

RECORDING REQUESTED BY:

[XXX]

AFTER RECORDING, RETURN TO:

[XXX]

**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR**

[Project Title]
A COMMON INTEREST DEVELOPMENT

THIS DECLARATION CONTAINS BINDING NEUTRAL ARBITRATION PROVISIONS THAT INCLUDE A WAIVER OF THE RIGHT TO A JURY TRIAL. YOU SHOULD CONSULT LEGAL COUNSEL WITH ANY QUESTIONS ON THESE OR OTHER PROVISIONS OF THIS DECLARATION

IF THIS DOCUMENT CONTAINS ANY RESTRICTION BASED ON RACE, COLOR, RELIGION, SEX, GENDER, GENDER IDENTITY, GENDER EXPRESSION, SEXUAL ORIENTATION, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, NATIONAL ORIGIN, SOURCE OF INCOME AS DEFINED IN SUBDIVISION (P) OF SECTION 12955, ANCESTRY OR MILITARY AND VETERAN STATUS, THAT RESTRICTION VIOLATES STATE AND FEDERAL FAIR HOUSING LAWS AND IS VOID, AND MAY BE REMOVED PURSUANT TO SECTION 12956.2 OF THE GOVERNMENT CODE. LAWFUL RESTRICTIONS UNDER STATE AND FEDERAL LAW ON THE AGE OF OCCUPANTS IN SENIOR HOUSING OR HOUSING FOR OLDER PERSONS SHALL NOT BE CONSTRUED AS RESTRICTIONS BASED ON FAMILIAL STATUS

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**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
[Project Title]**

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE MILL is made on the date hereinafter set forth by MERITAGE HOMES OF CALIFORNIA, INC., a California corporation (herein referred to as “**Declarant**”), and [XXX] (“**Land Banker**”), on the terms and conditions herein.

The [Project Title] is a stand-alone, residential community comprised [enter project description] However, there is no guarantee that the community will be developed or completed as presently proposed, and nothing in this Declaration shall be construed to require Declarant or Land Banker to develop the maximum number of homes approved, and that there may be increases or decreases if there are any changes, amendments to the governmental approvals for the community.

ARTICLE I

RECITALS

1.1 Description of Real Property. Declarant and Land Banker are collectively the owners of that certain real property in the City of Costa Mesa, County of Orange, State of California, described in **Exhibit A** attached hereto and incorporated herein by reference (the “**Project**”). Declarant intends to improve or has improved the Project by subdividing it into Parcels, Condominiums, Association Property and Common Area, as these terms are defined herein.

1.2 Rights Between Declarant and Land Banker. As of the recordation of this Declaration, Declarant will not own all of the real property identified on **Exhibit A** but will have the right to purchase portions of the Project from Land Banker pursuant to a purchase agreement between Declarant and Land Banker (the “**Purchase Agreement**”). Any real property owned by Land Banker is subject to and affected by the Declaration, and Land Banker has reserved (or been granted, as applicable) various rights and powers as set forth herein. Furthermore, any provision in the Declaration that states the intent of the Declarant to subject the Project to the Declaration shall only be effectuated by Declarant and Land Banker, as they so intend. Upon termination of the Purchase Agreement, Land Banker shall have the right, but not the obligation, to automatically assume the title of “Declarant” (and all rights, powers, authority, obligations, etc., incidental thereto), upon Land Banker’s recordation of an appropriate document evidencing such termination of the Purchase Agreement. Land Banker shall assume no liabilities prior to the date of the termination of the Purchase Agreement which shall also serve as the date of the assignment of Declarant’s rights to Land Banker.

1.3 Phases of the Project. Declarant has improved or intends to improve the Project by subdividing it into Parcels, Condominiums, Common Area, Association Property, and other improvements, as defined hereinbelow. Declarant intends to sell each Condominium to a separate

party (each, an “**Owner**”). Declarant intends to develop the Project in two (2) or more Phases. The first Phase will consist of the real property defined as the “Initial Property” defined herein. Prior to annexation, the Annexable Property (as defined herein) shall not be subject to any provision of this Declaration. Declarant may, but shall have no obligation to, annex all or any portion of the Annexable Property to the Project by recording a Declaration of Annexation in compliance with the provisions of this Declaration.

1.4 Ownership Interests. Each Owner shall receive fee title to his/her Condominium Unit, a fractional ownership interest in Common Area and exclusive easements for use and maintenance of Exclusive Use Areas, if any, assigned to said Condominium. Each Owner shall also have mandatory membership in The [Project Title] Homeowners Association, a non-exclusive easement for use, enjoyment, ingress and egress over Association Property and any applicable Association Maintenance Areas, and such other interests as may be provided herein.

1.5 Common Plan for Project. By this Declaration, Declarant and Land Banker intend to establish a common scheme and plan for the possession, use, enjoyment, repair, Maintenance, restoration and improvement of the Project and interests therein conveyed and to establish thereon a common interest development that is consistent with the development for the Project.

1.6 Boundary Modifications. If the boundaries of real property change as a result of one or more subsequently recorded final maps, amended final maps, parcel maps, amended parcel maps, certificates of correction, lot line adjustments and/or records of survey, then for all purposes of this Declaration.

1.6.1 Added to Parcel. Real property which is removed from a Parcel and added to another Parcel shall thereafter be part of that other Parcel;

1.6.2 Removed from Declaration. Real property which is removed from Association Property and added to real property which is not subject to this Declaration shall no longer constitute a part of such Association Property and shall no longer be subject to this Declaration; and

1.6.3 Added to Declaration. Real property not subject to this Declaration which is added to Association Property shall be part of the Association Property to which it is added and shall automatically be subject to all provisions of this Declaration.

NOW, THEREFORE, Declarant and Land Banker hereby declare that the Initial Property and all portions of the Annexable Property annexed hereto shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold and improved, subject to the following declarations, limitations, covenants, conditions, restrictions and easements, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Project, in accordance with the plan for improvement of the Project and all division thereof into Parcels and Condominiums. Pursuant to California Civil Code Sections 1468 and 5975, all of the limitations, covenants, conditions, restrictions and easements shall constitute covenants which shall run with the land, be enforceable as equitable servitudes, and shall be binding upon Declarant, Land Banker and their successors and assigns, and all parties having or acquiring any right, title or interest in or to any part of the Project.

