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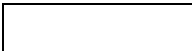
*First American Title*

1355 Willey Way  
Concord, Ca 9620  
Attn; Cathy White

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR QUIET HARBOR

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EXHIBITS

A	Description of Property
B	Phase I Condominium Plan
C	Offsite Maintenance Easement
D	Schedule of Ownership Interests
E	Repair, Maintenance and Replacement Responsibility
F	First Year Assessments

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DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS  
FOR QUIET HARBOR

This Declaration is made as of the 11th day of November, 1988 by CENTEX REAL ESTATE CORPORATION, hereinafter referred to as "Declarant," with reference to the following facts:

RECITALS

A. Declarant is the Owner of certain real property (referred to as the "Property") in the City of Vallejo, County of Solano, which is described in Exhibit A attached hereto and made a part hereof.

B. Declarant intends to improve the Property in nine phases as a Condominium Development and to construct thereon a total of 160 Condominiums if the Property is fully developed.

C. The first phase (referred to as "Phase 1") is that portion of the Property shown as Lots 1, 2, 19, 20, C, D, E, I, K, Y, 3B, & II on the subdivision map described in Section 1.26. Phase 1 is also shown on the Condominium Plan, as defined in Section 1.12, a copy of which is attached as Exhibit B. Declarant intends to improve Phase 1 by constructing thereon condominiums and other improvements, as shown on the Condominium Plan.

D. Declarant intends by this Declaration to subject Phase 1 and the ownership thereof to certain limitations, covenants, conditions, restrictions, easements, liens, charges, assessments and equitable servitudes hereinafter set forth for the benefit of all the Property and future owners thereof, and to subject Phase 1 and ownership thereof to the provisions of the Civil Code of the State of California pertaining to condominium ownership of real property.

E. Declarant deems it desirable for the management and administration of the condominium development and for the preservation of the values and amenities of the condominium development to incorporate the Quiet Harbor Homeowners Association as a nonprofit mutual benefit corporation under the laws of the State of California for the purposes of administering and enforcing the imitations, covenants, conditions, restrictions, easements, liens and equitable servitudes created by or imposed in accordance with the provisions hereof, collecting and disbursing the assessments and charges imposed in accordance with the provisions hereof, and exercising such other powers as may be authorized by this Declaration, by law, or by its Articles of Incorporation and Bylaws.

NOW, THEREFORE, Declarant hereby declares as follows:

ARTICLE 1  
DEFINITIONS

The following terms shall have the following meanings when used in this Declaration:

1.01. Act. "Act" means Title 6, Sections 1350 through 1372, inclusive, of the Civil Code of California, entitled "Common Interest Developments," as the same may be amended from time to time.

1.02. Appraisal. "Appraisal" means an appraisal by a member of the Appraisal Institute of the National Association of Real Estate Boards (or, if such Institute is not then in existence, a like organization).

1.03. Articles. "Articles" means the articles of incorporation of the Association, including any amendments thereto.

1.04. Association. "Association" means the Quiet Harbor Homeowners Association, a California nonprofit mutual benefit corporation, its successors and assigns.

1.05. Board. "Board" means the board of directors of the Association.

1.06. Bylaws. "bylaws" means the bylaws of the Association, including any amendments thereto.

1.07. City. "City" means the City of Vallejo, Solana County, California.

1.08. Common Area. "Common Area" means, with respect to a Phase, the entire Phase, except the individual Units, and with respect to the Condominium Development, the entire condominium development, except the individual Units. Except where otherwise stated, when used in this Declaration, "Common Area" refers to all common areas in the Condominium Development, without respect to the particular Phase of which the Common Area is a part. The Common Area includes, but is not limited to the following: bearing walls, columns, floors, roofs, foundations, window awnings, pumps and other central services, pipes, chutes, conduits, wires and other utility installations, wherever located, except the outlets thereof located within the Unit. The Common Area includes "Exclusive Use Common Area" as defined in Section 1.16 of this Declaration.

1.09. Completion of Sales. "Completion of Sales" means the earlier of (1) conveyance of all Condominiums in the Condominium Development to purchasers other than a successor Declarant hereunder, (2) the second anniversary of the issuance by the California Department of Real Estate of the original final subdivision public report for the most recent Phase of the Condominium Development, or (3) the fourth anniversary of the issuance by the California Department of Real Estate of the original subdivision public report for the first Phase of the Condominium Development; provided, however, if Declarant is delayed in developing the Property, constructing improvements or

selling Condominiums due to strikes or work stoppages, shortages of materials, supplies, fuel, power, or energy, moratoriums or suspensions on issuance of land use permits and approvals or affecting the availability of water, sewer, power or other utilities or necessary services, inclement weather, or other cause beyond Declarant's reasonable control, said two (2) and four (4) year periods shall be extended by the period of any such delay.

1.10. Condominium. "Condominium" means an estate in real property, as defined in California Civil Code Section 783 and Section 1351(f), consisting of an undivided interest in common in the Common Area, together with a separate interest in a Unit. For the purposes of this Declaration, ownership of each Condominium shall include an entire Unit, all easements appurtenant thereto, use of Exclusive Use Common Area appurtenant thereto and the respective undivided interest in the Common Area as hereinafter set forth.

1.11. Condominium Development. "Condominium Development" means all the real property now subject or later made subject to this Declaration, including such real property as may be annexed in accordance with the terms of this Declaration, and including all structures and improvements thereon.

1.12. Condominium Plan. "Condominium Plan" means the following recorded plans prepared in accordance with California Civil Code of California Section 1351:

(a) The Supplemental Condominium Plan dated November 1, 1988 recorded in book 1988 at page 162591 Official Records of Solano County, California, showing diagrammatic floor plans of the buildings to be built and approximate dimensions thereof; and

(b) The Condominium Plan dated November 1, 1988, recorded in Book 1988 at Page 162591, Official Records of Solano County, showing the relative locations of the buildings and other improvements. A copy of the Condominium Plan is attached as Exhibit B.

1.13. County. "County" means Solano County, the county in the State of California in which the Condominium Development is located.

1.14. Declarant. "Declarant" means Centex Real Estate Corporation, and any successor or assign to whom Centex Real Estate Corporation assigns its interest as Declarant hereunder is whole or in part by instrument recorded in the official records of the County.

1.15. Declaration. "Declaration" means this Declaration and any amendments or supplements hereto.

1.16. Exclusive Use Common Area. "Exclusive Use Common Area" means a portion of the Common Area, designated by this Declaration for the exclusive use of the Owner of a Unit, which is or will be appurtenant to the Unit. Any patios, balconies, garages, driveways, exterior doors, door frames and hardware incident thereto, screens and windows or other fixtures designed to serve a single Unit but located outside the boundaries of the Unit, including but not limited to, heating units, air conditioning units and hot water heaters as applicable are Exclusive Use Common Area allocated exclusively to that Unit.

1.17. Insurance Trustee. "Insurance Trustee" means a national banking association or title company as may be designated by the Association to hold and disburse funds as trustee for the Association and the owners as provided in this Declaration.

1.18. Member. "Member" means a member of the Association.

1.19. Mortgage. "Mortgage" means a mortgage or deed of trust which constitutes a first lien upon a Condominium given to a bank or savings and loan association for the purpose of securing indebtedness to purchase or improve a unit.

1.20. Mortgagee. "Mortgagee" means the holder of the beneficial interest in any Mortgage.

1.21. Notice and Opportunity for Hearing. "Notice and Opportunity for Hearing" means giving at least fifteen (15) days' prior notice of a proposed action and the reasons therefore, and an opportunity to be heard by the Board, orally or in writing, not less than five (5) days before the effective date of the proposed action.

1.22. Offsite Maintenance Easement. "Offsite Maintenance Easement" means all areas over or on which the Association has an easement, as shown on Exhibit C attached hereto, which are not part of the Property, but for which the Association has the right and/or the obligation to maintain the landscaping or improvements located on the real property burdened by such easement.

1.23. Owner. "Owner" means the record fee title owner, whether one or more persons or entities, of a fee simple title to any Condominium and shall include Declarant as to any Condominium owned by Declarant and the buyer under a recorded contract of sale. "Owner" shall not include any person or entity who holds an interest in a Condominium merely as security for the performance of an obligation or as a tenant.

1.24. Person. "Person" shall mean an individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

1.25. Phase. "Phase" means a group of Condominiums which are made subject to this Declaration at the same time either by recording this Declaration or by the recording of a Supplemental Declaration. Each Phase is a statutory condominium project as defined in the Act and consists of a parcel of real property divided or to be divided into Condominiums, including all structures thereon.

1.26. Phase 1. "Phase 1" shall mean that portion of the property shown as 1, 2, 19, 20, C, D, E, I, K, Y, 3B, & II on the subdivision map entitled "Glen Cove Unit 5E", which map was filed on June 6, 1988 in Book 32 of Maps, Page 23, Official Records of Solano County, California



1.27. Property. "Property" shall mean that certain real property in the City of Vallejo, County of Solano, which is described in the attached Exhibit A.

1.28. Rule and Regulations. "Rules and Regulations" means reasonable and nondiscriminatory rules and regulations as may be adopted from time to time by the Association, provided notice of such rules and regulations has been given to Owners in accordance with the requirements of this Declaration.

1.29. Supplemental Declaration. "Supplemental Declaration" means a supplemental declaration of covenants, conditions and restrictions annexing a Phase to the Condominium Development in accordance with the provisions of this Declaration.

1.30. Unit. "Unit" means the elements of a Condominium which are not owned in common with other Owners. The boundaries of each Unit are the interior surfaces of the perimeter walls, floors, ceilings, windows and doors thereof, and the Unit includes both the portions of the building so described and the airspace so encompassed. The Units also include any heating and air conditioning and water heating equipment and ducts servicing the individual Units. The following are not part of the Units: bearing walls, columns, floors, roof, foundation, pumps and other central services, pipes, conduits, wires and other utility installations, wherever located, except the outlets thereof located within the Unit.

1.31. Voting Power. "Voting Power" means the total number of votes held by Members (in a class of Members of the Association, or of Members other than Declarant, as the case may be) whose Membership at the time the determination of Voting Power is made has not been suspended in accordance with the provisions of this Declaration or the Rules and Regulations. Voting Power shall be computed by including all such Members whether or not such Members are present in person or by proxy at a meeting.

