center Parkway, Santee, California 92071-0000.

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

**SEVEN:** The Corporation has no managing agent.

The undersigned, who is the incorporator of the Corporation, has executed these Articles of Incorporation on January 20, 2021.



\_\_\_\_\_  
Yvonne Benschop, Incorporator

**EXHIBIT C**  
**BYLAWS OF THE ASSOCIATION**

**BYLAWS**  
**OF**  
**RIVERVIEW COMMUNITY ASSOCIATION**



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**BYLAWS**  
**OF**  
**RIVERVIEW COMMUNITY ASSOCIATION**

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**CERTIFICATE OF SECRETARY**

**BYLAWS**  
**OF**  
**RIVERVIEW COMMUNITY ASSOCIATION**

**ARTICLE I**  
**PLAN OF OWNERSHIP**

1.1 **DEFINITIONS AND INTERPRETATION.** Unless otherwise provided in these Bylaws, the capitalized terms used in these Bylaws have the meanings they are given in the Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Riverview (the "**Declaration**"), which was Recorded in the Official Records of the County against the Community. These Bylaws shall be interpreted in accordance with Section 1.2 of the Declaration.

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

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

**ARTICLE II**  
**BOARD OF DIRECTORS**

2.1 **NUMBER OF DIRECTORS.**

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

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

2.2 **QUALIFICATIONS FOR HOLDING OFFICE.** Each Director, except for those initially appointed by Declarant to serve as interim Directors until the first annual meeting,

must be either: (a) an individual Owner (subject to Section 2.2.4 below) who meets the candidacy and incumbency requirements in Sections 2.2.1 and 2.2.2 below; or (b) as long as Declarant owns any portion of the Community or Annexable Area, an employee or agent of Declarant (who need not be an Owner); or (c) appointed to office by exercise of the Board Appointment Right (as defined in Section 4.4.4 of the Declaration). Such appointee need not be an Owner.

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

(a) The Owner is an Owner of a Condominium within the Community at the time of nomination;

(b) Not be subject to disqualification pursuant to Section 2.2.3 below;

(c) The Owner, if elected, would not be serving on the Board at the same time as another Person who holds a joint ownership interest in the same Condominium and the other Person is either properly nominated for the current election or is an incumbent Director; and

(d) The Owner must be not more than two (2) months in arrears in the payment of any Assessments (which are consumer debts subject to validation) as of the deadline for nomination for election to the Board of Directors; provided however, that the Owner shall not be disqualified if either of the following circumstances is true:

(i) The Owner has paid the Assessment(s) under protest pursuant to California Civil Code Section 5658; or

(ii) The Owner has entered into a payment plan with the Association for such delinquent Assessment(s) pursuant to California Civil Code Section 5665.

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

(a) Remain at all times an Owner of a Condominium in the Community;

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

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

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

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

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

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

(h) Refuse any type of gain, such as money, services, products, gifts or gratuities of a significant value, as determined by a majority vote of the Directors who meet all of the required qualifications to serve as such, which gain is offered in relation to the Owner's service as a Director. In addition, the Owner must disclose such offers at an open meeting of the Board. Compensation for services duly approved by the Board and unrelated to duties as a Director or Officer of the Association, and reimbursement of expenses associated with services to the Association, do not constitute prohibited gain within the meaning of this subsection;

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

(j) Not be subject to disqualification pursuant to Section 2.2.3 below; and

(k) Not be more than two (2) months in arrears in the payment of any Assessments (which are consumer debts subject to validation); provided however, that the Owner shall not become disqualified to continue to serve on the Board if either of the following circumstances is true:

(i) The Owner has paid the Assessment(s) under protest pursuant to California Civil Code Section 5658; or

(ii) The Owner has entered into a payment plan with the Association for such delinquent Assessment(s) pursuant to California Civil Code Section 5665.

**2.2.3 Disqualification due to Criminal Conviction.** A Director must disclose any criminal convictions that may be required by the Association's fidelity bond carrier. An Owner shall be disqualified for nomination as a candidate to the Board, or, if such Owner is an incumbent Director, shall become disqualified to continue to serve on the Board, if such Owner discloses, or if the Association is aware of, or becomes aware of, a criminal conviction that would either prevent or make economically infeasible the Association's purchase of fidelity bond coverage required by California Civil Code Section 5806 or cause termination of the Association's existing fidelity bond coverage.

**2.2.4 Ownership by Legal Entity.** A Director must be a natural person. However, in accordance with California Civil Code Section 5105(b)(2), if title to a

Condominium is held by a legal entity recognized under California law ("**Entity Owner**") that is not a natural person, the governing authority of such Entity Owner shall have the power to designate in writing to the Association one (1) natural person ("**Entity Owner Representative**") to be a member for purposes of exercising the Entity Owner's voting rights attributable to such Condominium and for qualification to serve on the Board of Directors. Notwithstanding the foregoing, for such Entity Owner Representative to be qualified for nomination and election to the Board, or to remain qualified to serve on the Board (as applicable), (a) the Entity Owner Representative shall be subject to the qualification requirements of Section 2.2.3 above, and (b) the Entity Owner shall be subject to the qualification requirements of Sections 2.2.1 and 2.2.2. If the Entity Owner Representative is elected to the Board and the governing authority of the Entity Owner revokes the designation of the Entity Owner Representative in writing delivered to the Association's Board during the Entity Owner Representative's term, then the Entity Owner Representative's seat on the Board shall be deemed vacant, and the vacancy filled in accordance with Section 2.5.5 by the Board or by the Owners.

**2.2.5 Disqualification for Nonpayment of Assessments.** As provided in Sections 2.2.1 and 2.2.2 above, an Owner may be disqualified for the Board for nonpayment of Assessments in certain circumstances. However, pursuant to California Civil Code Section 5105(d), the Association may not disqualify an Owner for nonpayment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party.