ARTICLE II

DEFINITIONS

In addition to the defined terms set forth herein, certain defined terms relating to Disputes with Declarant and the Association and/or an Owner are set forth in the Dispute Resolution Declaration:

2.1 “Accessory Dwelling Unit” or “ADU” shall collectively refer to “Accessory Dwelling Unit” and “Junior Accessory Dwelling Unit” which are structures to be used as habitable spaces and satisfies the requirements set forth in California Government Code Section 65852.2, or California Government Code Section 65852.22, as applicable, and which shall be subject to all requirements, restrictions and limitations that may be imposed by the Association, the City, and any other governmental agency or department. Due to the nature of the Project as being Condominiums, Owners are not guaranteed that they will be approved to have an Accessory Dwelling Unit or that any garage may be converted into an Accessory Dwelling Unit.

2.2 “Additional Charges” shall mean costs, fees, charges and expenditures, including, without limitation, attorney’s fees, late charges, interest and recording and filing fees actually incurred by the Association in collecting and/or enforcing payment of Assessments, fines and/or penalties.

2.3 “Alteration” shall mean constructing, performing, installing, remodeling, repairing, replacing, demolishing, and/or changing the color or shade of any Improvement. The term “Alteration” does not include repainting or refinishing any Improvement in the same color, hue, intensity, tone, and shade or repairing any Improvement with the same materials.

2.4 “Annexable Property” shall mean the real property described in **Exhibit A** attached hereto, *but excluding therefrom the Initial Property*. Any portion of Annexable Property may be added to the Project upon recordation of a Declaration of Annexation, as set forth in this Declaration. However, there is no guarantee that any of the Annexable Property will be annexed into the Project as intended by Declarant.

2.5 “Antenna Equipment” shall individually and collectively refer to any and all television, video or radio poles, antennae, satellite dishes, cables, other transmission and/or reception fixtures, or other over-the-air receiving device or related or similar personal property.

2.6 “Antenna Laws” shall refer to Title 47 U.S.C. §§ 1 et seq., 47 CFR § 1.4000 and any other applicable state, federal and local laws, rules and decisions promulgated with respect thereto, pertaining to the use, installation and Maintenance Antenna Equipment.

2.7 “Architectural Control Committee” or “ACC” shall mean the committee referenced in ARTICLE VI of this Declaration.

2.8 “Articles” shall mean the Articles of Incorporation of The [Project Title] Homeowners Association, a California nonprofit mutual benefit corporation, and any amendments thereto.

2.9 “Assessment” shall mean that portion of the cost of Maintaining, improving, repairing, operating and managing the Project which is to be paid by each Owner as determined by the Association and as more particularly set forth in ARTICLE IX of this Declaration. “Assessment” shall include Regular Assessments, Special Assessments, and/or Reimbursement Assessments, as discussed in further detail in ARTICLE IX hereto.

2.10 “Association” shall mean The [Project Title] Homeowners Association, a California nonprofit mutual benefit corporation, the Members of which shall be the Owners of Condominiums in the Project, their successors and assigns.

2.11 “Association Maintenance Areas” or “AMA” shall mean those portions of the Project that are not owned in fee by the Association but for which the Association shall have the obligation to Maintain, as set forth in this Declaration. Association Maintenance Areas include, but are not limited to, landscaping, irrigation or other Improvements in public rights-of-way and within any adjoining public parkways (including portions of the public rights-of-way along Santa Ana Street, Claudina Street, Philadelphia Street and Olive Avenue) (collectively, “***Offsite Maintenance Areas***”). “Association Maintenance Areas” shall also mean any real property and Improvements described as “Association Maintenance Areas” in a Declaration of Annexation, or as may be designated by the Association.

2.12 “Association Property” or “AP” shall mean (a) Association Maintenance Areas; and (b) Parcels 1 and 2 of the Map, and all Improvements thereon, but excluding therefrom all “Condominium Units” and “Common Area” as defined herein. With the exception of Association Maintenance Areas, Association Property and the Improvements thereon shall be held in fee title by the Association. The term “Association Property” shall also mean any real property and Improvements described as “Association Property” in a Declaration of Annexation and/or shown on a Condominium Plan for a particular Phase. Association Property is “common area” as that term is defined in California Civil Code Section 4095.

2.13 “Association Rules” shall mean rules and regulations regulating the use and enjoyment of the Project which may be adopted by the Board from time to time.

2.14 “Authorized Vehicles” shall include, but not be limited to, standard passenger vehicles, motorcycles and trucks (unless otherwise defined as a Commercial Vehicle below) used for personal transportation. Any vehicle that is not an Authorized Vehicle is deemed a “Prohibited Vehicle,” as set forth below. The Board shall have the discretion to modify, amend or change the definition of “Authorized Vehicles” through Association Rules so long as the minimum standards set forth in Section 4.23 of this Declaration are satisfied.

2.15 “Budget” shall mean the portion of the budget (as set forth in ARTICLE IX below) that shall cover those portions of the expenses for the entirety of the Project, and for which the Regular Assessment payable by each Owner of a Condominium under ARTICLE IX of this Declaration.

2.16 “BMPs” shall mean Best Management Practices as it pertains to the management of storm water facilities located within the Project, as set forth in the WQMP approved by the City for the Project.

2.17 “Board” or “Board of Directors” shall mean the Board of Directors of the Association, appointed or elected as provided in the Bylaws.

2.18 “Bond” shall mean a bond, security or other arrangement to secure performance of the commitment of Declarant to complete Association Property Improvements.

2.19 “Building” shall mean each of the multiple-dwelling residential structures which contain Condominium Units, as shown on a Condominium Plan. While Buildings enclose the residential and garage elements of the Condominium Units, **the Buildings are not part of the Condominium Units, and are considered Association Property for purposes of this Declaration.** For purposes of interpreting this Declaration and a Condominium Plan, the term “Building” is intended to include all of the following components:

(a) The shell, including the roof, foundation and exterior surfaces and the finishes thereon;

(b) Entry doors, windows and the garage door (except for glass portions of windows and sliding doors at Condominium Unit boundaries, all of which are part of the Condominium Unit);

(c) All structural support elements existing in, on, under and throughout the Building shell and core that carry ceiling, roof, and floor loads to the foundation, including all separate or common footings, girders, columns and braces, the foundations and other standard support elements, and every wall, column, floor, ceiling, footing, or other vertical or horizontal Improvement in the Building, but the Building does not include between-room walls or partitions within a Condominium Unit that are not necessary for the structural support of the Building (for purposes hereof, any wall or other structure that carries roof, ceiling or upper floor loads is “necessary for structural support”);

(d) All exterior walls and surfaces of the Building and their surface treatments (including siding, stone, stucco, plaster, paint and stain);

(e) Fixtures that are outside the boundaries of the Condominium Units, including exterior lighting fixtures, utility cabinets on Building exteriors, utility cabinets and other facilities for the delivery of utilities to the Project (except for outlets that are located in the Condominium Unit);

(f) Utility meters outside the Condominium Unit boundaries, and the cables, pipes, conduits and other Improvements for the delivery of utilities to the Condominium Unit;

(g) Fire sprinkler systems serving each Condominium Unit, including fire sprinkler pipes and fire sprinkler heads that protrude into the boundaries of the Condominium Unit;

(h) Cables and related equipment for the delivery of telecommunications services to the Project (except for any outlets in the Condominium Unit boundaries and

except for connectors, fibers or cables that protrude into the boundaries of the Condominium Unit); and

(i) All or any portion of mechanical shaft, duct, pipe, line, main, conduit, lighting, flue, methane mitigation Improvement and any other equipment, fixtures, machinery, system or apparatus which benefits the entire Building.