## ARTICLE 2 SUBMISSION

2.01. Submission. Phase 1 and such other real property as may be annexed in accordance with the provisions of this Declaration shall be held, conveyed, hypothecated, encumbered, sold, leased, rented, used, occupied and improved subject to each and all of the limitations, covenants, conditions, restrictions, easements, liens, charges, assessments and equitable servitudes set forth herein, all of which are declared to be in furtherance of a plan of Condominium ownership, as described in the Act, and all of which are declared to be for the purpose of enhancing, maintaining and protecting the value, desirability and attractiveness of the Condominium Development and every part thereof. All of the limitations, covenants, conditions, restrictions, easements, liens, charges, assessments and equitable servitudes set forth herein shall run with, be binding upon and inure to the benefit of Phase 1 and such other real property as may be annexed and become a part of the Condominium Development in accordance with the provisions of this Declaration, shall be binding on and inure to the benefit of each and every person having



or acquiring any right, title or interest in Phase 1 or such other real property as may be annexed, shall be binding upon and inure to the benefit of the successors in interest of such parties, and shall inure to the benefit of the Association, its successors and assigns.

2.02. Incorporation of Declaration Into Instruments. Any deed or other instrument by which a Condominium in the Condominium Development is conveyed shall be subject to the provisions of this Declaration and shall be deemed to incorporate the provisions of this Declaration, whether or not the deed makes reference hereto.

### ARTICLE 3

#### COMPLIANCE WITH MANAGEMENT DOCUMENTS

3.01. Compliance with Declaration and Other Documents. Each Owner, resident or tenant of a Condominium shall comply with the provisions of this Declaration, the Bylaws, Rules and Regulations duly adopted by the Association, decisions and resolutions of the Association and its duly authorized representative, all as may be amended from time to time, and failure to comply with any such provisions, decisions or resolutions, shall be grounds for an action to recover sums due for damages or for injunctive relief.

3.02. Resolution of Conflicts Between Documents. Each Owner covenants and agrees that the administration of the Condominium Development shall be in accordance with the provisions of this Declaration, the Articles and the Bylaws and Rules and Regulations duly adopted by the Association. If there are any matters of conflict or inconsistencies in the Bylaws, Articles and this Declaration, then the provisions of the Declaration shall prevail. In the event that anything shown on Exhibit B, or on any condominium plan or subdivision map for a subsequent Phase of the Property, is in any way inconsistent with provisions of this Declaration, then the provisions of this Declaration shall prevail. If a dispute arises among Owners in regard to the administration of the Condominium Development, then the provisions of this Declaration shall prevail.

### ARTICLE 4

#### PROPERTY RIGHTS

4.01. Common Area. The Common Area of Phase 1 shall be owned by the Owners of Condominiums in Phase 1 as tenants-in-common in the undivided percentage interests set forth on the schedule attached hereto as Exhibit D. The Common Area in subsequent Phases of the Condominium Development shall be owned as tenants-in-common by the respective Owners in such Phases in the undivided percentage interests indicated on the schedule attached to the Supplemental Declaration annexing such Phase. The Common Area shall remain undivided and there shall be no partition of the Common Area by judicial action or otherwise, except as provided by the Act or by this Declaration. Ownership of each Condominium within the Condominium Development shall include a Unit, the respective undivided interest in the Common Area set forth in this Declaration or applicable Supplemental Declaration, a membership in the Association, and any Exclusive Use Common Area and easements appurtenant to such Unit or interest in the Common Area.





4.02. Severance. No Owner shall be permitted to sever his Unit from his membership in the Association or sever his Unit and membership from his undivided interest in the Common Area and none of the component interests in a Condominium (including Exclusive Use Common Area and any easements appurtenant to Units) can or shall be severed from the other component interests or separately sold, conveyed, encumbered, hypothecated, or otherwise transferred. Any sale, conveyance, encumbrance, hypothecation, transfer or other action in violation of this prohibition shall be void. Each undivided interest in the Common Area shall be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the Unit.

No Owner shall have the right or authority to mortgage or otherwise encumber in any manner whatsoever any part of the Condominium Development, except his own Condominium. No Condominium shall be partitioned, "time shared" or further subdivided by any Owner, except that this restriction shall not preclude a judicial sale of an entire Condominium in lieu of partition as between tenants in common or joint tenants.

4.03. Common Area Easements. Each Owner shall have a nonexclusive easement in common with all other Owners over, in, to and throughout the Common Area in his Phase and other Phases of the Condominium Development for the purposes of use and enjoyment of the Common Area and ingress to and egress from his Unit. Such nonexclusive easements shall not interfere with Exclusive Use Common Area. Each Owner shall have a nonexclusive easement in common with all other Owners over, in, to and throughout the Common Area for support and repair of his Unit.

4.04. Parking. Each Owner shall have the exclusive use, possession and enjoyment of an enclosed garage with location to be assigned by the Declarant or the Association. Use of this space shall be limited to the parking of one (1) motor vehicle.

4.05. Patio/Balcony. Each Owner shall have the exclusive use of a patio or balcony adjacent to his Unit, which patio or balcony corresponds to the Unit number shown on the condominium plan for his Condominium. The patio or balcony shall be for the exclusive use of the Owner of the immediately adjoining Unit, except that in an emergency the patio or balcony may be used for emergency egress from the neighboring Units. The patio or balcony shall be used in accordance with restrictions contained in this Declaration and the Rules and Regulations.

4.06. Driveway. Some Owners shall have the exclusive use of a driveway adjacent to his Exclusive Use Common Area garage described in Section 4.04. The driveway shall be for the exclusive use of the Owner having the exclusive use of the immediately adjoining garage, except that in an emergency the driveway may be used for emergency egress from the neighboring garages and Units. The driveway shall be used in accordance with restrictions contained in this Declaration and the Rules and Regulations.

4.07. Restrictions. Each Owner's interest in the Common Area, Including Exclusive Use Common Area and easements, shall be appurtenant to and

pass with the title to his Unit and shall be subject to the following rights and restrictions:

(A) Easements for ingress, egress, use and enjoyment over, in, to and throughout the Common Area (including recreational facilities) for the benefit of Declarant, its successors and assigns and future Owners of Condominiums in subsequent Phases of the Condominium Development as may be annexed in accordance with the provisions of this Declaration;

(B) The right of the Association to limit the number of guests of an Owner and to adopt Rules and Regulations pertaining to the use and enjoyment of the Common Area;

(C) The right of the Association, after Notice and Opportunity for Hearing, to levy fines for infraction of the provisions of this Declaration or the Rules and Regulations, provided (1) the Member shall have been warned in writing of a previous infraction within the preceding one (1) year, and (ii) the fine conforms to the provisions of Sections 9.07 and 9.11;

(D) The right of the Association, after Notice and Opportunity for Hearing, to suspend the right of an Owner to use any facilities in the Common Area: (i) for any period during which any assessment against such Owner's Condominium or any monetary penalty imposed against an Owner remains unpaid; and (ii) for a period not to exceed thirty (30) days for any infraction of the Rules and Regulations or any violation of or failure to comply with the provisions of the Bylaws or this Declaration; provided, however, the Association shall not be entitled to cause a forfeiture or an abridgement of an Owner's right to the full use and enjoyment of its Unit on account of the failure of such Owner to comply with the provisions of this Declaration, the Bylaws or any rules and regulations promulgated pursuant thereto except by judgment of a court, award in arbitration or pursuant to a foreclosure by judicial or non-judicial process of the lien arising from non-payment of assessments, and

(E) The right of the Association to grant easements over and across the Common Area as provided in this Declaration.

4.08. Delegation. Any Owner may delegate his rights of use and enjoyment of the Common Area and any facilities thereon to the members of his family or household residing in his Unit and his guests and invitees while he is occupying his Unit, subject, however, to reasonable restrictions imposed by the provisions of this Declaration, the Bylaws and the Rules and Regulations. Provided the notice required by Section 4.09 of this Declaration has first been given to the Association, a tenant of an Owner, while residing in such Owner's Unit, shall be entitled to use and enjoy the Common Area and any facilities thereon and to delegate rights of use and enjoyment in the same manner as if such tenant were the Owner of such Condominium. No delegation of rights of use and enjoyment or rental of a Unit shall release an Owner from his obligations hereunder, including, without limitation, the obligation to pay regular and special assessments.

Upon request, each Owner or tenant shall notify the secretary of the Association of the names of all persons to whom such Owner or tenant has delegated any rights of use and enjoyment of the Common Area and the relationship that each such person bears to such Owner or tenant. Any delegated rights of use and enjoyment are subject to suspension to the same extent as the rights of Owners.

#### 4.09. Tenants.

(A) Any Owner who rents or leases his Unit to a tenant shall not be entitled to use and enjoy any common facilities on the Common Area during the period the Unit is occupied by such tenant.

(B) No Owner shall lease or rent less than an entire Unit and no more than one family shall live in any one Unit. Except as provided in Section 7.10, the Units shall not be leased or rented for hotel or transient purposes and no rental agreement or lease shall be made for a period of less than sixty (60) days. Subject to the foregoing restrictions, Owners shall have the right to lease or rent their Units, provided that any lease or rental agreement between an Owner and a tenant shall be in writing and shall provide that it is in all respects subject to the provisions of this Declaration, the Bylaws, and the Rules and Regulations and that any failure by the tenant to comply with such provisions shall be a default under the rental agreement or lease. However, the failure of any lease or rental agreement to so provide shall not excuse any person from complying with the provisions of this Declaration, the Bylaws, and the Rules and Regulations.

#### SEE AMENDMENT

(C) In the event an Owner shall rent or lease his Unit such Owner shall immediately give to the Association in writing:

(1) the name of the tenant and the Unit rented or leased;

(2) the current address of such Owner; and

(3) a true and complete copy of the lease or rental agreement.

(4) In no event shall any lease or rental agreement release or relieve an Owner from the obligation to pay regular and special assessments to the Association, regardless of whether the obligation to pay assessments has been assumed by the tenant in such lease or rental agreement.

4.10. Encroachment. There shall exist an easement over and across each Unit for any portion of the Common Area which unintentionally encroaches on any portion of a Unit and an easement over and across the Common Area for any portion of a Unit which unintentionally encroaches on any portion of the Common Area, as the Common Area and the Units are shown on the Condominium Plans for the Condominium Development. These easements shall exist whether such encroachments exist by reason of original construction or the repair, restoration, reconstruction, shifting, settlement, or movement of any Unit or the Common Area.