**2.2.6 Limitation on Power to Disqualify Candidates.** The Association shall not disqualify an Owner from nomination as a candidate to the Board if such Owner has not been provided the opportunity to engage in internal dispute resolution pursuant to California Civil Code Section 5900, *et seq.*

## **2.3 ELECTION.**

**2.3.1 General Procedure.** On the date of the first annual meeting of the Owners, the offices of the three interim Directors shall be deemed to be vacant, and the Members of the Association (including Declarant) shall elect new Directors to fill all Board seats not filled by Declarant appointees as described below. At each annual meeting thereafter (as described in Section 4.2), new Directors shall be elected or appointed (as applicable) to fill vacancies on the Board. If an annual meeting is not held, or all vacancies on the Board are not filled at the annual meeting, vacancies may be filled in accordance with the procedure for filling vacancies set forth in Section 2.5. Pursuant to California Civil Code Section 5100(a)(2), the Association shall hold an election for a seat on the Board at the expiration of the corresponding Director's term and, in any event, at least once every four (4) years.

**2.3.2 Nomination.** The Board of Directors or a nominating committee established by the Board of Directors may propose the nomination of candidates. In addition, any Owner may nominate any other Owner or himself or herself by submitting written notice of the nomination to the Board or its nominating committee (if one is formed). The Association shall provide general notice of the procedure and deadline for submitting a nomination at least thirty (30) days before any deadline for submitting a nomination. Individual notice shall be delivered pursuant to California Civil Code Section 4040 if individual notice is requested by a member.

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

2.3.4 **Special Election Requirement.** So long as either (a) Declarant is entitled to exercise its Board Appointment Right (as described in the Declaration), or (b) Declarant is entitled to exercise a majority of the Association's voting power, at least one (1) of the members of the Board must be elected solely by the votes of Owners other than Declarant. Furthermore, until expiration of the Board Appointment Right, Declarant shall not cast any Class A or Class B vote to elect any Director.

2.4 **TERM OF OFFICE.** Each Director shall hold office until the earlier to occur of (a) the end of the Director's term of office after a successor has been elected, or (b) his death, resignation, removal or judicial adjudication of mental incompetence. At the first annual meeting, and at any future election in which all Board seats are to be filled, the term of office of the two (2) Directors receiving the highest number of votes shall be three (3) years and the term of office of the Director receiving the next highest number of votes shall be two (2) years. At the first annual meeting, Directors who are appointed by exercise of Declarant's Board Appointment Right shall be deemed to have received the highest number of votes and therefore they shall occupy the seats with three (3)-year terms of office. Thereafter, new Directors shall be elected or appointed to fill any vacancies.

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

2.4.1 **Term for Appointee Directors.** Notwithstanding anything in these Bylaws to the contrary, all Directors appointed at any time by exercise of the Board Appointment Right shall serve until the earliest to occur of:

- (a) Removal of the Director by Declarant;
- (b) The date of the appointed Director's death, resignation from employment by Declarant or termination of employment by Declarant or resignation from the Board of Directors; or
- (c) The expiration of the Director's term of office; or
- (d) The date that is three (3) years after the date on which the Board Appointment Right expires; or

(e) The date on which Declarant no longer owns any portion of the Community or Annexable Area.

## 2.5 VACANCIES.

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

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

2.5.3 **Declared Vacancies.** The Board by majority vote of Directors who meet all of the requirements for incumbent Directors in Sections 2.2.2 and 2.2.3 above, and any Directors who are agents or employees of Declarant, may declare vacant one or more Director seats for cause pursuant to Section 2.6.3 below.

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

2.5.5 **Replacement.** Vacancies in elected seats on the Board caused by death, resignation, or any other reason besides the removal of a Director by the Board or by the Owners may be filled by either (a) a vote of a majority of the remaining Directors, even though they may constitute less than a quorum, or (b) by vote of the Owners. Any vacancy caused by the removal of a Director must be filled by a vote of the Owners. Provided, however, that notwithstanding the foregoing or anything else to the contrary in these Bylaws, vacancies arising for any reason in the seats of any Directors who are serving as agents of Declarant may be filled solely by Declarant while the Board Appointment Right is in effect. If the vacancy occurs after the Board Appointment Right has expired, then Declarant has the right to fill the vacancy with an appointee to serve the unserved remainder of the term, until the earliest to occur of:

- (a) The date on which the unserved remainder of the term expires;
- or
- (b) The date that is three (3) years after the date on which the Board Appointment Right expires;



(c) The date on which Declarant no longer owns any portion of the Community or Annexable Area; or

(d) The date on which Declarant delivers written notice to the Board that it has waived its right to appoint a replacement for the departing appointee.

## 2.6 REMOVAL OF DIRECTORS.

2.6.1 **Generally.** At any meeting of the Owners, any individual Director or the entire Board may be removed before the expiration of their terms of office with or without cause as follows: (a) as long as fewer than fifty (50) Condominiums are included in the Community, by the vote of Owners representing a majority of the Association's total voting power (including votes attributable to Declarant), and (b) once fifty (50) or more Condominiums are included in the Community, by the vote of Owners representing a majority of a quorum of Owners.

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

2.6.2 **Restrictions on Removal Powers.** Notwithstanding anything in these Bylaws to the contrary concerning the removal of Directors, any Director elected to office solely by the votes of Owners other than Declarant pursuant to Section 2.3.4 may be removed only by the vote of at least a simple majority of the Association's voting power represented by Owners other than Declarant, or by the Board pursuant to Section 2.6.3. Any Director appointed by Declarant may only be removed by Declarant, and the vacancy filled only by a Director appointed by Declarant, or elected by the votes of Declarant (as applicable) until the earlier of:

(a) The date that is three (3) years after the date on which the Board Appointment Right expires; or

(b) The date on which Declarant no longer owns any portion of the Community or Annexable Area.

2.6.3 **Removal by Board for Failure to Qualify.** Except as provided in Section 2.6.2, the Board by a majority vote of the Directors who meet the applicable qualifications to serve as a Director in Section 2.2 above, may declare vacant the office of any Director who was not appointed by Declarant or elected by the votes of Declarant if the Director fails or ceases to meet any one or more of the qualifications then applicable to the Director under Section 2.2 above. Provided, however, that so long as Declarant owns any portion of the Community or Annexable Area, any such Directors who are agents or employees of Declarant may only be removed by Declarant.