2.20 “Bylaws” shall mean the Bylaws of the Association, as amended from time to time.

2.21 “City” shall mean the City of Costa Mesa, the City in which the Project is located.

2.22 “Commercial Vehicles” shall mean any truck or vehicle that is primarily used or maintained for the transportation of persons for hire, compensation, or profit (e.g., taxi or limousine), or is designed, used, or maintained primarily for the transportation of property, or requires a specialized driver’s license (e.g., a California Class A, Class B or commercial Class C licenses). A “Commercial Vehicle” is also any truck or vehicle that (a) has more than (2) axles, (b) is longer than twenty-one (21) feet in length from bumper to bumper, (c) exceeds 10,000 pounds gross vehicle weight rating, and/or (d) is not used for personal transportation.

2.23 “Common Area” shall mean the volume of airspace described in a Condominium Plan for each Phase in which Condominiums are located which shall be owned by Owners in each Phase as tenants-in-common. The Common Area will consist of a three-dimensional volume of airspace located above the Buildings within a Phase as described in a Condominium Plan, and is bounded by and contained within the following boundaries: the upper vertical boundary extends infinitely into the heavens; the lower vertical boundary is one hundred feet (100.0’) above the lowest finished grade elevations shown on the Condominium Plan; and the lateral boundaries are vertical planes at the limits of the horizontal dimensions of the Condominium Units within a Phase. All Common Area will consist solely of a volume of airspace as shown and described in the respective Condominium Plan. Any references in this Declaration to “Common Area” are references to the Common Area as a whole and to portions thereof. The Common Area identified in a particular Phase constitutes the undivided interest-in-common in a portion of real property held by the Owners in that particular Phase, all in accordance with California Civil Code Section 4125. The term “Common Area” shall also mean any property described as Common Area in a Declaration of Annexation.

2.24 “Common Expenses” shall mean and include the actual and estimated expenses of operating and Maintaining the Project and Improvements, as set forth in this Declaration, and any reasonable reserve for such purposes as found and determined by the Board and all sums designated as Common Expenses by or pursuant to the Project Documents.

2.25 “Conditions of Approval” shall collectively refer to any and all conditions approved and adopted by the City for the Project including, but not limited to, Resolution No. 2024-119, which is incorporated herein by reference.

2.26 “Condominium” refers to an estate in real property consisting of: (a) a separate interest in a Condominium Unit; (b) an undivided fractional fee interest in the Common Area; (c) rights and easements to EUA designated to a Condominium Unit (if any); and (d) all easements

exclusive and non-exclusive appurtenant thereto, as provided in this Declaration, as may be shown on a Condominium Plan, and/or on the Map.

2.27 “Condominium Plan” shall mean the recorded condominium plan for a Phase consisting or (a) a description or survey map of a Phase or portion thereof, which shall refer to or show monumentation on the ground, (b) a three dimensional description of the Phase or a portion thereof, one or more dimensions of which may extend for an indefinite distance upwards or downwards in sufficient detail to identify Association Property, Common Area, Exclusive Use Areas and each Condominium Unit, and (c) a certificate consenting to the recordation thereof signed and acknowledged by the record owner of fee title to the real property within the Phase or portion thereof, by either the trustee or the Mortgagee of each recorded Mortgage encumbering the Phase or portion thereof, if any. Condominium Plans may be recorded for future phases over any portion of Annexable Property at the discretion of Declarant and shall not constitute an amendment to any Condominium Plan. Any Condominium Plan for a Phase may be corrected by Declarant without approval of the Association or any Owner to correct any technical, mathematical, information and/or typographical errors. Otherwise, amendments to a Condominium Plan must comply with the law including, but not limited to, California Civil Code Section 4295, as amended from time to time.

2.28 “Condominium Unit” shall mean that portion of a Building which is shown on a Condominium Plan as an individually numbered space and which shall constitute a “separate interest,” as defined in California Civil Code Section 4185. The boundaries of each Condominium Unit shall be to the interior unfinished surfaces of the perimeter walls, floors, ceilings, doors and windows. Each Condominium Unit includes the airspace encompassed by its boundaries but does not include load bearing walls and walls containing utility conduits. Utility systems and components, fixtures and appliances located within the boundaries of a Condominium Unit, and which service only that Condominium Unit, are also part of a Condominium Unit. Garage doors and garages that are attached to and accessed from a Condominium Unit (shown on the Condominium Plan as an individually numbered space with the letter “G” or the word “Garage”), if any, are included in the definition of a “Condominium Unit.” The approximate dimensions of each Condominium Unit are shown on the Condominium Plan; however, the existing physical boundaries of a Condominium Unit as originally constructed or as reconstructed shall be conclusively presumed to be its boundaries.

2.29 “County” shall mean the County of Orange, California, the County in which the Project is located.

2.30 “Declarant” shall mean Meritage Homes of California, Inc., a California corporation, its successors and assigns, if such successors and assigns are assigned the rights of Declarant pursuant to Section 16.10 hereof or if such successor or assign is a mortgagee acquiring Declarant’s interest in the Project, or any portion thereof, by foreclosure or by deed in lieu of foreclosure. The term “Declarant” shall also mean any person or entity if (a) a notice signed by a Declarant and such person or entity has been recorded in the Official Records in which such person or entity assumes the rights and duties of Declarant to some portion of the Project or (b) such person or entity acquires all of the Project then owned by a Declarant which must be more than one (1) Condominium. There may be more than one Declarant at any given time. Unless otherwise expressly provided in this Declaration, all actions that may be taken by Declarant may be chosen

by Declarant in its sole discretion. Declarant is a “builder” as defined in California Civil Code Section 6000, a “Declarant” as defined in California Civil Code Section 4130, and a “subdivider” as used in the regulations of the DRE.

2.31 “Declaration” shall mean this “Declaration of Covenants, Conditions and Restrictions for The [Project Title],” and any amendments, modifications or supplements thereto.