4.11. Rules and Regulations. The Association shall have the right to adopt, publish and enforce Rules and Regulations governing the Condominium Development, the use and enjoyment of the Common Area and any facilities thereon, and the personal conduct thereon of the Owners, their guests, invitees, members of their families or households and tenants, provided the Rules and Regulations are approved (i) if a two-class voting structure is in effect, by the vote or written consent of a majority of the total Voting Power of each class of Members, or (ii) if a two-class voting structure is not in effect, the vote or written consent of a majority of the total Voting Power of the Association. The Members may amend any such Rules and Regulations adopted by the Board at any regular or special meeting of Members called for such purpose by (i) if a two-class voting structure is in effect, the vote or written consent of a majority of the total Voting Power of each class of Members, or (ii) if a two-class voting structure is not in effect, the vote or written consent of a majority of the total Voting Power of the Association. Such Rules and Regulations shall be reasonable, shall not discriminate against Declarant (or have an adverse impact on Declarant or upon the sale of Condominiums), and must be consistent with this Declaration, the Articles and the Bylaws. Rules and Regulations shall not be effective until written notice thereof has been given by mailing a copy of the Rules and Regulations, postage prepaid, at least ten (10) days before the effective date of the Rules and Regulations, to each Owner addressed to the Owner's address last appearing in the books of the Association.

#### ARTICLE 5 COMMON AREA EASEMENTS AND RIGHTS OF WAY- ENCUMBRANCES

5.01. Dedications. The Association shall have the power to dedicate and/or grant easements and/or rights of way in, on, over, through and across the Common Area for any public or quasi-public improvements or facilities and their appurtenances, including, without limitation, street, sewer, drainage, water, gas and sprinkler improvements and facilities, provided (i) any such easement does not unreasonably interfere with the use and enjoyment of the Common Area or any Unit, (ii) the prior written consent of Declarant shall be obtained so long as Declarant owns any Unit; and (iii) as long as there are two classes of membership in the Association and at least one Federal Housing Administration or Veterans Administration insured loan on property within the Condominium Development, prior approval of the Federal Housing Administration or Veterans Administration shall be obtained. Each Owner, by accepting a deed to a Condominium, expressly grants to the Association an irrevocable power of attorney for the purpose of granting such easements in, on, over, through and across the Common Area. The president or other duly designated officer of the Association may execute, acknowledge and record in the official records of the County a certificate stating that the Board is the attorney in fact for the Owners for the purpose of such grant and that such power of attorney is properly exercisable in accordance with this Declaration. The acts of the Board in exercising its power of attorney shall be conclusively binding on all Owners. The power of attorney herein granted shall include authority to do such acts incidental to such grant and to incur such expenses as may be necessary or convenient in connection therewith. The Board, by resolution, shall instruct the appropriate officers of the Association to make, execute and deliver on behalf of any Owner, as his interest may appear, any and all



instruments, certificates and documents, including but not limited to, releases, waivers, deeds, escrow instructions and conveyances of every kind and nature, as may be deemed necessary or convenient for such dedication or grant.

5.02. Encumbrances. The Association shall have the right to borrow money to improve, repair, restore and reconstruct the Common Area and to place liens on the Common Area and otherwise encumber the Common Area for such purposes (i) if a two-class voting structure is in effect, upon the vote or written consent of sixty-seven percent (67%) of the Voting Power of each class of Members of the Association, or (ii) if a two-class voting structure is not in effect, upon the vote or written consent of sixty-seven percent (67%) of the total Voting Power of the Association. As long as there are two classes of membership in the Association and at least one Federal Housing Administration or Veterans Administration loan on any property in the Condominium Development, any mortgaging of the Common Area shall require the approval of the Federal Housing Administration or Veterans Administration.

## ARTICLE 6

### REPAIRS AND UTILITIES

6.01. Maintenance and Repair. The obligations and responsibilities of the Association and Owners pertaining to maintenance and repair of the Common Area and the Units are set forth in Sections 6.02, 6.03, and 6.04 and in Exhibit E attached hereto and made a part hereof. The provisions of Sections 6.02, 6.03, and 6.04 and the provisions of Exhibit E shall be interpreted as being consistent to the extent this may be done, but in the event of any conflict, the provisions of Exhibit E shall control.

6.02. Association Responsibilities. Except as otherwise provided herein, the Association shall have control of the Common Area and shall operate and maintain the Common Area and every part thereof in a neat, clean and well-kept condition and make such repairs and replacements as may be necessary or desirable from time to time for the benefit of the Owners. The Owner shall be responsible for the maintenance and repair of the Exclusive Use Common Area, as provided for in Section 6.04, except the Association will be responsible for structural maintenance or structural repair of the balconies or patios, driveways and garages. The Association shall be the exclusive party to pursue any warranties or remedies with respect to the Common Area and it shall be empowered to bring suits and settle and compromise any claims with respect to the construction, improvement, repair or replacement of the Common Area. Furniture, furnishings and personal property placed in the Common Area by or for the benefit of the Association shall also be subject to the control of the Association and shall be maintained, repaired or replaced from time to time as necessary or desirable. Subject to the provisions of this Declaration and the Rules and Regulations. Owners may place their personal property on their patios or balconies. An Owner shall allow access in or through the Unit where necessary for the maintenance, repair or replacement of any portion of the Common Area as provided in Section 6.07 of this Declaration.

6.03. Landscape Easement. The Association shall have the obligation and right to maintain and keep in repair the landscaped areas, including any



Irrigation facilities located on the property described in the Offsite Maintenance Easement, except as it may be prevented from doing so because of shortages of water or other conditions beyond the reasonable control of the Association. The obligation of the Association set forth in this paragraph shall terminate if, and only to the extent that, the maintenance of such property is expressly accepted by the City or some other governmental agency.

6.04. Owner's Responsibilities. Each Owner shall, at his cost and expense, maintain and repair his Unit and maintain, repair and replace portions of his Unit, all property, equipment and fixtures within his Unit (including, without limitation, carpets, refrigerators, ranges, appliances, electrical system and electrical system components, fixtures and appurtenances (including switches, circuit breakers, light fixtures, light and wall sockets), plumbing system and plumbing system components, fixtures and appurtenances (including sinks, disposals, toilets, tubs and related fixtures and appurtenances) and all other fixtures, any water heater located outside of his Unit which serve his Unit, interior walls and partitions, interior doors and all improvements and alterations installed by such Owner within the Unit. Each Owner shall, at his cost and expense, maintain and repair all Exclusive Use Common Area except the Association shall be responsible for structural maintenance or structural repair of the balconies or patios, driveways and garages as provided for in Section 6.02. Each Owner, at his own expense, shall keep any and all Exclusive Use Common Area (including the garage, driveway and patio or balcony) appurtenant to his Unit free of debris and trash and in broom-clean condition. Maintenance and repair shall include, without limitation, floor care, painting, wallpapering and all other maintenance of interior walls and partitions and of the interior surfaces of perimeter walls, floors and ceilings, and regular cleaning of interior and exterior surfaces of windows; provided, however, that the Association shall furnish maintenance, repairs and replacements within the Common Area or, if a malfunction has originated outside the Unit, within a Unit, required for the functioning of plumbing within a Unit or within the Common Area or required for the provision of water, gas and electricity to a Unit.

6.05. Repair Assessment. If any act or omission of any Owner (or of any member of his family or household, of any of his guests or invitees, or of any tenant of his Unit) causes damage or destruction to the Common Area or causes the need for repair, maintenance or replacement within the Common Area or another Unit, whether for the functioning of plumbing within a Unit or for the provision of water, gas or electricity to a Unit, or for some other purpose, the Board, after Notice and Opportunity for Hearing is afforded such Owner, may levy a special assessment against such Owner and such Owner's Condominium to reimburse the Association for any costs incurred to repair, maintain, or replace any affected part of the Common Area. Such assessment shall conform to the provisions of Section 9.07. Nothing herein shall be construed to enable any insurer to be subrogated to the rights of any insured party as to any loss as to which the insurer has waived its right of subrogation.

6.06. Utilities. Each Owner shall pay for his own telephone, electricity, gas and other utilities, including any utility furnished to or for any Exclusive Use Common Area appurtenant to his Unit, which is separately metered or itemized for the Unit.

6.07. Right to Enter. The Association, its agents, insurers, employees, and contractors, and the City shall have the right to enter any Unit or garage, at reasonable hours after forty-eight (48) hours prior notice in connection with any work or thing required or permitted to be performed or done by the Association by this Declaration, the Bylaws, or the Rules and Regulations, including any emergency or necessary repairs which the Owner has failed to perform.

In the event there is any emergency threatening injury to persons or property, or reasonable cause to believe there is such an emergency, this right of entry shall be immediate and may be exercised without notice and whether or not the Owner is present.

## ARTICLE 7

### USE RESTRICTIONS

7.01. Residential Use. Except as otherwise provided in this Declaration. Units shall be used as a residence for a single family and for no other purpose, and no Owner shall use or cause or permit to be used the Common Area or his Unit for any business, commercial, manufacturing or mercantile use or purpose, or for any other nonresidential use or purpose.

7.02. Unlawful Activity. No unlawful activity shall be carried on in any Unit or in any other part of the Condominium Development. Nothing shall be done within the Condominium Development that is an unreasonable annoyance, inconvenience or nuisance to the residents of the Condominium Development, or that unreasonably interferes with the quiet enjoyment of occupants of Units. No doorways, corridors, walkways or streets shall be obstructed in any manner which would interfere with their use for ingress or egress in the event of fire, earthquake or other emergency.

7.03. Parking. No automobile, motorcycle, boat, trailer, recreational vehicle, camper, camper truck or commercial vehicle shall be parked, stored or left on any street or on any other part of the Condominium Development, other than within an assigned garage or driveway, or in other designated parking areas. No boat, trailer, recreational vehicle, camper, truck, or commercial vehicle shall be parked or left on any private street or any other part of the Condominium Development; provided, however, that this prohibition shall not apply to sales trailers, construction trailers, or other vehicles, which may be used by Declarant and its agents and contractors in the conduct of their business prior to Completion of Sales. Garages shall be used only for parking and storing automobiles. No boat, truck, trailer, camper, recreational vehicle or tent shall be used as a living or dwelling area within the Condominium Development. No repairs to or maintenance of any automobile or other vehicle shall be made or performed on any street or in any garage within the Condominium Development, except in the case of emergency and except as may be permitted by the Rules and Regulations.