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

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

2.8.1 **Conduct of Meeting; Attendees.** Any meeting of the Board may be conducted by teleconference at which a majority of the Directors are connected by electronic means, through audio or video or both, with at least one physical location so that the Members may attend and at least one Director, or other person designated by the Board, is present at that location, and so long as the requirements for attendance and participation of Directors and Members at the meeting under California Civil Code Section 4090 and the California Corporations Code are met. In these cases, all Directors who participate in a meeting by any of these methods will be deemed to be present in person at the meeting.

2.8.2 **Regular Meetings.**

(a) **Time and Place.** Regular meetings may be held at such time and place fixed from time to time by resolution adopted by a majority of a quorum of the Directors. There is no common meeting room in the Community. Therefore, the meeting place shall ordinarily be as near as possible to the Community, but the Board may elect to hold a meeting at the Manager's corporate offices if such location is determined to be reasonable in the Board's business judgment.

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

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

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

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

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

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

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

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

**2.8.9 Waiver of Notice.** Before or after any meeting of the Board, any Director may, in writing, waive personal notice of such meeting. Attendance by a Director at any Board meeting waives the requirement of personal notice. If all Directors are present at a Board meeting, no notice to Directors is required and any business may be transacted at such meeting. The transactions of any Board meeting however called and noticed or wherever held, are valid as though had at a meeting duly held after regular call and notice, if (a) a quorum is present, (b) notice to the Owners of such meeting was posted as provided in Sections 2.8.2 and 2.8.3, and (c) either before or after the meeting, each of the Directors not present signs a written waiver of notice, a consent to holding such meeting, or an approval of the minutes thereof. The Secretary shall file all such waivers, consents and approvals with the Association's records or make them a part of the minutes of the meeting.

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

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

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

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

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

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

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

2.10.5 **Obtaining Goods and Services.** Subject to the limitations on contracts set forth in Section 2.11.3 below, the power to contract for goods and services for the Association Property or for the Association, including (a) contracts for maintenance, landscaping and common utilities services, (b) contracts for materials and supplies necessary for the operation and maintenance of the Association Property, (c) contracts to obtain the services of personnel necessary to operate and manage the Community, including management, legal and accounting services, and (d) contracts to pay the cost of construction, maintenance, repair, removal and replacement of Improvements on the Association Property.

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

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

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

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

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

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

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

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

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

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

2.10.16 **Principal Office, Place of Meetings, Seal.** The power but not the duty to move the Association's principal office from one location to another in the County; to designate any place in the County for holding any meetings of Owners consistent with the provisions of Section 4.2.4; and to adopt and use a corporate seal and to alter the form of such seal.

2.10.17 **Rules for Elections; Inspector of Elections.** The power and duty to adopt rules governing elections in accordance with the procedures prescribed in California Civil Code Section 5105, and the power and duty to select an independent inspector of election in accordance with California Civil Code Section 5110. In accordance with California Civil Code Section 5105(h), election rules adopted pursuant to California Civil Code Section 5105 shall not be amended less than ninety (90) days prior to an election.

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

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

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

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

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

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

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

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

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

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

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

(vii) A contract reviewed by DRE.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) A general statement setting forth the procedures used by the Board in calculating and establishing reserves to defray the costs of repair and replacement of, or



additions to, major components of the Association Property and facilities for which the Association is responsible.

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

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

- (a) A balance sheet as of the end of the Fiscal Year.
- (b) An operating (income) statement for the Fiscal Year.
- (c) A statement of changes in financial position for the Fiscal Year.
- (d) Any information required to be reported under California Corporations Code Section 8322.
- (e) For any Fiscal Year in which the Association's gross income exceeds Seventy Five Thousand Dollars (\$75,000), a copy of a review of the annual report prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy.
- (f) A statement of the place where the names and addresses of the current Owners are located.

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

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

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

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

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

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

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

2.12.5 **Assessment and Foreclosure Notice.**

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

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

## **“NOTICE ASSESSMENTS AND FORECLOSURE**

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

### **ASSESSMENTS AND FORECLOSURE**

Assessments become delinquent 15 days after they are due, unless the governing documents provide for a longer time. The failure to pay association assessments may result in the loss of an owner's property through foreclosure. Foreclosure may occur either as a result of a court action, known as judicial foreclosure, or without court action, often referred to as nonjudicial foreclosure. For liens recorded on and after January 1, 2006, an association may not use judicial or nonjudicial foreclosure to enforce that lien if the amount of the delinquent assessments or dues, exclusive of any accelerated assessments, late charges, fees, attorney's fees, interest, and costs of collection, is less than one thousand eight hundred dollars (\$1,800). For delinquent assessments or dues in excess of one thousand eight hundred dollars (\$1,800) or more than 12 months delinquent, an association may use judicial or nonjudicial foreclosure subject to the conditions set forth in Article 3 (commencing with Section 5700) of Chapter 8 of Part 5 of Division 4 of the Civil Code. When using judicial or nonjudicial foreclosure, the association records a lien on the owner's property. The owner's property may be sold to satisfy the lien if the amounts secured by the lien are not paid. (Sections 5700 through 5720 of the Civil Code, inclusive)

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

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

the requirements are the responsibility of the association. (Section 5675 of the Civil Code)

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

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

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

#### **PAYMENTS**

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

An owner may, but is not obligated to, pay under protest any disputed charge or sum levied by the association, including, but not limited to, an assessment, fine, penalty, late fee, collection cost, or monetary penalty imposed as a disciplinary measure, and by so doing, specifically reserve the right to contest the disputed charge or sum in court or otherwise.