2.32 “Declaration of Annexation” shall mean and refer to those certain declarations of covenants, conditions and restrictions or similar instruments, annexing any or all of the Annexable Property (defined herein) and extending the plan of this Declaration to that real property as provided in Section 3.8 of this Declaration. The Declaration of Annexation shall (a) describe the portion of real property to be annexed; (b) describe any Association Property with the property to be annexed; (c) set forth the ownership of any such Association Property; (d) specify that all of the covenants, conditions and restrictions of this Declaration shall apply to the annexed real property in the same manner as if it were originally covered by this Declaration; and (e) include any additional terms, provisions, easements or conditions that may be applicable to the real property and Improvements described in the Declaration of Annexation. A Declaration of Annexation may include additional terms, provisions, easements, restrictions or conditions that cover all or a portion of the Project described in the Declaration of Annexation in order to supplement, modify, or clarify conditions, covenants, restrictions or easements established under this Declaration. The provisions of any Declaration of Annexation may impose such additional, different or more restrictive conditions, covenants, restrictions, land uses and limitations as Declarant may deem advisable, taking into account the particular requirements of the real property encumbered thereby. In the event of any conflict between the provisions of this Declaration and the provisions of a Declaration of Annexation, this Declaration shall control.

2.33 “Design Guidelines” shall refer to architectural rules, regulations and guidelines that may be adopted by the ACC, in its sole discretion. The Design Guidelines may impose specific requirements on individual Parcels and/or Condominium Units if those requirements are reasonable in light of specific topography, visibility or other factors and address any modifications or additions of any Building and structures including, but not limited to, fences, trellises and sunshades. Design Guidelines, if adopted, repealed and/or modified pursuant to California Civil Code Section 4340, *et seq.*, shall constitute “Association Rules.”

2.34 “Dispute Resolution Declaration” shall refer to the “Notice of Alternative Non-Adversarial and Dispute Resolution Procedures for The [Project Title],” recorded in the Official Records, as may be amended, supplemented or modified, against the Project and which shall govern any and all claims and disputes against Declarant with respect to the Association, Owners, Condominium Units and Association Property.

2.35 “DRE” shall mean the California Department of Real Estate, and any successor entity, agency, department, bureau, commission and/or council.

2.36 “Eligible First Mortgagee” shall mean an Eligible First Mortgagee, who has sent written notice to the Association, stating both its name and address and the address of the Condominium Unit it has the Mortgage on. An “Eligible First Mortgagee” shall include any holder (including FHLMC and FNMA), insurer (including FHA), guarantor (including VA) of a First

Mortgage on a Condominium Unit or other portion of the Project, or an “Institutional Mortgagee” as defined below. Where any provision of this Declaration requires the approval of an Eligible First Mortgagee, the approval of the holder, insurer or guarantor of that First Mortgage shall be deemed to be the required approval. An Eligible First Mortgagee is entitled to written notice from the Association of any or all of the events specified in Section 13.8 of this Declaration.

2.37 “Exclusive Use Area” or “EUA” shall mean those portions of the Building or Association Property which are shown on a Condominium Plan or as set forth in this Declaration and set aside for the exclusive use of a Condominium Unit Owner, if any.

2.37.1 “Balcony” shall mean each portion of the Building located on the second floor which is shown on the Condominium Plan as an individually numbered space with the letter “B.” The perimeter boundaries of each Balcony are to the interior unfinished surfaces of the fences and/or railings and to the exterior finished surfaces of any walls enclosing the Balcony. The vertical boundaries of each Balcony are to the interior unfinished surface of the floor and to a horizontal plane extended from the ceiling of the Condominium Unit which adjoins the Balcony. The approximate dimensions of each Balcony are shown on the Condominium Plan. Each Balcony includes the airspace encompassed and any storage areas within its boundaries.

2.37.2 “Patio” shall mean each portion of Association Property on the first floor shown on the Condominium Plan as an individually numbered space with the letter “PA.” The perimeter boundaries of each Patio are to the interior unfinished surfaces of the walls and gates, and to the exterior unfinished surfaces of any walls and gates enclosing the Patio. The vertical boundaries of each Patio are to the interior unfinished surface of the floor and to a horizontal plane extended from the ceiling of the Condominium Unit which adjoins the Patio. The approximate dimensions of each Patio are shown on the Condominium Plan. Each Patio includes the airspace encompassed within its boundaries.

2.37.3 “Porch” shall mean each portion of the Building on the first floor which is shown on the Condominium Plan as an individually numbered space with the letter “P.” The perimeter boundaries of each Porch are to the interior unfinished surfaces of the walls and to the exterior unfinished surfaces of any walls enclosing the Porch. The vertical boundaries of each Porch are to the interior unfinished surface of the floor and to a horizontal plane extended from the ceiling of the Condominium Unit which adjoins the Porch. The approximate dimensions of each Porch are shown on the Condominium Plan. Each Porch includes the airspace encompassed within its boundaries. Porches are intended to be those covered outside areas of the Building that are on the first floor of the Condominium Unit leading to the main entry door.

2.37.4 “Solar Energy System” shall mean the roof-mounted solar photovoltaic system and other equipment (including, but not limited to, solar arrays, panels, poles, platforms, all mechanical equipment, inverters, ducting, electrical connections, piping, wiring, conduits, framing, anchors and all other components necessary for the operation and function of the system) installed on a Building which exclusively serves a Condominium Unit.

2.37.5 “Utilities” shall collectively refer to any and all utilities, pipes, wires, conduits, and equipment which exclusively serves a Condominium Unit, wherever it may be located or installed within Association Property, including any walls of a Condominium Unit. This Utilities EUA shall include, but not be limited to, the heating, ventilation and air conditioning equipment (HVAC) which exclusively serves a Condominium Unit including the condenser unit, the platform upon which the condenser is located, all mechanical equipment, and all wires, conduits, pipes and ducting leading up to and through the exterior surface of the Building, the fire sprinkler systems (including fire sprinkler heads), water and plumbing and electrical pipes, conduits, wires, connectors and switches located in the walls of the Condominium Unit or outside of the Building.

2.38 “FHA” shall mean the United States Department of Housing and Urban Development, Federal Housing Administration.

2.39 “FHLMC” shall mean the Federal Home Loan Mortgage Corporation.

2.40 “Final Public Report” shall mean the final subdivision public report issued by the DRE or any successor state agency pursuant to the Subdivided Lands Act (California Business & Professions Code Section 11000, *et seq.*) as it may be amended from time to time.

2.41 “FNMA” shall mean the Federal National Mortgage Association.