7.04. Signs and Curtains. All window coverings must appear to be white or off-white when viewed from outside the Unit. No Owner shall place on or about any window or balcony any metallic foil or other coating, substance or material which similarly acts as a reflector of light and no Owner shall

display, hang, store or use any signs, curtains, draperies, shades, stained glass or other articles whatsoever outside of any Unit or in any Unit so as to be visible from the outside of such Unit, other than as may be permitted by the Rules and Regulations. Notwithstanding the foregoing, one sign of customary and reasonable dimensions, conforming to such reasonable standard as may be adopted by the Board, advertising a Condominium for sale or rent may be placed by the Owner within his Unit in such manner that it will be visible from the outside. The prohibitions in this section shall not apply to Declarant or its agents, who may erect such signs as Declarant deems desirable to promote the sale of Condominiums.

7.05. Antennas, Alterations, and Other Additions to the Common Area. Except as may be permitted by the Rules and Regulations, no Owner shall construct, install, erect or maintain any television or radio pole, antenna or satellite dish, flagpole, clothesline, canopy, awning, wiring, insulation, air conditioning equipment, fence, ornamental screen, screen door, sunshade, wall, plant or other fixtures, structures, machinery or equipment in or on the Common Area (including any patio or balcony) without the prior written consent of the Board. Owners shall have the right to install central air conditioning in their Units, providing that they obtain the prior written consent of the Board for the location of the equipment to be located outside their Unit and the plans and specifications of such installation, and the central air conditioning equipment is installed in accordance with the Board's written consent.

7.06. Pets

(A) No animals shall be raised, bred or kept in any Unit or elsewhere within the Condominium Development, except that a reasonable number of contained domestic animals, such as fish, birds, dogs or cats may be kept as household pets within any Unit. In no event shall animals be kept, bred or raised for commercial purposes and no animal shall be allowed if such animal constitutes an unreasonable annoyance, inconvenience or nuisance to any other Owner. If the Board receives any complaint that an animal constitutes an unreasonable annoyance, inconvenience or nuisance, the Board shall afford the Owner of such animal Notice and Opportunity for Hearing, and if the Board finds that such animal constitutes an unreasonable annoyance, inconvenience or nuisance, the Board may require that such animal be removed from the Condominium Development.

(B) The Board may adopt Rules and Regulations concerning animals which are more restrictive than the provisions of this Declaration, including rules requiring that all animals be kept on a leash when in the Common Area and that animals be restricted to designated areas within the Common Area. The Board may adopt a rule prohibiting certain pets, which is more restrictive than the provisions of this Declaration, except that such rule shall not apply to animals being kept in the Condominium Development at the time such rule is adopted. In any event, the Board at any time may require that any animal found to be an unreasonable annoyance, inconvenience or nuisance be removed as provided in Section 7.06(A).

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7.07. Trash. Trash, garbage, and other waste shall be disposed of in such manner as may be prescribed from time to time by the Board. No Owner shall permit or cause any trash, garbage or other waste to be kept on any portion of the Common Area, except in areas designated for such purpose or to accumulate unreasonably in his Unit.

7.08. Alterations. No structural alterations to the interior of any Unit shall be made or performed by any Owner without the prior written consent of the Board. No additions, alterations, modifications or improvements, including but not limited to painting, of or to any portion of the Common Area or Exclusive Use Common Area shall be made until an application, including plans and specifications showing the nature, kind, shape, height, color, materials and location of the proposed project has been submitted to and approved in writing by the Board. No building permit for any addition, alteration, modification or other improvement of or to any portion of the Condominium Development shall be issued by the City without the prior written consent of the Board.

7.09. Insurance. Nothing shall be done or kept in any Unit or in the Common Area which would increase the rate of or cause the cancellation of insurance on the Condominium Development or any portion thereof without the prior written consent of the Board.

7.10. Declarant's Rights. Notwithstanding anything to the contrary contained in this Article or elsewhere in this Declaration, Declarant, its agents, employees, and contractors shall not be restricted or prevented by this Declaration from doing, and Declarant, its agents, employees, and contractors shall have the right to do such things or take such actions as they deem reasonably necessary or advisable for completion and improvement of the Condominium Development as a residential community and for the sale, rental or other disposition of Condominiums in the Condominium Development. The rights of Declarant, its agents, employees and contractors shall include, without limitation:

(A) The right and easement of ingress in, over and upon the Common Area for the purpose of performing on any part or parts of the Condominium Development acts deemed reasonably necessary or advisable for the completion and improvement of the Condominium Development as a residential community and for the sale, rental or other disposition of Condominiums; provided Declarant shall repair any damage caused by such ingress;

(B) The right to erect, construct or maintain structures and other improvements on the Common Area as they deem necessary, advisable or convenient for the completion and improvement of the Condominium Development as a residential community and for the sale, rental or other disposition of Condominiums;

(C) The right to demolish or remove structures, except structures containing one or more Units which have been conveyed by Declarant to purchasers other than a successor Declarant for use as a residence, as they deem reasonably necessary or advisable for the completion and improvement of the Condominium Development as a residential community and for the sale, rental or other disposition of Condominiums; and

(D) The right to use Units owned by Declarant as models, sales offices and contractor's offices and to construct and display promotional, informational, and directional signs and other sales aides on or about any portion of the Condominium Development.

The rights of Declarant under this section shall terminate upon the Completion of Sales. Amendment of this section shall require (i) if a two-class voting structure is in effect, the vote or written consent of a majority of the Voting Power of each class of Members of the Association, or (ii) if a two-class voting structure is not in effect, the vote or written consent of both seventy-five percent (75%) of the total Voting Power of the Association and of the total Voting Power of the Association residing in Members other than Declarant.

7.11. Right to Enter. Any governmental agency, including, but not limited to the City, its agents, and employees, shall have the right of immediate access to the Common Area at all times if necessary for the preservation of public health, safety, and welfare.

## ARTICLE 8

### MEMBERSHIP AND VOTING RIGHTS

8.01. Governing Body. The Association shall be the governing body for all Owners with respect to the management, administration, maintenance, repair and replacement of the Condominium Development, as provided by the Act, this Declaration and the Bylaws.

8.02. Membership. Membership in the Association shall be composed of and limited to Owners. Each Owner, including Declarant, shall automatically be a Member of the Association and entitled to vote as set forth below. Membership shall be appurtenant to and may not be separated from ownership of a Condominium. Upon termination of ownership, an Owner's membership shall automatically terminate and be automatically transferred to the new Owner of the Condominium.

8.03. Voting. The Association shall have two classes of voting membership, and voting rights shall vest in an Owner only upon the levy of assessments against its Unit:

Class A. Class A Members shall be all Owners with the exception of Declarant; provided, however, that Declarant shall become a Class A Member when its Class B membership ceases as provided hereinafter Class A Members shall be entitled to one (1) vote for each Condominium owned. When more than one person holds an ownership interest in any Condominium, all such persons shall be Members, but no more than one vote shall be cast with respect to any Condominium. The vote for any such Condominium shall be exercised as the Members holding an interest in such Condominium determine among themselves. In the event of disagreement, the decision of Members holding a majority of interest in such Condominium shall govern. Unless otherwise notified by a co-owner as to a dispute between the co-owners regarding their vote prior to the casting of that vote, the vote of any co-owner shall be conclusively presumed to be the majority vote of the Owners of that Unit.

Class B. Class B Member shall be Declarant and shall be entitled to three (3) votes for each Condominium owned; provided that Declarant's Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier: (i) the second anniversary of the issuance by the California Department of Real Estate of the original final subdivision public report for the most recent Phase of the Condominium Development; or (ii) the fourth anniversary of the issuance of the original subdivision public report for the first Phase of the Condominium Development by the California Department of Real Estate.

8.04. Declarant's Voting Rights. With the exception of the provisions in Article 13, no requirement for the approval of a prescribed majority of the Voting Power of Members of the Association other than Declarant for action to be taken by the Association is intended to preclude Declarant from casting votes attributable to Units owned by Declarant.

8.05. Commencement of Voting Rights. Voting rights attributable to an ownership interest shall not vest until the assessment against that interest has been levied by the Association as provided in Article 9.

#### ARTICLE 9 COVENANT FOR ASSESSMENTS

9.01. Covenant to Pay Assessments: Lien. Declarant, for each Condominium owned by Declarant, hereby covenants to pay and every Owner of any Condominium by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association such regular annual assessments or charges and such special assessments or charges as may be levied by the Association pursuant to the provisions of this Declaration. The amount of any such annual or special assessment plus any other charges thereon, such as interest, late charges and costs (including attorneys' fees), as such may be provided in this Declaration, shall be and become a lien upon the Condominium assessed when the Association causes to be recorded in the official records of the County a notice of delinquent assessment, which notice shall state:

(A) The amount of such assessment and such other charges thereon as may be authorized by this Declaration;

(B) A description of the Condominium against which the same has been assessed; and

(C) The name of the record Owner of the Condominium assessed.

(D) The name and address of the trustee authorized by the Association to enforce, the lien by sale.

Such notice shall be signed by an authorized representative of the Association upon payment of, such assessment and charges in connection with which such notice has been so recorded, or other satisfaction thereof, the Association, at the Owner's cost and expense, shall cause to be recorded a further notice stating the satisfaction and the release of the lien thereof.



The lien provided for herein shall be prior to all other liens recorded subsequent to the recordation of such notice of assessment. The lien may be enforced by sale by a court, sale by the trustee designated in the notice of delinquent assessment or sale by a trustee substituted pursuant to Section 2934a of the California Civil Code, after failure of the Owner to pay such an assessment in accordance with its terms, such sale to be conducted in accordance with the provisions of Sections 2924, 2924b and 2924c of the California Civil Code, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law.

9.02. Personal Obligation. Each regular or special assessment, together with any late charges, interest, collection costs and reasonable attorneys' fees, shall be the personal obligation of each person or entity, other than any Mortgagee, who held an ownership interest in the Condominium at the time such assessment was levied. If more than one person or entity held an ownership interest in the Condominium at such time, the personal obligation to pay such assessment or installment respecting such Condominium shall be both joint and several. No Owner may exempt himself from payment of assessments, or installments, by waiver of the use or non-use of common facilities within the Common Area or of any other portion of the Common Area or by abandonment or leasing of his Unit.