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

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

### MEETINGS AND PAYMENT PLANS

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

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

2.12.6 **Accounts.** On at least a monthly basis, the Board shall: (a) cause to be completed and review a current reconciliation of the Association's operating and reserve accounts, (b) review the current Fiscal Year's actual operating revenues and expenses compared to the current year's Budget, (c) review the latest account statements prepared by the financial institutions where the Association keeps its operating and reserve accounts, (d) review an income and expense statement for the Association's operating and reserve accounts, (e) review the check register, monthly general ledger, and delinquent Assessment receivable reports, and (f) fulfill any additional duties established by California Civil Code Section 5500. The signatures of two (2) Directors are required for the withdrawal of money from the Association's reserve accounts, and notwithstanding anything to the contrary in the Governing Documents, transfers of greater than ten thousand dollars (\$10,000.00) or five percent (5%) of the Association's total combined reserve and operating account deposits, whichever is lower, shall not be authorized without the prior written approval of the Board. As used in this Subsection, the term "reserve accounts" means Budgeted funds that the Board has designated for use to defray the future repair and replacement of, or additions to, those major components of the Association Property which the Association is obligated to maintain. Provided, however, that if the Board meets less frequently than monthly, the monthly review requirements of this Section may be met when every Director, or a subcommittee of the Board consisting of the Treasurer/Chief Financial Officer and at least one (1) other Director, reviews the materials specified in this Section independent of a Board meeting, so long as the review(s) are ratified at the Board meeting subsequent to the review(s), and the ratification is reflected in the minutes of the Board meeting.

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

### **ARTICLE III OFFICERS**

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

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

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

3.4 **COMPENSATION.** No officer may receive any compensation for services performed in the conduct of the Association's business unless such compensation is approved by the vote or written consent of Owners representing at least a majority of the Association's voting power; however (a) nothing in these Bylaws precludes any officer from serving the Association in some other capacity and receiving compensation therefor, and (b) any officer may be reimbursed for actual expenses incurred in the performance of Association duties. Appointment of any officer does not create contractual rights of compensation for services performed by such officer. No officer, employee or director of Declarant or any affiliate of Declarant may receive any compensation for service as an officer of the Association.

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

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

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

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

## **ARTICLE IV OWNERS**

### **4.1 OWNER VOTING RIGHTS.**

4.1.1 **Classes of Membership.** The Association has two (2) classes of Membership, as described in the Declaration. The Class A and Class B Memberships are voting Memberships. However, the Declarant's Board Appointment Right is to be exercised solely for the appointment of Directors in accordance with these Bylaws and the Declaration. Until the expiration of Declarant's Board Appointment Right, Declarant shall not cast any Class A or Class B vote to elect any Director.

4.1.2 **Interpretation.** Any provision of the Bylaws which requires the vote or written consent of a specified percentage of the Association's voting power (i.e., actions requiring more than merely the vote or written consent of a majority of a quorum), requires the approval of such specified percentage of all of the following: (a) the Class A Membership; (b) the Class B Membership (so long as a Class B Membership exists); (c) the Association's total voting power; and (d) the voting power represented by Owners other than Declarant. Whenever a reference is made in these Bylaws or the Declaration to the Association's voting power, it is a reference to the voting power of the Class A and Class B Memberships, and not to the Board Appointment Right of Declarant.

## 4.2 OWNER MEETINGS.

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

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

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

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

4.2.5 **Adjourned Meetings.** If a quorum is not present at the time and place established for a meeting, a majority of the Owners who are present, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days after the original meeting date, at which meeting the quorum requirement is the presence in person or by proxy of Owners holding at least twenty-five percent (25%) of the Association's voting power. Such an adjourned meeting may be held without the notice required by these Bylaws if notice thereof is given by announcement at the meeting at which such adjournment is taken.

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

4.2.7 **Minutes, Presumption of Notice.** Minutes or a similar record of the proceedings of meetings of Owners, when signed by the President or Secretary, shall be presumed truthfully to evidence the matters described therein. A recitation in the minutes



executed by the Secretary that proper notice of the meeting was given constitutes prima facie evidence that such notice was given.

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

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

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

4.2.11 **Proxies.** Votes may be cast in person or by proxy. Proxies must be in writing, comply in form with the requirements of California Civil Code Section 5130, and be filed with the Secretary in advance of each meeting. Every proxy is revocable and automatically ceases to have any further legal effect after completion of the meeting for which the proxy was filed. Any form of proxy or written ballot distributed by any Person to the Owners must afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted on, except it is not mandatory that a candidate for election to the Board be named in the proxy or written ballot. The proxy or written ballot must provide that, when the Owner specifies a choice, the vote shall be cast in accordance with that choice. The proxy must also identify the person authorized to exercise the proxy and the length of time it will be valid. No proxy is valid concerning a vote on any matter described in California Corporations Code Section 7613(g) unless the general nature of the proposal was described in the proxy.

4.2.12 **Notice.** The Secretary shall send to each Owner of record, and to each first Mortgagee who has filed a written request for notice with the Secretary, a notice of each annual or special meeting. The notice must be sent by first-class mail, at least ten (10) but not more than forty-five (45) days before the meeting. The notice must state the purpose for the meeting as well as the day, hour and place where it is to be held. The notice may establish time

limits for speakers and nominating procedures for the meeting. The notice must specify those matters the Board intends to present for action by the Owners, but, except as otherwise provided by law, any proper matter may be presented for action at the meeting. The notice of any meeting at which Directors are to be elected must include the names of all nominees when the notice is given to the Owners. The mailing of a notice, postage prepaid, in the manner provided in this Section, shall be considered notice served, forty-eight (48) hours after the notice has been deposited in a regular depository of the United States mail. Such notice must be posted in a conspicuous place on the Association Property and is deemed served on an Owner on posting if no address for such Owner has been then furnished the Secretary.

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

**4.2.14 Matters Requiring Secret Ballot.** Notwithstanding any other law or provision of the Governing Documents, an election regarding Assessments, selection of Board members, amendments to the Governing Documents, or the grant of exclusive use of Association Property under California Civil Code Section 4600, shall be held by secret ballot according to the procedures set forth in California Civil Code Section 5100 *et seq.*, and Section 2.3.3 above. The Association shall provide general notice in accordance with California Civil Code Section 5115(b) at least thirty (30) days before the ballots are distributed.

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

**4.4 ACTION WITHOUT MEETING.** Except for election of Directors, any action which may be taken at a meeting of the Owners may be taken without a meeting by written ballot of the Owners, according to the provisions of California Civil Code Section 5115 and California Corporations Code Section 7513. Solicitations for ballots must specify (a) the number of responses needed to meet the quorum requirements, (b) the percentage of approvals necessary to approve the action, and (c) the time by which ballots must be received to be counted. The form of written ballot must afford an opportunity to specify a choice between approval and disapproval of each matter and must provide that, where the Owner specifies a choice, the vote shall be cast in accordance therewith. Receipt within the time period specified in the solicitation

of (1) ballots which equal or exceed the quorum which would be required if the action were taken at a meeting, and (2) approvals which equal or exceed the number of votes which would be required for approval if the action were taken at a meeting at which the total number of votes cast was the same as the total number of ballots cast, constitutes approval by written ballot.