2.42 “Homeowner’s Manual” shall mean the documents provided to original Owners by Declarant, as may be updated and amended from time to time, that pertain to Improvements within a Condominium Unit including, but not limited to, fixtures, appliances, windows, siding, landscaping, *etc.*, originally installed by Declarant, and which sets forth obligations, procedures, operation and schedules pertaining to certain products manufactured by others and installed on the Condominium Unit, including warranty terms, usage instructions, Maintenance Obligations and schedules for the Owner to Maintain the Improvements for which an Owner is responsible. Each Owner shall be responsible to ensure that the subsequent purchaser of such Owner’s Condominium Unit is aware of and is given the Homeowner’s Manual.

2.43 “Improvements” shall mean all structures and improvements on the Project, including, but not limited to, buildings, outbuildings, underground installations, slope, grading, roads, curbs, gutters, storm drains, utilities, driveways, parking areas, fences, walls, screening walls and barriers, retaining walls, stairs, decks, swimming pools, spas, saunas, painting, light standards, sound equipment, windbreaks, plantings, shrubbery, landscaping, irrigation system, drainage ditches, streets, street lighting, monuments, and other works of Improvement as defined in California Civil Code Section 8050, excluding only those Improvements, or portions thereof, that are dedicated to the public or a public or quasi-public entity or utility company, and accepted for Maintenance by the public, such entity or utility company.

2.44 “Initial Property” shall mean Condominium Units 1 to 8, inclusive, Common Area and Association Property, located on a portion of Parcel 1 of the Map, as shown on the Condominium Plan for Phase 1.

2.45 “Institutional Mortgagee” shall mean a First Mortgagee that is (a) a federally or state chartered or licensed bank or savings and loan association; (b) a mortgage company or other

entity chartered or licensed under federal or state laws whose principal business is lending money on the security of real property or investing in such loans; (c) an insurance company; (d) a federal or state agency or instrumentality including, without limitation, FNMA and FHLMC; or (e) an insurer or governmental guarantor of a First Mortgage including the FHA and the VA.

2.46 “Land Banker” shall refer to MTHCALV-I Santa Ana Street, LLC, a Delaware limited liability company, its successors and assigns, or if such successor or assign is a mortgagee acquiring Land Banker’s interest in the Project by foreclosure or by deed in lieu of foreclosure if such successors and assigns are assigned the rights of Land Banker in writing and recorded against the Parcels (or portions thereof) owned by Land Banker. Because Land Banker will own and convey real property to Declarant under the Purchase Agreement as development of the Project progresses, any references in this Declaration or Declaration of Annexation to the sale or conveyance of Condominiums or similar terms shall refer to the purchase of a Condominium to a homebuyer requiring a Final Public Report, and not a sale, conveyance or transfer of real property from Land Banker to Declarant under the Purchase Agreement.

2.47 “Maintain,” “Maintaining,” “Maintained” or “Maintenance” shall mean taking all actions reasonably necessary and the exercise of reasonable care to keep the Buildings, Condominium Units, roads, landscaping, lighting, storm water bio-retention areas, and other related Improvements and fixtures in first class condition and repair in a state similar to their original condition, normal wear and tear excepted, and includes “repair and replace.” The actions to be taken include, but are not limited to, regular inspections, painting, Maintenance, refinishing, repairing, replacing and reconstructing the Improvement, and in the case of landscaping, irrigating, fertilizing, and other garden practices necessary to promote a healthy, weed free environment for optimum plant growth. Owners shall have no responsibility to Maintain any Improvement Maintained by a third party or the public or quasi-public entity or utility company even if the third party or the public or a quasi-public entity or utility company fails to perform all actions required by this Declaration.

2.48 “Maintenance Obligations” shall mean the Owner’s or Association’s obligation to perform: (a) all reasonable Maintenance consistent with the terms of the any Maintenance manual provided by Declarant, any Maintenance obligations and schedules in any warranty offered by Declarant or any manufacturer, and any Maintenance obligations and schedules otherwise provided to the Owner or Association by Declarant or any manufacturer, as applicable; (b) any commonly accepted Maintenance practices to prolong the life of the materials and construction of all Parcels, Condominium Units and Improvements; and (c) any Maintenance Obligations and requirements set forth in this Declaration, as amended and updated from time to time.

2.49 “Map” shall refer to the final map of “Tract No. 19290,” filed for record on _____, 20____, in Book _____ of Maps, at Pages ____ to ____, inclusive, in the Official Records, as may be amended from time to time, and incorporated herein by reference.

2.50 “Member” shall mean a person or entity holding a membership in the Association as provided herein. Each Owner shall constitute a Member. If there is more than one Owner per Condominium Unit, the co-owners collectively shall constitute a single Member.

2.51 “Member in Good Standing” shall mean an Owner who is not delinquent in payment of Assessments, is not in violation of any provision of the Project Documents, and/or does not otherwise have any disciplinary action pending between said Owner and the Association, as further identified in the Bylaws.

2.52 “Model Units” shall mean those Condominium Units within the Project which are initially used by Declarant for the sole purpose of marketing other Condominiums constructed by Declarant and such Condominium Units are not initially occupied or used for residential purposes. It is intended and anticipated that the sale of the Model Units, which shall be open to the viewing public during business hours while the sales period is active, will be in the last Phase of the Project.

2.53 “Mortgage” shall mean a mortgage or deed of trust encumbering a Condominium Unit or other portion of the Project. A “Mortgagee” shall include the beneficiary under a deed of trust and any guarantor or insurer of a Mortgage. “First Mortgagee” is one having priority over all other Mortgages or holders of Mortgages encumbering the same Condominium Unit or other portion of the Project.

2.54 “Notice of Lien” shall mean a notice of delinquent Assessment recorded as a lien against a Condominium Unit for the Owner’s failure to pay Assessments as set forth in this Declaration.

2.55 “Official Records” shall refer to the Official Records of the Orange County Recorder’s Office, State of California.

2.56 “Owner(s)” shall mean the record holder or holders of title, if more than one, to any Condominium Unit in the Project. “Owner” includes Declarant and Land Banker, except where specified as mutually exclusive. This shall not include contract sellers or persons or entities having any interest merely as security for the performance of an obligation. If a Condominium Unit is sold under a recorded contract of sale (or a recorded memorandum of such contract), the purchaser, rather than the fee Owner, shall be considered the “Owner.”

2.57 “Parcel” shall mean any Parcel or Lot, as shown on the Map, and any other parcel of land designated as “Parcel” or “Lot” in any recorded supplement to the Declaration or in any Declaration of Annexation.