9.03. Use of Assessments. Regular or annual assessments paid by Declarant and other Owners shall be used to pay for operation, maintenance, preservation, enhancement, repair, and improvement of the Common Area and Offsite Maintenance Easement, other purposes reasonably related to the foregoing, and to promote the recreation, health, safety, and welfare of the Owners. In addition, such assessments shall be used to pay the cost of administration of the affairs of the Association, including payment of applicable taxes, and for the preservation of the Association's existence, to the extent properly allocable to the performance and exercise of the Association's duties and powers under this Declaration. The foregoing is intended as an authorization to the Association and shall not be construed to require expenditure of Association funds for any particular purpose.

9.04. Reserve Funds. The Board shall establish and maintain reserves in accordance with standard accounting practices and procedures for Common Area replacements and maintenance in accordance with the budget of the Association as initially approved by the California Department of Real Estate. Each budget subsequently adopted by the Board shall provide for funds to be placed in reserves in at least the amount of reserves established in the initial budget approved by the California Department of Real Estate, unless a lower level of reserves is approved by the vote or written consent of a majority of the Voting Power of (i) if a two-class voting structure is in effect, of a majority of the Voting Power of each class of Members, or (ii) if a two-class voting structure is not in effect, of the total Voting Power of the Association. Funds deposited in reserve for a particular purposes shall be held for that purpose and shall not be expended for any other purpose without (i) if a two-class voting structure is in effect, the vote or written consent of a majority of the Voting Power of each class of Members, or (ii) if a two-class voting structure is not in effect, the vote or written consent of a majority of the total Voting Power of the Association, except that if the

Board determines that funds held in reserve for a particular purpose exceed an amount reasonably required as a prudent reserve for that purpose, then, without the vote or written consent of Members, the excess may be allocated to any other reserve fund established by the budget of the Association as approved by the California Department of Real Estate and expended for the purpose for which such other reserve fund has been established.

9.05. Regular Assessments. All regular annual assessments shall be levied equally with respect to each Unit. The regular annual assessment for each Unit for the first assessment year shall be as set forth in Exhibit F; provided, however, that if the first full assessment year shall have fewer than twelve months, the assessment shall be proportionately reduced. The Board shall fix the amount and due date of the regular annual assessments thereafter on a yearly basis at least sixty (60) days in advance of each assessment year, provided that the Board may not impose. Regular annual assessments which are more than twenty (20%) percent greater than the regular assessments for the preceding fiscal year, for maintenance or repair of the Common Area without the vote or written assent of a majority of the Members present at a meeting or election of the Association where more than 50% of the total Members are present. Maintenance or repair of the Common Area includes, but is not limited to, the payment of insurance premiums, the payment of utility bills, the costs incurred in maintaining or repairing structures or improvements and funding reserves. Written notice of the regular annual assessments shall be sent to every Owner who is not present at the time the regular annual assessments are so fixed. If the Board fails to so fix the regular annual assessments, the assessments applicable for the previous assessment year shall remain in effect until the Board shall fix new regular annual assessments. Regular annual assessments shall be payable in equal monthly installments on the first day of each month or at such other time as the Board may fix. The Association shall, upon demand, and for a reasonable charge, furnish to any person having a legitimate interest a certificate signed by an officer of the Association stating whether the regular annual assessments and special assessments, if any, on a specified Condominium have been paid and, if not, the amount due.

9.06. Special Assessments. In addition to the regular annual assessments authorized herein, the Board may levy, in any assessment year, a special assessment with respect to each Unit applicable to that year only; provided the Board may not impose a special assessment which exceeds five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, for maintenance or repair of the Common Area without the vote or written assent of a majority of the Members present at a meeting or election of the Association where more than 50% of the total Members are present. Maintenance or repair of the Common Area includes, but is not limited to, the payment of insurance premiums, the payment of utility bills, the costs incurred in maintaining or repairing structures or improvements and funding reserves.

9.07. Emergency and Extraordinary Assessments: Meetings in Connection with Sections 9.05 and 9.06. Notwithstanding anything to the contrary contained in this Declaration, the Board may increase assessments necessary for emergency situations. For purposes of this Section, an emergency situation is any one of the following:



(A) An extraordinary expense required by order of a court.

(B) An extraordinary expense necessary to repair or maintain the Common Area or any part thereof for which the Association is responsible where a threat to personal safety is discovered.

(C) An extraordinary expense necessary to repair or maintain the Common Area or any part thereof for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the budget. However, prior to the imposition or collection of an assessment under this Section the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process and the resolution shall be distributed to the Members with the notice of assessment.

Any meeting or election of the Association for purposes of complying with Sections 9.05 and 9.06 shall be conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3, Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code.

9.08. Assessment as Remedy. After Notice and Opportunity for Hearing, the Board, without the vote or written consent of Members, may levy a special assessment against an Owner as a remedy to reimburse the Association for costs (including attorneys' fees) incurred in bringing the Owner into compliance with the provisions of this Declaration, the Bylaws, or the Rules and Regulations; provided that no such assessment shall become a lien upon the Member's Condominium enforceable by a sale of the Condominium in accordance with the provisions of Sections 2924, 2924(b) or 2924(c) of the California Civil Code.

9.09. Allocation of Assessments. Except as otherwise provided in this Declaration, all regular and special assessments shall be levied equally with respect to all Units and shall be collected on a monthly basis. The Owner (including Declarant) of any Unit which is not ready for occupancy shall be exempted from paying that portion of the annual assessment which is for the purpose of defraying expenses and reserves directly attributable to the occupancy and use of such Unit. To the extent applicable the exemption may include, but shall not necessarily be limited to: (i) roof replacement; (ii) exterior maintenance; (iii) exterior lighting; (iv) refuse disposal; (v) cable television; and (vi) domestic water supplied to Units. The exemption shall continue only until: (1) the filing for record of a notice of completion for the building within which the Unit is located, or (2) the expiration of one hundred and twenty (120) days from the date of issuance of a building permit for such building, whichever shall first occur. Special assessments with respect to Units to raise funds for the rebuilding or major repair of the structural Common Area of the Condominiums shall be levied upon the basis of the ratio of the square footage of the floor area of each Unit to be assessed to the total square footage of floor area of all Units to be assessed.

9.10. Commencement of Assessments. The regular annual assessments provided for herein shall commence as to all Condominiums in Phase 1 on the first day of the month next following the closing of the first sale of a Condominium to a purchaser other than a successor Declarant. The first assessment year shall be the period commencing on the date regular annual assessments commence and ending on the December 31 next following. Subsequent assessment years shall be each successive calendar year; provided, however, that at any time the Board may change the assessment year to correspond to a fiscal year selected by the Board. Assessments of Condominiums within each Phase of the Condominium Development which is annexed in accordance with the provisions of this Declaration shall commence on the first day of the month next following the closing of the first sale of a Condominium to a purchaser in such Phase other than a successor Declarant.

9.11. Revised Assessments. Subject to the provisions of Section 9.05 and Section 9.07 of this Declaration, if at any time during the course of any year the Board shall deem the amount of the regular annual assessments to be inadequate or over adequate by reason of a revision of its estimate of either expenses or income, the annexation of a Phase, or other arise, the Board shall have the right, at a regular or special meeting, to revise the regular annual assessments for the balance of the assessment year. Any such revised assessments shall become effective on the first day of the month next following the date of adoption.

9.12. Delinquent Assessments. Any assessment not paid within fifteen (15) days after the due date shall be delinquent. The Board may require that any delinquent assessment bear a late charge to cover administrative expenses incurred as a result of the late payment of the assessment. Late charges on delinquent assessments shall not exceed ten percent (10%) of the delinquent assessment computed on the outstanding balance, which shall include any late charges previously assessed and unpaid, or ten dollars (\$10), whichever is greater.

No charge may be imposed more than once for the delinquency of the same payment, provided, however, that the imposition of a late charge on any delinquent payment shall not eliminate or supersede charges imposed on prior delinquent payments. Until Declarant has sold 90% of the Units, no late charges shall be imposed unless the delinquency is in excess of thirty (30) days. After Declarant has sold 90% of the Units, when an assessment is paid more than fifteen (15) days after the due date of the assessment, late charges shall accrue from the first day following the due date of the assessment. The Association may bring legal action against the Owner personally obligated to pay a delinquent assessment, or foreclose the lien against his Condominium, and, after Notice and Opportunity for Hearing, the Association may suspend a delinquent Owner's membership in the Association while the assessment remains unpaid. In any legal action to enforce payment of an assessment, the Association shall be entitled to recover interest computed at an annual rate of twelve percent (12%) commencing thirty (30) days after the assessment becomes due (or any other rate provided for in Section 1366 of the Civil Code of California), costs and reasonable attorneys' fees.

9.13. Exemption from Payment of Certain Assessments.

(A) With respect to any buildings containing condominiums. Declarant and any other Owner shall be relieved of their obligations for the payment of that portion of the regular assessment attributable to defraying expenses and reserves for roof repair and replacement, building maintenance, repair and component replacement, walkway and carport lighting, refuse disposal, cable television and domestic water supplied to the Units until the earliest to occur of (1) the recordation of a notice of completion for the structure, (2) occupation or use of the structure and (3) completion of all elements of the structure which the Association is obligated to maintain.

(B) With respect to any common facility, the Declarant and the other Owners shall be relieved of their obligations for the payment of that portion of any assessment which is for purposes of defraying expenses and reserves directly attributable to the existence and use of a common facility that is not complete at the time assessments commence until the earlier occurs of: (1) a notice of completion of the common facility has been recorded and (2) the common facility has been placed in use.

ARTICLE 10  
INSURANCE

10.01. Duty to Maintain Insurance.

(A) The Association shall have the duty and the authority to maintain fire and extended coverage casualty insurance on the Common Area in an amount not less than the full insurable value thereof, and liability insurance with limits in and amounts adequate, under standards in the insurance industry existing from time to time, to protect the Association and the Owners in the event of property damage, personal injury or death occurring in or about the Condominium Development and/or Offsite Maintenance Easement. The Board shall have the authority to settle or enforce on behalf of the Association and on behalf of the Owners, by legal action or otherwise, any claim arising under any insurance carried by the Association.