## **ARTICLE V AMENDMENTS**

These Bylaws may be amended by the vote or written consent of Owners representing at least (a) a majority of the voting power of each class of the Owners, and (b) a majority of the Association's voting power represented by Owners other than Declarant; provided that the specified percentage of each class of Owners necessary to amend a specific provision of these Bylaws may not be less than the percentage of affirmative votes prescribed for action to be taken under that provision. These Bylaws may be amended by a majority of the entire Board, (1) at any time before the Close of Escrow for the sale of the first Condominium, or (2) if the amendment is within the Board's power to adopt without Owner approval pursuant to the California Corporations Code and either (a) the proposed amendment conforms the Bylaws to California law or the requirements of DRE, FHFA, FHA, VA, Fannie Mae, Ginnie Mae or Freddie Mac, or (b) the proposed amendment corrects a typographical error in the Bylaws. Any amendment to these Bylaws which materially affects the rights of Mortgagees as described in Article 11 or Section 13.2 of the Declaration must be approved by at least the percentage of Mortgagees specified in the applicable provision of Article 11 or Section 13.2 of the Declaration. If an amendment to these Bylaws materially affects matters listed in both Article 11 and Section 13.2 of the Declaration, then the amendment must be approved pursuant to the requirements of both Article 11 and Section 13.2 of the Declaration. Notwithstanding anything to the contrary in these Bylaws or in the other Governing Documents of the Association, during the term of Declarant's Board Appointment Right (described in Section 2.3.1 above), no amendment concerning the Board Appointment Right shall be effective without the prior written consent of the Declarant, which consent it may withhold in its sole discretion.

## **ARTICLE VI MISCELLANEOUS**

**6.1 RELINQUISHMENT OF CONTROL OVER INITIATION OF RIGHT TO REPAIR ACT CLAIM.** Beginning on the date of the first annual meeting of the Owners, Declarant relinquishes control over the Association's ability to decide whether to initiate a Right to Repair Act Claim. This means that Declarant and Directors who are current employees or agents of Declarant or elected by a majority of votes cast by Declarant whether appointed by exercise of Declarant's Board Appointment Right or elected by a majority of votes cast by Declarant and all other Persons whose vote or written consent is inconsistent with the intent of the preceding sentence, are prohibited from participating and voting in any decision of the Association Board or Owners to initiate a Right to Repair Act Claim.

**6.2 CHECKS, DRAFTS AND DOCUMENTS.** All checks, drafts, orders for payment of money, notes and other evidences of indebtedness issued in the name of or payable to the Association must be signed or endorsed in the manner and by the person or persons the

Board designates by resolution, subject to the requirements of Section 2.12.6 for withdrawing money from the Association's reserve accounts.

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

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

**6.5 AVAILABILITY OF ASSOCIATION DOCUMENTS.**

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

**6.5.2 Inspection Rights.** Subject to reasonable Rules and Regulations adopted from time to time by the Board, the Association shall make Association Documents available for the time periods and within the timeframes provided in California Civil Code Sections 5210 (a) and (b) for inspection and copying by an Association member, or the member's designated representative. The Association may bill the requesting member for the direct and actual cost of copying requested documents. The Association shall inform the member of the amount of the copying costs before copying the requested documents. The Association shall permit Association members to verify the accuracy of their individual information on the candidate registration list and voter list maintained pursuant to California Civil Code Section 5105(a)(7) at least thirty (30) days before election ballots are distributed.

**6.5.3 Manner of Inspection.** The Association shall make the specified Association Documents available for inspection and copying in compliance with California Civil Code Sections 5205 and 5215. The inspection and copying rights provided in these Bylaws are subject to the rights and restrictions set forth in California Civil Code Sections 5200, *et seq.*

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

**6.5.5 Distribution of Records on Sale or Transfer of Title.** No later than ten (10) days after the Association receives written request from any Owner, the Association

shall provide to that Owner a copy of each of the documents listed in California Civil Code Section 4525 that have been requested by the Owner.

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

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

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

## ARTICLE VII NOTICE AND HEARING PROCEDURE

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

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

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

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

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

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

The date for the hearing may be not less than fifteen (15) days after the date the notice of hearing is mailed or delivered to the Respondent. The Respondent is entitled to attend the

hearing, submit a statement of defense to the Board in advance of the hearing, or present a statement of defense and supporting witnesses at the hearing. If the Respondent does not attend the hearing, the Respondent waives these rights.

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

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

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

***[CERTIFICATE OF SECRETARY ON NEXT PAGE]***

**CERTIFICATE OF SECRETARY**

I, the undersigned, certify that:

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

2. The foregoing Bylaws comprising 32 pages (including the title page, table of contents and this page) constitute the Bylaws of the Association duly adopted by the Association Board of Directors on \_\_\_\_\_, 202\_\_.

I have signed this Certificate and affixed the seal of the Association effective on \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
\_\_\_\_\_, Secretary

(SEAL)

**EXHIBIT D**

**SPECIFIC MAINTENANCE OBLIGATIONS**

COMPONENT	OWNER	ASSOCIATION
<b>Roof, Structural Integrity of Condominium Building</b>		
Roof	N/A	Maintain per schedule.
Foundation	N/A	Maintain per schedule.
Internal Structural Components of Condominium Building	N/A	Maintain per schedule, including any fire assembly and noise mitigation measures between Unit (does not include any noise mitigating floor covering materials installed in the Unit).
<b>Outer Surface of Condominium Building Walls</b>		
Stucco/Stone/Veneer	N/A	Maintain per schedule.
Siding/Pot Shelves/Ornaments	N/A	Maintain per schedule.
Surface Finishes	N/A	Maintain per schedule.
<b>Garage Door</b>	Maintain door. Maintain indoor surface. Maintain door opener and hardware. Replace when necessary with door of identical design to that originally installed by or as approved in writing by the Committee	Maintain exterior paint per schedule.
<b>Residence Entry Doors/Windows</b>		
Entry Door Hardware	Maintain locks, handle hardware, hinges and openers (as applicable).	N/A
Entry Door Frame	N/A	Maintain per schedule.
Entry Door Weatherstripping	Maintain.	N/A
Replacement of Entry Door	Replace when necessary with door of identical design to that originally installed by or as approved in writing by the Committee.	N/A
Entry Door - Exterior Surface/Outdoor Paint or Other Finish	Touch up with same color and material if necessary between Association maintenance.	If door is not factory-prefinished, then maintain exterior surface paint or finish per Condominium Building paint and finish schedule.