2.58 “Permitted Parking Areas” shall mean garages and open/guest parking spaces that are designed and established for the parking of Authorized Vehicles. Permitted Parking Areas may also include those areas determined to be such areas by the Board of Directors as part of the Association Rules. “Permitted Parking Areas” **do not** include sidewalks, garage aprons, emergency vehicle access road, alleys, streets marked with “No Parking” signs and/or red-painted curbs, or areas in the adjacent neighborhoods. Specifically, the curbs adjacent to the drive aisles (private alleys) shall be painted red to prohibit parallel parking in the drive aisles. There are no driveways for any Condominium Units in the Project on which vehicles are allowed to park, and there will be limited open/guest parking spaces. Use of the Permitted Parking Areas is described in Section 4.23 of this Declaration.

2.59 “Phase” shall mean any Parcels, Condominiums, Buildings, Common Area, Association Maintenance and/or Association Property which are made subject to the provisions of

this Declaration either by recording this Declaration or by recording a Declaration of Annexation; provided, a single Declaration of Annexation may establish more than one Phase in accordance with the terms of that Declaration of Annexation.

2.60 “Prohibited Vehicles” shall include, but not be limited to, non-motorized vehicles, trailers or motorized vehicles that exceed 7 feet in height, 7 feet in width, and 19 feet in length (unless otherwise defined as a Commercial Vehicle above), and any vehicle intended for recreation purposes including attached camper bodies, motor homes, mobile homes, boats, land conveyances, vessels and aircraft that exceed 18 feet in length. The Board shall have the discretion to modify, amend or change the definition of “Prohibited Vehicles” through Association Rules so long as the minimum standards set forth in Section 4.23 of this Declaration are satisfied.

2.61 “Project” shall mean the Initial Property, and the portions of Annexable Property brought within the jurisdiction of the Association, including any structures and Improvements erected or to be erected thereon, all in accordance with this Declaration.

2.62 “Project Documents” shall mean and include this Declaration, as amended from time to time, the exhibits, if any, attached hereto, together with the other basic documents used to create and govern the Project, including the Map, Conditions of Approval, Articles, Bylaws and Association Rules. The Project Documents **do not** include the Dispute Resolution Declaration defined below.

2.63 “Quorum” shall mean more than fifty percent (50%) of those entitled to act. With respect to the imposition of certain Assessments, a Quorum necessary for the imposition of Regular and Special Assessments set forth in ARTICLE IX shall be more than fifty percent (50%) of the Members of the Association, as set forth in California Civil Code Section 5605.

2.64 “Remainder” shall mean and refer to the three-dimensional volume of land and airspace consisting of portions of the Map, excepting therefrom, the Initial Property. Remainder is not part of the Initial Property. “Remainder” shall also mean those portions of the Map, depicted and described on separate and distinct Condominium Plans for future Phases. Condominium Plans may be recorded for future phases over Remainder at the discretion of Declarant and shall not constitute an amendment to the Condominium Plan. Remainder shall be consistent with the meaning of “Three-Dimensional Portion” as used in California Government Code Section 66427, as the same may be amended from time to time.

2.65 “Right to Repair Act” shall refer to California Civil Code Sections 895-945.5, as may be amended from time to time.

2.66 “VA” shall mean the United States Department of Veteran's Affairs.

2.67 “Water Quality Management Plan” or “WQMP” shall refer to the Water Quality Management Plan approved by the City. The WQMP shall be consistent with the requirements of Section 7 and Exhibit 7.II of the County Drainage Area Management Plan (DAMP) for new developments, and shall identify potential sources of pollutants during the long-term on-going maintenance and use of the Project that could affect the quality of storm water runoff from the Project, shall define source control, site design, and treatment control (if applicable) BMPs to control or eliminate the discharge of pollutants into the surface water runoff, and provide a

monitoring program to address the long-term implementation of and compliance with the defined BMPs.

ARTICLE III

PROPERTY RIGHTS

3.1 Association Property. Title to or a legal ownership interest in Association Property shall be conveyed to the Association prior to or concurrently with the conveyance of the first Condominium Unit within a particular Phase to an Owner. The Association shall be deemed to have accepted the Association Property conveyed to it when (a) a grant deed conveying title to the Association Property has been recorded in the Official Records, and (b) Assessments have commenced pursuant to ARTICLE IX of this Declaration. Association Property shall be Maintained by the Association as provided in ARTICLE V of this Declaration. When Association Property is conveyed by Declarant, an easement shall be deemed automatically reserved over the Association Property in favor of Declarant for drainage and encroachment purposes and for ingress and egress from the Association Property for the purpose of completing Improvements thereon or for the performance of necessary repair work. Said easement in favor of Declarant shall automatically terminate ten (10) years after the sale of the last Condominium Unit covered by this Declaration.

3.2 Association Maintenance Areas. The Association shall be and is hereby conveyed non-exclusive easements to the Association Maintenance Areas prior to or concurrently with the conveyance of the first Condominium Unit within a particular Phase to an Owner. Association Maintenance Areas shall be Maintained by the Association as provided in ARTICLE V of this Declaration. When Association Maintenance Area is conveyed by Declarant, an easement shall be deemed automatically reserved over the Association Maintenance Area in favor of Declarant for drainage and encroachment purposes and for ingress and egress from the Association Property for the purpose of completing Improvements thereon or for the performance of necessary repair work. Said easement in favor of Declarant shall automatically terminate ten (10) years after the sale of the last Condominium Unit covered by this Declaration.

3.3 Common Area. Each Owner of a Condominium shall be conveyed an equal undivided interest in the Common Area as a tenant-in-common with the other Owners of Condominiums in the same Phase, excluding the Condominiums. The tenancy-in-common interest to be conveyed with each Condominium shall be determined by a fraction, the numerator of which is one (1) and the denominator of which is the total number of Condominiums within that particular Phase. Owners of Condominium Units in Phase 1 shall each have a one-eighth (1/8th) interest in the Common Area as tenants-in-common. The specific interests in the Common Area for Condominiums in each Phase to be conveyed to the Owners within that Phase shall be specified in the Declaration of Annexation for that particular Phase.

3.4 Exclusive Use Areas. Except as limited by other provisions in this Declaration, the Map and/or Condominium Plan, each Owner of a Condominium shall have an exclusive right and easement for the use, possession and enjoyment of the EUA applicable to his/her Condominium Unit designated on the Condominium Plan which bears the number that corresponds to that of his/her Condominium Unit, and any other areas defined as EUA in this Declaration or any

Declaration of Annexation, all of which shall be appurtenant to and pass with title to the Owners' Condominium. All easements to EUA are subject to the right of the Association to enter in and upon the EUA as provided by and in accordance with the limitations upon such right as set forth in this Declaration.