(B) Notwithstanding any other provisions contained herein, the Association shall continuously maintain in effect such casualty, flood, and liability insurance and a fidelity bond noting the insurance and fidelity bond requirements for planned unit development projects established by the Federal National Mortgage Association and Government National Mortgage Association, so long as either is a Mortgagee or Owner of a Unit within the Condominium Development, except to the extent such coverage is not available or has been waived in writing by the Federal National Mortgage Association or Government National Mortgage Association.

10.02. Proceeds of Insurance. The proceeds of casualty insurance carried by the Association shall be paid as follows:

(A) If such proceeds do not exceed Fifty Thousand Dollars (350,000), the proceeds shall be paid to and held by the Association as trustee for the Owners and Mortgagees for disbursement in accordance with the provisions of this Declaration; and

(B) If such proceeds exceed Fifty Thousand Dollars (\$50,000), the proceeds shall be paid to and held by the Insurance Trustee in trust for the Association, Owners, Declarant and Mortgagees, for disbursement in accordance with the provisions of this Declaration.

Except as otherwise provided herein, casualty insurance proceeds shall be used for repair, replacement, or reconstruction to the extent required to effectuate repair, replacement, or reconstruction.

#### ARTICLE 11 DAMAGE AND DESTRUCTION

11.01. Damage to Units. Restoration and repair of damage to any Unit and any fixture or personal property contained therein shall be made by and at the expense of the Unit Owner, except to the extent such damage may be covered by the Association's casualty insurance. Any deductible under the Association's casualty insurance shall be at the expense of the Unit Owner, unless the Board otherwise directs.

11.02. Minor Damage and Major Damage Defined. Damage or destruction to the Common Area where the estimated cost of repair, restoration or reconstruction does not exceed Fifty Thousand Dollars (\$50,000) is referred to in this Declaration as "minor damage". Damage or destruction to the Common Area where the estimated cost of repair, restoration or reconstruction exceeds Fifty Thousand Dollars (\$50,000) is referred to in this Declaration as "major damage".

11.03. Minor Damage. If minor damage occurs, the Association shall promptly contract for the repair, restoration or reconstruction of the Common Area improvements which have been damaged or destroyed and, if necessary, collect from the Insurance Trustee any proceeds of insurance as received in accordance with Section 10.02. The difference, if any, between the insurance proceeds payable by reason of such minor damage and the cost of such repair, restoration, and reconstruction may be recovered by one or more special assessments levied by the Board against all Owners. The amount of such special assessment payable by each Owner shall be an amount in proportion to the ratio of the square footage of the floor area of the Unit to be assessed to the total square footage of the floor areas of all Units to be assessed.

11.04. Major Damage. In the event of any major damage to or destruction of any portion of the Common Area by fire or other casualty:

(A) The Board shall as soon as reasonably practicable obtain such information as it deems necessary to make an informed judgment about whether to proceed with the repair, restoration or reconstruction of the Common Area so damaged or destroyed, which information may include: (i) obtaining firm bids from two (2) or more responsible and licensed general contractors for the repair, restoration and reconstruction of the Common Area so damaged or destroyed in accordance with the original plans and specifications to the extent reasonably practicable; and (ii) obtaining an Appraisal setting forth an opinion as to the value of the Condominium Development as it then exists together with an opinion of the increment in value, if any, which would accrue if the Condominium Development or some portion thereof were razed.

(B) No later than one hundred eighty (180) days after the occurrence of major damage, the Board shall hold a special meeting of Members after notice as provided in the Bylaws. Such notice shall include a summary of the Appraisal (if any) and of the bids for repair, restoration and reconstruction (if any), the amount of insurance proceeds payable to the Association as a result of such damage and destruction, and the amount of the special assessment, if any, necessary to make any difference between the insurance proceeds and the total cost of repair, restoration and reconstruction.

(C) Unless within two hundred forty (240) days after the occurrence of such major damage, (1) if a two-class voting structure is in effect, a majority of the Voting Power of each class of Members, or (ii) if a two-class voting structure is not in effect, a majority of the total Voting Power of the Association agree by vote or written consent and a majority of all Mortgagees (based upon one (1) vote for each Mortgage owned) agree in writing that such repair, restoration or reconstruction of the Common Area improvements which have been damaged or destroyed shall not take place: (i) the Association shall promptly contract for and complete such repair, restoration and reconstruction in accordance with plans and specifications approved by the Board; and (ii) the difference, if any, between the insurance proceeds and the total cost of repair, restoration and reconstruction shall be recovered by a special assessment levied by the Association against all Owners. The amount of such special assessment payable by each Owner shall be an amount in proportion to the ratio of the square footage of the floor area of the Unit to be assessed to the total square footage of the floor areas of all Units to be assessed.

(D) Funds collected and held by the Insurance Trustee shall be disbursed by the Insurance Trustee for the purpose of repair, restoration or reconstruction (if any) in accordance with the terms and conditions of such contract or an agreement between the Association and the Insurance Trustee. Funds from any special assessment shall be delivered to and held in trust by the Insurance Trustee and shall be held and disbursed for repair, restoration and reconstruction in the same manner as insurance proceeds. The Insurance Trustee may invest and reinvest funds held by it in a manner consistent with its duties as trustee. The Insurance Trustee shall be entitled to a reasonable fee for its services.

(E) If major damage occurs and it is determined in accordance with this Section 11.04 that the Common Area shall not be repaired, restored or reconstructed, the Board shall cause the Appraisal described in Section 11.04 (A) to be made (if such Appraisal has not previously been obtained) and the Appraisal shall be made available to the Owners and Mortgagees. The Association shall sell the entire Condominium Development, in one or more sales, for and on behalf of all Owners upon such terms and conditions and for such price as may be approved by a majority of the Board and ratified (i) if a two-class voting structure is in effect, by the vote or written consent of a majority of the Voting Power of each class of Members, or (ii) if a two-class voting structure is not in effect, by the vote or written consent of a majority of the total Voting Power of the Association. For such purposes, the Board shall be and hereby is irrevocably appointed attorney in fact to act on behalf of all Owners to sell the entire Condominium Development upon such



terms and conditions and for such price as shall have been ratified and approved by the Members and to do such acts incidental to the sale and to incur such expense as in its opinion will increase the value of the Condominium Development for the purpose of sale or as may be deemed necessary or convenient in connection with the sale, including but not limited to, the razing of any or all improvements and the preparation and filing of a subdivision map or maps converting the Condominium Development into a single parcel or further subdividing the Condominium Development. The president or other duly designated officer of the Association shall promptly execute, acknowledge and record in the official records of the County a certificate declaring the intention of the Members not to rebuild and stating that the Board is the attorney in fact for the Owners and that such power of attorney is properly exercisable in accordance with the provisions of the Act. The acts of the Board in exercising its power of attorney shall be conclusively binding on all Owners in connection with the sale of the Condominium Development, the Board, by resolution, shall instruct the appropriate officers of the Association to make, execute and deliver on behalf of any Owner, as his interest may appear, any and all instruments, certificates and documents, including, but not limited to, maps, plans, releases, waivers, deeds, escrow instructions and conveyances of every kind and nature, as may be necessary or convenient for the sale of the Condominium Development. The Board shall be authorized to incur fees for legal and accounting services, appraisals, engineering, examination of title and other expenses reasonably related to the sale of the Condominium Development.

(F) The recordation of the deed or deeds conveying the Condominium Development shall terminate the title of each Owner in his Condominium. The title conveyed shall be free from the effect of this Declaration and, upon conveyance of title, this Declaration and the limitations, restrictions, liens, covenants, conditions, easements and equitable servitudes herein contained shall terminate and cease to be effective, except that the provisions of this Declaration providing for disbursement of the proceeds of sale shall continue to be binding on the Association and the Members and no Member shall be relieved of personal liability for any charges or assessments theretofore levied or imposed.

(G) After payment of expenses directly relating to the sale of the Condominium Development and properly payable out of the escrow at the closing of the sale, the Insurance Trustee shall receive the remaining sale proceeds and shall disburse such proceeds, together with any other sums it holds and any remaining assets of the Association (which assets shall be liquidated to the extent possible and the proceeds thereof delivered by the Association to the Insurance Trustee for the purpose of distribution), as follows:

(1) To pay any outstanding expenses of the Association or of the Insurance Trustee relating to the sale of the Condominium Development, including but not limited to, costs of Appraisal, collection of insurance proceeds, compensation of the Insurance Trustee, engineering, legal and accounting expenses, costs of preparing the Condominium Development for sale and other related expenses:

(2) To pay all other debts and liabilities of the Association;

and

(3) To pay the respective Owners in the Condominium Development in proportion to each Owner's undivided interest in the Common Area as shown on the schedule attached as Exhibit D; provided, however, that an equitable adjustment shall be made in the distribution to provide for any Owner's liability to the Association, including but not limited to, liability for unpaid assessments and charges.

11.05. Conformance to Plan. Any reconstruction undertaken in the event of damage or destruction must be in conformance to the City-approved plans for the planned development of the Project in effect at the time of such reconstruction.

ARTICLE 12  
EMINENT  
DOMAIN

12.01. Eminent Domain. If all or any portion of the Condominium Development is taken by action in eminent domain (hereinafter called a "taking"), the Association shall give written notice of the proceedings to all Owners and Mortgagees, and the condemnation award shall be fairly and equitably apportioned among the Owners, Mortgagees, and the Association as the court may determine. A condemnation award which is not apportioned among the Owners by court judgment or by agreement between the condemning authority and each affected Owner shall be allocated first to the repair, restoration, and reconstruction of any remaining portion of the Common Area, and then any excess shall be distributed among the affected Owners and their respective Mortgagees, with the amount distributed to each Owner being an amount equal to the total amount available for distribution to Owners multiplied by a fraction, the numerator of which is the value of such Owner's Unit and the denominator of which is the aggregate value of all Units in the Condominium Development. If necessary to determine the values of the Units for the purpose of apportioning a condemnation award, the Board shall cause an Appraisal to be made. If requested by the court, an Insurance Trustee shall be employed to make disbursement of the award.