COMPONENT	OWNER	ASSOCIATION
Indoor Paint or Other Finish	Maintain.	N/A
Windows (except sliding glass doors)	<p>Maintain and regularly clean indoor and outdoor surfaces of glass. Maintain weather-stripping, caulking, locks, screens, and replace broken glass.</p> <p>Replacement glass must be same as originally installed or Association-approved equivalent, and have same noise and fire rating.</p>	Maintain frame per schedule.
<b>Exclusive Use Areas</b>		
Deck	<p>Sweep floor surface regularly; keep free of standing water; keep scuppers, down spouts (if safely accessible from deck) and deck surface free of debris and trash. Periodically inspect the deck surface for evidence of leaks or penetration in the deck's waterproof membrane and promptly notify the Association of any leaks or penetration. Do not place any personal property (e.g., flower pots, wet towels, laundry, rugs, athletic equipment or other personal or household items) on or over a deck railing.</p>	<p>Deck surfaces and interior structural components of deck, and railing/wall are part of Condominium Building maintained by the Association. Maintain surface membrane (if any) per schedule. Maintain railing/wall, surface finishes, and all interior and exterior trim and structural components of deck. Maintain scuppers and down spouts. Maintain associated waterproofing systems.</p>
Sliding Glass Doors at Deck	<p>Maintain and regularly clean indoor and outdoor surfaces of glass. Maintain weather-stripping, rollers, caulking, locks, screen doors (including screen, frame and lock) and replace broken glass. Keep track clear of obstructions.</p> <p>Replacement glass must be same as originally installed by Declarant or Association-approved equivalent, and have same noise and fire rating.</p> <p>Maintain frame as necessary to prevent water intrusion.</p>	N/A
Air Conditioning Compressor Pad and related equipment mounted on	Maintain compressor, pad and related equipment. Maintain	Maintain all HVAC components that serve two or more Units

COMPONENT	OWNER	ASSOCIATION
Condominium Building roof serving individual Unit.	ductwork to Unit and any in the Unit airspace (including any above drop ceilings). All work to be performed outside Unit airspace (including without limitation work involving ducts or chases) shall be performed by Association-approved contractor. Compressor may not be re-located from original installation site without obtaining the prior written approval of the Committee in accordance with Article 5 of the Declaration.	
<b>Telephone wiring exclusively serving a Unit.</b>	Maintain.	N/A
<b>Utility Service</b>	Maintain gas lines not serviced by Gas Company or Association and water and electrical utilities not serviced by provider or Association.	Maintain all utilities serving Association Property or more than one Unit
<b>Interior of Unit</b>		
Unit systems – Water pressure regulator, water heater, plumbing outlets and fixtures, furnaces, ducts, built-in appliances (microwave, range, ovens), electrical wiring and circuit breakers.	Maintain systems and appliances in the Owner’s Unit; but see also “Plumbing” below.	N/A
Forced-air heater in Unit	Maintain heater and all ductwork inside the Unit	N/A
Indoor floor coverings	Maintain; Committee to pre-approve in writing replacement floorings and noise mitigating underlayments.	N/A
Indoor wall surfaces and ceiling	Maintain surface, including paint and other wall coverings, and patch and repair damage to drywall. No removal or replacement of drywall or ceiling without prior written approval of Committee.  Between-room walls or partitions in the Unit boundaries that are not necessary for structural	Maintain shear walls, fire assembly and any noise mitigation measures installed between walls in the Condominium Building. Interior structural components of indoor walls between adjoining Units, walls that are necessary for structural support of the Condominium Building, and the ceilings are Association Property.

COMPONENT	OWNER	ASSOCIATION
	<p>support of the Condominium Building are maintained by the Owners. Modifications may be made with prior written consent of the Committee.</p> <p>The interior structural components of walls between adjacent Units are part of the Association Property maintained by the Association.</p>	
Plumbing	<p>Immediately report water leaks, supply line leaks, sewer backups and overflowing tubs, toilets and sinks to the Association. Maintain in-Unit plumbing fixtures, including sinks, toilets, bath, shower, faucets, supply lines, sink hardware, and drain lines for washing machine and dishwasher and gas line and vent line (if any) for dryer. Owners and tenants must regularly inspect water supply lines/hoses connected to washing machine, toilets, faucets and dishwasher for leaks and replace when necessary at Owner's expense. Do not leave running faucets or running/leaking toilets unattended. Owners are also responsible for removing blockages from all drains and sewer lines serving the Unit through laterals to the main line. Owners are responsible for damage to the Unit, to other Units and to Association Property to extent caused by Owner or tenant failure to prevent or stop leaks or overflows in the Unit and for damage caused by negligent plumbing repairs by or on behalf of Owner, wherever located. Residents who plan to leave the Unit unoccupied for more than 24 hours should shut off water supplies to fixtures and appliances to prevent leaks during their</p>	Maintain pipes and other fixtures serving more than one Unit and Association Property.