3.5 Non-severability of Common Area. The interests in Common Area cannot be changed after conveyance of the first Condominium in a Building within a Phase. The undivided interests in Common Area, the fee title to the respective Condominium Units conveyed therewith and the easements appurtenant thereto are not separable and may not be separately conveyed unless the Condominium Plan is amended in accordance with California Civil Code Section 4295. If the Condominium Plan is amended, any conveyances necessary to cause ownership interests to conform to the amended Condominium Plan shall not violate this section. Each undivided interest in the Common Area and each easement appurtenant to the Condominium shall be deemed to be conveyed or encumbered with the respective Condominium even though the description in the grant deed or other instrument of conveyance or encumbrance may refer only to the Condominium. The ownership interests in the Common Area and Condominiums described herein are subject to the easements described, granted and reserved in this Declaration. Each of the easements described, granted and reserved herein shall be enforceable as equitable servitudes and covenants running with the land for the use and benefit of the Owners and their Condominiums superior to all other encumbrances applied against or in favor of any portion of the Project with respect to the operation and management of the Project.

3.6 Non-severability of Membership. Every Owner of a Condominium Unit which is subject to Assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Condominium Unit which is subject to Assessments.

3.7 Partition Prohibited. Except as provided in California Civil Code Section 4610, there shall be no judicial partition of Common Area or of any part thereof. Each Owner specifically waives and abandons all rights, interests, and causes of action for judicial partition of Common Area. Each Owner agrees that no action for judicial partition of Common Area shall be instituted, prosecuted or reduced to judgment, except in compliance with California Civil Code Section 4610. If a Condominium is owned by two or more Owners as partners, tenants-in-common, or joint tenants, or as community property, nothing contained in this Section shall be deemed to prevent a judicial partition of their co-ownership.

3.8 Annexation and Deannexation Rights. Real property may be annexed or deannexed pursuant to this Section.

3.8.1 Annexation Pursuant to Approval. Annexable Property may be added to the Project by Declarant and Land Banker as one or more subsequent Phases without the approval of the Association or any Owner if the annexation is in substantial conformance with the detailed plan of phased development submitted to the DRE with the Phase 1 Final Public Report application. Otherwise, any other Annexable Property not identified herein may be annexed to the Project only with the approval of two-thirds ($\frac{2}{3}$) of each class of Members other than Declarant; provided, however, any annexation made while there are

two (2) classes of membership requires the prior approval of the FHA and/or the VA, if either are First Mortgagees.

3.8.2 Procedure for Annexation. In addition to any required approval by Members, a final subdivision map(s) or final parcel map(s) and a Declaration of Annexation for the property to be annexed must be recorded. The Declaration of Annexation shall also provide that if and only if at the time of the first conveyance of a Condominium Unit in a Phase the Declarant has rented or leased Condominium Units in that Phase for a period of at least one (1) year after the most recent review of a budget for that Phase by the DRE, Declarant shall either issue a written commitment to pay or pay to the Association the following amount: an amount equal to that portion of the Regular Assessment which would have been attributable to each Condominium Unit in that Phase and which would have been allocable to reserves for replacement and deferred Maintenance of Association Property, Association Maintenance Areas and other Improvements had Regular Assessments in that Phase commenced at the time of the most recent review of a budget for that Phase. Such amount, if any, shall be paid to the Association prior to or concurrently with the first conveyance of a Condominium Unit in that Phase.

3.8.3 Proof Satisfactory to the DRE. In addition to the requirements set forth in Section 3.8.2 above, Declarant shall provide satisfactory proof to the DRE that the proposed annexation will not result in an overburdening of Association Property and/or Association Maintenance Areas, and that the proposed annexation will not cause a substantial increase in Assessments against existing Owners which was not disclosed in Final Public Reports under which prior Owners purchased their Condominium Units.

3.8.4 Effect of Annexation. After complying with the procedures for annexation and upon the commencement of Assessments for Condominium Units in the annexed Phase, Owners of Condominium Units in the annexed Phase shall be Members, shall be subject to this Declaration, and shall be entitled to use all Association Property and Association Maintenance Areas in the Project. The Association shall reallocate the Regular Assessments so as to assess each Owner in the Project for an equal and proportionate share of the Common Expenses of the Project. All Owners shall have ingress and egress to all portions of the Association Property and Association Maintenance Areas throughout the Project, subject to the provision of this Declaration, the Bylaws of the Association and the Association Rules in effect from time to time.

3.8.5 Deannexation. Subject to the restrictions, limitations and provisions of this Declaration, Declarant and Land Banker, or the Association may remove any property in the Project by executing and recording a Declaration of Deannexation. Declarant and Land Banker may deannex property only if (a) no escrows have closed on the annexed Phase, (b) no Assessments have commenced on any portion of the annexed Phase, (c) Declarant or Land Banker have not exercised any votes attributable to the annexed Phase, and (d) a Declaration of Deannexation is recorded in the same manner as the Declaration of Annexation was recorded. If the Association desires to deannex property within the Project, the approval of Members constituting at least two-thirds ($\frac{2}{3}$) of each class of Members is

required; provided, however, any deannexation made while there are two (2) classes of membership requires the approval of the FHA and/or the VA, if either are First Mortgagees.

3.9 Easements. In addition to any and all other easements contained in this Declaration, the Project shall be subject to the following easements:

3.9.1 Access Easements. There shall be reserved in favor of the Association and each Owner a non-exclusive easement over, upon and across the Project and each adjacent Condominium Unit. The access easement granted herein shall be for the purpose of carrying out the obligations set forth in this Declaration. There is also reserved in favor of the Association and each Owner non-exclusive easements over, upon and across the Project upon which walkways, paseos and other Improvements are constructed for pedestrian access to and from Condominium Units and Buildings.

3.9.2 Architectural Control Committee Easements. The ACC and its duly authorized agents and representatives shall have a non-exclusive right and easement as is necessary to perform its duties and obligations set forth in this Declaration, including the right to enter any Parcel, Building, or Condominium Unit, subject to the limitations contained in this Declaration.

3.9.3 Association Maintenance Easements. There shall be reserved in favor of the Association, an easement across, over, in and on any Condominium Unit to Maintain any Association Maintenance Areas as set forth in this Declaration.

3.9.4 BMP Right of Entry. A non-exclusive easement over and upon any portion of the Project is hereby reserved in favor of the City, the Regional Water Quality Control Board, and their respective representatives, for the purposes of verification of proper operation and maintenance for storm water BMPs in accordance with the WQMP.

3.9.5 Clustered Mailbox Easements. Declarant reserves non-exclusive easements over, across and upon the Project for (a) placement of mailbox clusters in locations required by the United States Postal Service and local governmental agencies with jurisdiction over the Project; (b) delivery, deposit and pickup of United States mail; and (c) access to and Maintenance of the mailbox clusters by the Association. The actual locations of the easements referred to herein shall be determined by the as-built location of each mailbox cluster. The easements reserved hereby are appurtenant to each Condominium Unit in the Project, as necessary to ensure the Owner's reasonable access to their respective mailboxes.