12.02. Repair, Restoration, Reconstruction. If only a portion of the Condominium Development is taken, the Board shall promptly contract for the repair, restoration, or reconstruction of the Common Area to a complete architectural Unit, to the extent such repair, restoration, and reconstruction is reasonably necessary and practical. If the cost of repair, restoration and reconstruction of the Common Area exceeds the amount awarded by the court for such purposes, the difference may be recovered by a special assessment levied against all Owners whose Units have not been taken. The Board may levy such special assessment against each Owner whose Unit has not been taken in proportion to each Owner's undivided interest in the Common Area as shown on the schedule attached as Exhibit D. Any reconstruction shall conform to the City approved plans for the planned development of the Project in effect at the time of such reconstruction.

12.03. Adjustment of Undivided Interests. If any part of the Common Area in a particular Phase is taken, and at least one entire Unit is taken, the undivided interests of the Owners in the Common Area in such Phase shall be adjusted as follows:

(A) The interest in the remaining portions of the Common Area of any Owner in such Phase whose entire Unit is taken shall automatically cease and terminate:

(B) The interest in the remaining portion of the Common Area in such Phase of each Owner in such Phase whose Unit is not taken shall increase proportionately so that the total of all undivided interests within such Phase shall, equal one hundred percent (100%).

The Board shall be and hereby is appointed the irrevocable attorney in fact for all Owners to make such adjustments of the undivided interests and to make, execute and deliver a revised exhibit to this Declaration or to any Supplemental Declaration setting forth the undivided interest of all remaining Owners within a Phase, as so adjusted, and further to execute and deliver on behalf of any Owner any and all instruments, certificates and documents, including, but not limited to, maps, plans, releases, waivers, deeds, escrow instructions and conveyances of every kind and nature, as may be necessary or convenient in connection with such adjustments of undivided interests.

### ARTICLE 13 ENFORCEMENT OF BONDED OBLIGATION AND RELEASE OF BONDS

13.01. Enforcement of Bonded Obligation. Before the sale of any of the Condominiums in a particular Phase, all Common Area improvements shall be completed or Declarant shall post a bond or bonds (hereinafter tailed the "bond") to secure the faithful performance of Declarant to complete all or any Common Area improvements in such Phase as the California Department of Real Estate may require. With respect to any Common Area 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 (or, if the Board has given an extension in writing for the completion of any such facility, within thirty (30) days after expiration of such extension) the Board shall consider and vote on the question of action by the Association to enforce the obligations under the bond.

13.02. Rights of Members. A decision of the Board not to initiate action to enforce the obligations under the bond may be overruled, or, if the Board has failed to consider and vote on the question, the decision as to whether to initiate action to enforce the bond may be made, at a special meeting of Members called for the purpose of considering such question Any such meeting shall be held not less than thirty-five (35) nor more than forty-five (45) days after receipt by the Board of a petition for such a meeting signed by Members representing at least five percent (5%) of the total Voting Power of the Association. The question of enforcement of the bond shall be considered and voted upon at such meeting and any proposal receiving the vote of a majority of the total Voting Power of the Association residing in Members other than Declarant shall be the decision of the Association. A decision not to enforce the bond shall be subject to the approval of the City. The Board shall implement any decision to enforce the obligations under the bond made at such meeting by initiating and pursuing appropriate action in the name of the Association.

13.03. Inspection of Improvements and Release of Bond.

(A) Declarant may notify the Board when the Common Area and Offsite Maintenance Easement improvements (including landscaping) for a particular Phase have been completed. Within thirty (30) days after the later to occur of (i) Declarant's giving of such notice and (ii) the date on which Members other than representatives of Declarant constitute a majority of the Board. Declarant and the Board shall jointly request that a qualified engineer or architect employed by the City of Vallejo inspect the Common Area and Offsite Maintenance Easement improvements as to which Declarant has given such notice. If the City of Vallejo is unwilling or unable to provide an engineer or architect to make such inspection, Declarant and the Board shall jointly select an independent and qualified engineer or architect to perform the inspection. If Declarant and the Board are unable or fail to agree on the selection within thirty (30) days after joint selection is requested by either, then Declarant and the Board, within the next thirty (30) days, shall each select a licensed engineer or architect and the persons so selected, within fifteen (15) days after both are selected, shall jointly select a third engineer or architect. If either Declarant or the Board fails to select an engineer or architect within the time provided, then that party shall be deemed to have irrevocably waived its right to select, and the inspection shall be performed by the engineer or architect selected by the other party. If the engineers or architects selected by Declarant and the Board shall fail to select a third person within the time provided, then either Declarant or the Board may petition any court of competent jurisdiction for appointment of such a third person. Each person selected or appointed pursuant to this paragraph is referred to herein as an "Expert," and all Experts are referred to collectively as the "Expert." Declarant shall pay the reasonable compensation of the Expert.

(B) Promptly upon the selection of the Expert as provided in Section 13.03 (A), the Expert shall inspect the Common Area and Offsite Maintenance Easement improvements as to which Declarant has given notice of completion and requested inspection. Declarant and the Board may accompany the Expert during the inspection. The inspection shall be limited to a visual inspection, and improvements shall not be uncovered. The Expert shall not be responsible for identifying latent defects. Promptly after the inspection is completed, the Expert shall submit a written report (the "Report") to Declarant and the Board specifying the respects, if any, in which the improvements do not conform to the plans and specifications therefore and are defective, and if there are no such defects, the Report shall state that the improvements conform to the plans and specifications therefore. The Report shall constitute conclusive and binding evidence that, except as otherwise provided therein and except for latent defects, if any, the improvements have been constructed in accordance with the plans and specifications therefore, and thereafter Declarant shall have no further liability, duty or obligation with respect to such improvements, except to remedy any defects specified in the Report and except with respect to latent defects, if any, and the separate repair obligations of Declarant under express written warranty, if any.

(C) Declarant shall correct any defects specified in the Report, and the Expert shall re-inspect such improvements within thirty (30) days after

Declarant's request. Such re-inspection shall be performed in the same manner as provided for the first inspection. Promptly after the reinspection is completed, the Expert shall submit another written report (the "Reinspection Report") to Declarant and the Board specifying the defects specified in the Report which have not been corrected, if any, and if all such defects have been corrected the Reinspection Report shall state that the improvements conform to the plans and specifications therefore. The Re-inspection Report shall constitute conclusive and binding evidence that, except as otherwise provided therein and except for latent defects, if any, the improvements have been constructed in accordance with the plans and specifications therefore, and thereafter Declarant shall have no further liability, duty or obligation with respect to such improvements, except to remedy any defects specified in the Reinspection Report, and except with respect to latent defects, if any, and the separate repair obligations of Declarant under express written warranty, if any.

(D) Additional inspections and Reinspection Reports shall be made, if necessary, all in accordance with and with the same effect as provided hereinabove.

(E) If the improvements to be inspected are landscaping improvements, then notwithstanding anything to the contrary contained herein, the Expert shall be a horticulturalist or landscape architect. In all other respects, the provisions of this section shall apply to the inspection of landscaping improvements.

(F) Within ten (10) days after all defects have been corrected, as evidenced by a Report or Reinspection Report, the Board shall accept the improvements in writing and shall release in writing any and all rights under any and all payment and performance, labor and material, and completion bonds pertaining to the improvements.

#### ARTICLE 14 MORTGAGEE PROTECTION

14.01. Interpretation. In the event any provision of this Article 14 is inconsistent with or contrary to any other provision of this Declaration, the provisions of this Article 14 shall control.

14.02. Notices. Any Mortgagee of any Condominium, by written notice to the Association setting forth the Condominium encumbered, the Owner thereof and the address to which notices may be sent, may request and thereby be entitled to receive written notice from the Association of (i) any default which is outstanding for sixty (60) days or longer by the Owner of such Condominium in the performance of his obligations under or in compliance with the provisions of this Declaration, the Bylaws or the Rules and Regulations, (ii) any substantial damage to or destruction of the Common Area, if the cost of repair, restoration, or reconstruction exceeds Ten Thousand Dollars (\$10,000), (iii) any proposed or threatened taking by power of eminent domain of the Common Area or any portion thereof or of any Unit or portion thereof, and (iv) any damage to or destruction of a Unit of which the Association is aware, if the cost of repair, restoration, and reconstruction exceeds One Thousand Dollars (\$1,000).



14.03. Mortgagee's Right to Information. Upon written request to the Association, a Mortgagee is entitled to: (1) inspect the books and records of the Association during normal business hours; and (2) receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year of the project; and (3) receive written notice of all meetings of the Association and to designate a representative to attend all such meetings.

14.04. Damage and Destruction Rights. In the event of substantial damage to or destruction of any Unit or any part of the Common Area, a Mortgagee will be entitled to timely written notice of any such damage or destruction and no provision of any document establishing the Condominium Development shall entitle the Owner of a Condominium or other party to priority over such Mortgagee with respect to the distribution to such Owner of any insurance proceeds.

14.05. Condemnation Rights. If any Unit or portion thereof or the Common Area or any portion thereof is made the subject matter of any condemnation proceedings or is otherwise sought to be acquired by a condemning authority, then a Mortgagee shall be entitled to timely written notice of any such proceeding or proposed acquisition and no provision of any document establishing the Condominium Development shall entitle the Owner of a Condominium or other party to priority over such Mortgagee with respect to the distribution to such Owner of the proceeds of any award or settlement.

14.06. Right of First Refusal. Any right given by an Owner of a Condominium to any third person to purchase such Condominium before it is offered for sale or sold to any other person (such right commonly known as a "right of first refusal") shall not be binding upon or enforceable against any Mortgagee acquiring such Condominium pursuant to exercise of remedies provided for in the Mortgage, including foreclosure by judicial action or exercise of a power of sale, or by acceptance of a deed or assignment in lieu of foreclosure.