COMPONENT	OWNER	ASSOCIATION
	absence. Owners are encouraged to hire qualified plumbers for all plumbing work, but are required to hire qualified plumbers to perform all work outside the Unit airspace. Plumbers hired by Owners must be approved by the Association.	
Cabinets	Maintain.	N/A
Interior doors and hardware	Maintain.	N/A
Appliances	Maintain.	N/A
Electrical	Maintain outlets and switch wiring and distribution exclusively serving the Unit wherever located. Owner shall hire qualified electrical contractor approved by the Association for all electrical maintenance work.	Maintain wiring and distribution equipment serving more than one Unit.
Fire Sprinklers	Keep heads free of dust and debris. Do not obstruct heads nor expose them to open flame or high heat sources. Do not disable heads. Immediately report to Association any damage, leak or malfunction. Cooperate with Association and its contractors in regular inspections and pressure testing.	Maintain per schedule the pipes, valve, pressure gauges. Test all systems per schedule.
Carbon Monoxide Detectors/Smoke Detectors/Fire-Life Safety Systems	Maintain (including periodic testing and battery replacement). Report malfunction to servicer specified in Maintenance Guidelines. Keep free of dust; do not disable.	N/A
Fireplaces (if any)	Maintain firebox and gas line in Unit.	Maintain duct/flue per schedule.
Water Utility Submeter	Maintain submeter. Owner responsible for cost of replacement or repair or damage caused by Owner or Owner's Family, tenants or guest.	If Owner fails to maintain submeter, Association shall have the power to perform required maintenance and charge the cost thereof to the Owner as a Special Assessment in addition to any other remedies available under law.

COMPONENT	OWNER	ASSOCIATION
<b>Outdoor Lighting Fixtures</b>		
Controlled by switch in Unit or separately metered to Unit.	Relamp as necessary.	Maintain fixtures per schedule and wiring.
Controlled by photocell, timer or switch in Association Property	N/A	Maintain fixtures, timer/photocell and wiring per schedule; relamp as necessary.
<b>Other</b>		
Mailbox	Replace lost key or broken lock as necessary.	Maintain per schedule.
Implementation of BMPs	Perform BMPs applicable to Condominiums, if any, as described in Section 2.1.6.	Perform BMPs applicable to Association Property as described in Water Quality Management Plan and Section 2.1.6.
Private Street Improvements, Landscaping, perimeter fencing.	N/A	Maintain streets and landscaping per schedule. Maintain perimeter fencing per schedule.
Common Amenities including swimming pool and bathrooms.	N/A	Maintain per schedule

**NOTES:**

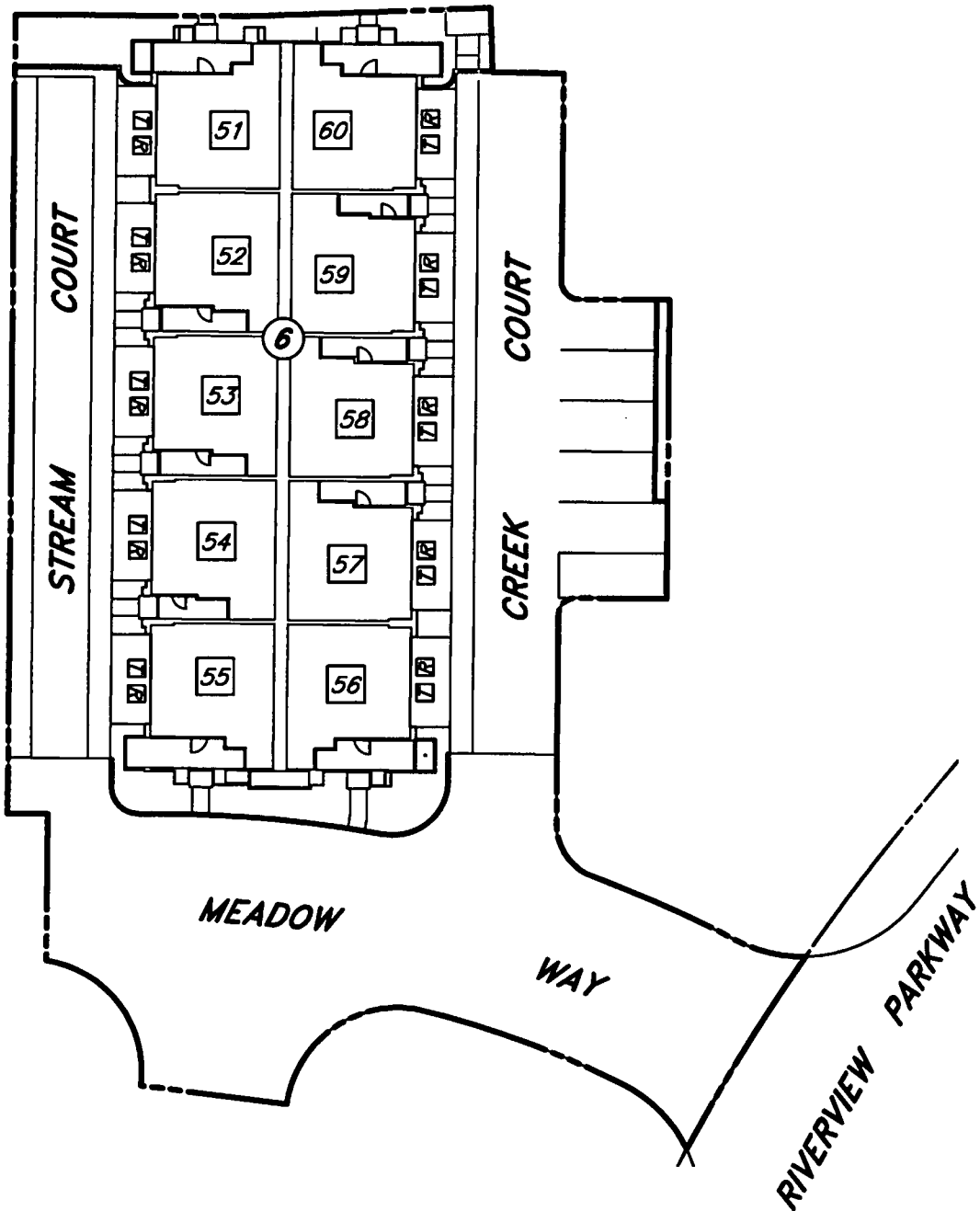
Maintain, capitalized or not, means "maintain, repair and replace." Notwithstanding anything in the Declaration or this exhibit to the contrary, all maintenance by Owners must at least conform to the recommendations in the Maintenance Guidelines. If any maintenance item in Association Property is not specifically assigned to individual Owners, it will be the responsibility of the Association.

This exhibit is not intended to be an exhaustive list of Association maintenance obligations; it is intended to supplement relevant provisions of the Declaration, the applicable Notice of Addition or Supplemental Declaration, the Maintenance Guidelines, and the Association's latest adopted budget.

The phrase "per schedule," when used in connection with Association maintenance obligations, shall mean and refer to maintenance levels and frequencies in the latest adopted Budget; provided, however, that the Association shall not permit any required maintenance to fall below the levels specified in the Maintenance Guidelines (if any are specified for the Improvement). If a particular maintained Improvement requires replacement before the end of its expected life, the Association may bill the Owner responsible for any damage beyond normal wear and tear that is caused by the Owner.

**EXHIBIT E**  
**DESIGNATED TRASH PICKUP LOCATIONS**

**RIVERVIEW AT TOWN CENTER,  
PORTION OF LOT 1 MAP 16395  
PHASE 1 - TRASH PICKUP LOCATIONS**



**LEGEND**

51

UNIT NO.

PHASE BOUNDARY

6

BUILDING NO.

T

COLLECTION AREA FOR TRASH CONTAINERS

R

COLLECTION AREA FOR RECYCLING CONTAINERS

**NOTE**

THIS DEPICTION IS FOR ILLUSTRATION PURPOSES ONLY AND  
ACTUAL AS-BUILT CONDITION WILL CONTROL.



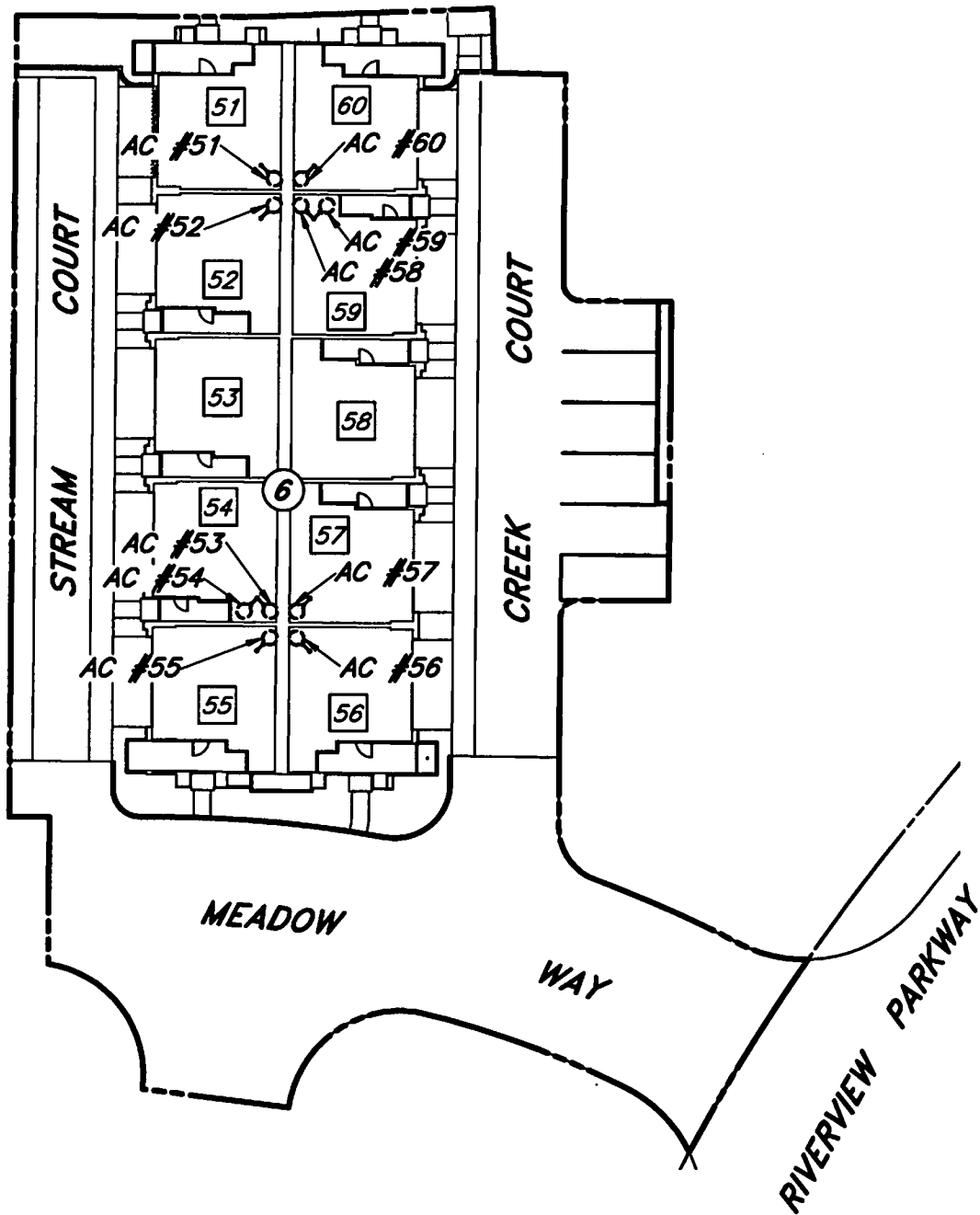
**SB&O** INC.  
PLANNING ENGINEERING SURVEYING

**EXHIBIT F**

**APPROXIMATE LOCATIONS OF EXCLUSIVE USE AREAS FOR PLACEMENT AND  
MAINTENANCE OF AIR CONDITIONER COMPRESSOR AND COMPRESSOR PADS  
IN PHASE 1**



**RIVERVIEW AT TOWN CENTER,  
PORTION OF LOT 1 MAP 16395  
PHASE 1 - AC PAD EXCLUSIVE USE AREAS**



**LEGEND**



UNIT NO.



BUILDING NO.



AC PAD (AC #)  
AC PAD EXCLUSIVE USE AREAS

**NOTE**

THIS DEPICTION IS FOR ILLUSTRATION PURPOSES ONLY AND  
ACTUAL AS-BUILT CONDITION WILL CONTROL.



**SB&O** INC.  
PLANNING ENGINEERING SURVEYING