14.07. Subordination. No provisions contained in this Declaration shall defeat or render invalid the lien of any Mortgage which is made in good faith and for value. The lien of the assessments provided for herein shall be subordinate to the lien of any Mortgage recorded prior to the date any such assessment becomes due. This subordination shall apply only to assessments on a Condominium which have become due and payable prior to a sale or transfer of such Condominium pursuant to a decree of foreclosure or exercise of power of sale. Any Mortgagee who acquires title to or comes into possession of a Condominium pursuant to exercise of remedies provided for in the Mortgage, including foreclosure by judicial action or exercise of a power of sale, and any purchaser at a foreclosure sale, shall take the Condominium free of any claims for unpaid assessments or charges against the Condominium which have accrued prior to the time such Mortgagee or purchaser acquires title to or comes into possession of the Condominium; provided, however, this exception shall not be applicable to any claim for assessments or charges levied by the Association against all Condominiums for the purpose of recovering any revenue lost by reason of the nonpayment of past due assessments upon such Condominium; and provided further, that except as otherwise provided in this section, all of the limitations, restrictions, covenants, conditions,

easements, liens, charges, assessments, and equitable servitudes contained herein shall be binding upon any Owner whose title is derived through foreclosure sale, trustee's sale or otherwise. Except as provided above, the sale, transfer or conveyance of title to a Condominium shall not relieve a selling Owner from personal liability for any assessments which became due and payable prior to such sale, transfer or conveyance, nor relieve such Condominium from a duly recorded lien for any such prior unpaid assessment.

14.08. Payments by Mortgagees. Any Mortgagee, after at least ten (10) days' prior written notification to the Association of the items to be paid and the failure of the Association within such time to make payment, may pay, alone or in conjunction with other Mortgagees, delinquent taxes, liens or assessments which may be or become a charge against the Common Area, or any portion thereof, and any overdue premiums on policies of fire and extended coverage insurance for the Common Area and in the event of a lapse of such a policy of insurance, may pay premiums to secure a new policy. In the event such payments are made, the Mortgagee making such payment shall be entitled to immediate reimbursement from the Association to the extent of the payment made.

14.09. Professional Management. In the event that Declarant or the Association enters into any contract with any person or entity to provide management or maintenance services to the Condominium Development, such contract shall not exceed one (1) year and shall provide that the Association shall have the right to terminate the contract without cause and without payment of termination fee upon thirty (30) days' written notice and without cause upon ninety (90) days' written notice, without payment of a termination fee.

## ARTICLE 15 ANNEXATION

13.01. Right to Annex. Declarant shall have the right to annex to Phase 1 and thereby bring within the scheme of this Declaration and subject to the jurisdiction of the Association additional portions of the Condominium Development, provided, (1) such annexation is in substantial conformance with a detailed plan of phased development submitted to the California Department of Real Estate with the application for a public report for Phase 1 of the Project; (2) as long as there is at least one Federal Housing Administration or Veterans Administration insured or guaranteed loan on property within the Condominium Development, such annexation is in accordance with the general plan for the Condominium Development previously approved by the Federal Housing Administration or Veterans Administration; and (3) such annexation shall be made prior to the third anniversary of the issuance of the original final subdivision report for the immediately preceding Phase of the Condominium Development. Annexation of any other real property or annexation of any real property after said three-year period shall require the vote or written consent of not less than sixty-seven percent (67%) of the total Voting Power of the Association residing in Members other than Declarant. Annexation of additional portions of the Condominium Development may be accomplished in stages.



15.02. Procedure for Annexation. Any annexation shall be made by recordation of both (i) a condominium plan in accordance with the requirements of Section 1351 of the Act, which plan may be combined with a subdivision map, and (ii) a Supplemental Declaration covering the real property to be annexed. The Supplemental Declaration shall describe the real property to be annexed, state that annexation is being made pursuant to this Declaration for the purpose of extending the jurisdiction of the Association to cover the Phase of the Condominium Development being annexed, and set forth the respective undivided interests in the Common Area in the Phase being annexed to be owned by Owners in such Phase. The Supplemental Declaration may contain such complimentary additions and modifications to the terms of this Declaration as may be necessary or desirable to reflect the different character, if any, of the Phase being annexed and as are not inconsistent with the general scheme of this Declaration. Annexation shall be effective upon recordation of the condominium plan and the Supplemental Declaration and thereupon the real property described therein shall be subject to all of the provisions of this Declaration to the extent made applicable by the Supplemental Declaration and to the jurisdiction of the Association pursuant to the terms of this Declaration, the Articles and Bylaws.

15.03. Annexed Property. Each Owner of a Unit in an annexed Phase automatically shall be a Member of the Association and such Owners shall be subject to assessment by the Association for the benefit of the Condominium Development or any part thereof and their Condominiums shall be subject to liens for the purpose of securing payment of assessments as provided in Article 9 hereof. Assessments of Units in an annexed Phase shall commence on the first day of the month next following the closing of the first sale of a Unit to a purchaser in such Phase other than a successor Declarant, as provided in Section 9.09. Voting rights attributable to an Owner of a Unit shall not vest until assessments against the Unit have commenced. The Association shall have the duties, responsibilities, and powers set forth in this Declaration, the Articles and Bylaws with respect to annexed real property. Except as may otherwise be expressly provided in this Declaration or any Supplemental Declaration, the Condominium Development, though consisting of one or more separate statutory condominium projects, shall be managed and governed by the Association as an entirety. Assessments collected from Owners in the Condominium Development may be expended by the Association anywhere in the Condominium Development without regard to the particular Phase, area, subdivision or statutory condominium project from which such assessments came. All Owners shall have ingress and egress to and from all the Common Area throughout the Condominium Development and any Phase thereof and shall have use and enjoyment of any recreational facilities and other amenities contained within the Common Area throughout the Condominium Development, provided that any such use shall be subject to the provisions of this Declaration, any Supplemental Declaration, the Bylaws and the Rules and Regulations.

#### ARTICLE 16 MISCELLANEOUS PROVISIONS

16.01. Power to Settle Claims. The Board shall have the power and authority to compromise, settle, release, and otherwise adjust claims, demands, causes of action and liabilities in favor of the Association and the Owners,



behalf of the association and owners, as the case may be, provided any such claim, demand, cause of action, or liability arises out of or relates to a condition or defect common to all or a majority of the units, or to the development, design, construction, condition, repair, or maintenance of or injury to or defect in the Common Area or part thereof, and the association shall have the right and the power to make and receive all other considerations necessary therefore or in connection with. For such purposes, the board shall be, and hereby is, irrevocably appointed attorney in fact to act on behalf of all owners upon such terms and conditions and for such considerations as may be approved by a majority of the board.

16.02. Custodian Unit. The Association may purchase a Condominium to be occupied by the custodian of the Condominium Development ("Custodian Unit"). In such case, and during any period that such Condominium is owned by the Association, there shall be no Association membership or voting rights with respect to the Custodian Unit. No assessment shall be levied against or with respect to the Custodian Unit and such Unit's share of any assessments shall be allocated proportionately to the remaining Units in the Condominium Development.

16.03. Independence of Provisions. The provisions of this Declaration shall be deemed independent and severable. Invalidation or partial invalidation of any provision of this Declaration by judgment or court order shall not affect any other provision of this Declaration, and the remaining provisions shall remain in full force and effect.

16.04. Notices. Notices shall be in writing and shall be addressed as follows: (i) if to an Owner, to the address of his Unit; (ii) if to a declarant, to Centex Real Estate Corporation, 597 Center Avenue, Suite 200, Martinez, California 94553 and (iii) if to the Association, to the address of the Condominium Development. The Association may designate a different address for notices by giving written notice of such change of address to all Owners and to Declarant. Declarant may designate a different address for notices by giving written notice of such change of address to all Owners and to the Association. Any Owner may designate a different address for notices by giving written notice of such change of address to the Association and to Declarant.

16.05. Headings. The headings used in this Declaration are for convenience and reference only and the words contained therein shall not be held to expand, modify, or aid in the interpretation, construction, or meaning of this Declaration.

16.06. Enforcement. The failure of any Owner to comply with the provisions of this Declaration, the Bylaws or the Articles shall entitle the Association, any Owner, the City, or any of them, to maintain an action for the recovery of damages or injunctive relief or both, and such persons or entities, or any of them, shall have the right to enforce all limitations, restrictions, covenants, conditions, easements, liens, charges, assessments and equitable servitudes imposed by or pursuant to the provisions of this Declaration. Failure to enforce the provisions of this Declaration shall not

be deemed a waiver of the right to do so thereafter. All remedies provided in this Declaration shall be cumulative and in addition to any other remedies available under law.

16.07. Equal Opportunity Housing. This Condominium Development provides equal opportunity housing. Each Unit sold shall be sold without regard to the race, national origin, ancestry, color, religion, creed, marital status, age, or sex of the purchaser.

16.08. Exhibits. Exhibits A through G inclusive, which are attached to this Declaration, are incorporated herein and made a part hereof by this reference.

16.09. Amendments. Any amendments of this Declaration shall require (i) if a two-class voting structure is in effect, the vote or written consent of a majority of each class of Members of the Association as such classes are set forth in the Bylaws and this Declaration; or (ii) if a two-class voting structure is not in effect, the vote or written consent of both a majority of the Voting Power of the Association and the vote or written consent of a majority of the Voting Power of the Association residing in Members other than Declarant; provided, however, that the percentage of the Voting Power (of each class of Members, of the Association, and of Members other than Declarant) necessary to amend a specific provision of this Declaration shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that provision. Notwithstanding anything to the contrary contained in this Declaration, any amendment which establishes, governs, provides for or regulates any one of the following: (i) voting; (ii) assessments, assessment liens or subordination of such liens; (iii) reserves for maintenance, repair and replacement of the Common Area; (iv) insurance or fidelity bonds; (v) right to use of the Common Area; (vi) responsibility for maintenance and repair of the Condominium Development; (vii) expansion or contraction of the Condominium Development or the addition, annexation or withdrawal of property to or from the Condominium Development except as provided in Section 15.01; (viii) the boundaries of any Unit; (ix) interests in the Common Area, (x) leasing of ownership interests; (xi) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his Unit; (xii) any provisions which are for the express benefit of Mortgagees, or (xiii) any other material amendment shall require (i) if a two-class voting structure is in effect, the vote or written consent of sixty-seven percent (67%) of the Voting Power of each class of Members, or (ii) if a two-class voting structure is not in effect, the vote or written consent of sixty-seven percent (67%) of the total Voting Power of the Association and the written consent of sixty-seven percent (67%) of the Mortgagees (based on one vote for each Mortgage owned). Any Mortgagee who does not respond within thirty (30) days' request by the Association for consent to an amendment of this Declaration shall be deemed to have approved such request. Any instrument amending this Declaration must contain a certification by the secretary of the Association that the amendment has been correctly adopted in accordance with the provisions of this Declaration and be recorded in the official records of the County. Any such amendment shall be effective upon the date of recordation.