3.9.6 Declarant's Reservation of Easements. Declarant hereby reserves easements over each Parcel, Condominium Unit and/or Association Property for common driveway purposes, for drainage and encroachment purposes, for ingress and egress from buildings for the purpose of completing Improvements thereon, for the performance of necessary repair work and for compliance with requirements of any governmental agency, for the purposes of reasonable ingress and egress from, over and across the Project, including private roads and pathways; and for inspection of the Association Property, and each Condominium Unit to ensure that the Project and all Improvements thereon are being Maintained in accordance with the provisions of this Declaration. Said easements in favor

of Declarant shall automatically terminate ten (10) years after the conveyance of the last Condominium Unit.

3.9.7 Drainage Easements. There shall be non-exclusive drainage easements in favor of the Association over, across and upon each Parcel and each Building for the conveyance of storm water and drainage through pipes, outlets, downspouts and conduits, no matter where located.

3.9.8 Easements for Utilities and Maintenance. Easements over and under the Project for the installation, repair and Maintenance of electric, telephone, water, and sanitary sewer lines and facilities, heating facilities, cable or master television antenna lines, drainage facilities, walkways, and landscaping, as shown on the Map and/or as installed or constructed, and as may be hereafter required or needed to service the Project, are hereby reserved by Declarant and its successors and assigns, including the Association and appurtenant utility companies, together with the right to grant and transfer the same. No Owner or occupant shall commit any act that would interfere with the operation of any drainage system (including drainage swales, filterra systems, bioretention areas, *etc.*) installed in the Project.

3.9.9 Easements on the Map. The Project is subject to the easements and rights of way shown on the Map. Limitations on the construction and installation of Improvements within the easements and rights of way set forth on the Map are as outlined on said Map and incorporated herein by reference as if set forth in full.

3.9.10 Encroachment Easements. There shall be an easement in favor of the Association and each Owner over any adjoining Parcel or Association Property for the purpose of accommodating any encroachment due to minor engineering errors, minor errors in original construction, settlement or shifting of the Building, Condominium Unit, or any other cause. There shall be valid easements for the Maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owners agree that minor encroachments over adjacent Association Property due to minor engineering errors, minor errors in construction, or settlement or shifting of the Condominium Unit, shall be permitted and that there shall be valid easements for the Maintenance of said encroachments so long as they shall exist.

3.9.11 Fire System Easements. Each Owner of a Condominium is granted a non-exclusive easement over and across those portions of Building for a Fire System Easement. The Fire System Easement shall be generally located within the interior perimeter walls of each Condominium Unit, and shall be used solely for the purpose of accommodating, Maintaining and using the lines and conduits for the fire sprinkler system serving individual Condominium Units, as applicable or necessary. Each Owner shall be solely responsible to Maintain the lines and conduits for the fire sprinkler system (including

fire sprinkler heads). The Association shall have a discretionary right to enter any Condominium Unit to inspect the fire sprinkler system to ensure proper Maintenance.

3.9.12 Owners' Easements. Every Owner shall have a right and non-exclusive easement of enjoyment in and to the Association Property and Improvements located thereon, including ingress and egress to and from his/her Condominium Unit, as applicable. Each such non-exclusive easement shall be appurtenant to and shall pass with the title to the Condominium, subject to the following provisions:

(a) Section 10.2 of this Declaration authorizes the Board to impose monetary penalties, temporarily suspend an Owner's rights as a Member of the Association or other impose appropriate discipline for failure to comply with the Project Documents provided that the established procedures are followed for Notice and Hearing which satisfy the minimum requirements of California Corporations Code Section 7341 with respect to the accused Member before a decision to impose discipline is reached. These procedures are set out in Article XIII of the Bylaws.

(b) The right of the Association to dedicate or transfer all or any part of the Association Property to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by two thirds ($\frac{2}{3}$) of the Members agreeing to such dedication or transfer has been recorded, provided, however, that no such dedication shall impair the ingress and egress to any Condominium Unit.

3.9.13 Reciprocal Maintenance Easements. Each Owner shall have a reciprocal non-exclusive maintenance easement over and across such portions of any adjacent or contiguous Condominium Unit or Association Property as is necessary to Maintain the Condominium Unit and/or any Improvement(s) including, but not limited to, utilities, pipes, wires, conduits, landscaping and irrigation.

3.9.14 Storm Drainage Generally. In addition to storm drain easements specifically identified on the Map or in this Declaration, there are reserved and granted for the benefit of each Building and Parcel over, under, across and through the Project, except for portions of the Project on which a structure is situated, non-exclusive easements for surface and subsurface drains and the flow of storm waters in accordance with natural drainage patterns and the drainage patterns and Improvements installed or constructed by Declarant in accordance with the WQMP.

3.9.15 Right of Entry. The Board may authorize its agents and employees to enter upon or in any Condominium Unit when necessary in connection with any Maintenance, landscaping or construction for which the Association is responsible, to effect emergency repairs, to effect necessary repairs which the Owner has failed to perform as required by this Declaration, or to inspect and/or make a determination whether an Owner is complying with the provisions of this Declaration. Such entry shall be made with as little inconvenience to the Owner as practicable and any damage caused thereby shall be repaired

by the Board at the expense of the Association. Except in case of emergencies, twenty-four (24) hour advance notice shall be given to the Owner or occupant.

3.9.16 Telecommunications Easement. There shall be reserved over the Project a telecommunications easement in favor of the City, telecommunications company or any franchisee for the installation and use of telecommunication equipment, conduits and facilities to serve the Project and any other properties.

3.9.17 Utility Chase Easements or UCEs. There shall be an easement across, under and through each Condominium Unit in each Building in which the Condominium Unit is located for the purpose of accommodating utility lines, pipes, wire and other conduits for the delivery of utility services to one or more or all of the Condominium Units within a Building. Unless performing Maintenance Obligations set forth in this Declaration, Owners and occupants of Condominium Units are strictly prohibited from altering, modifying or tampering with any lines, pipes, wires or other conduits located within these UCEs.

3.9.18 Easements in Favor of City. Declarant hereby grants to the City an easement to enter the Project for (a) access and maintenance of the on-site sewer lift station; (b) maintenance and repair rights over the Project for emergency access, and (c) drainage, utility, and storm water purposes as well as any related municipal purpose, including, without limitation, maintenance and repair. City shall provide reasonable notice to any affected Owner, except in the case of an emergency in which case such notice as is reasonable under the circumstances shall be provided. City must use reasonable efforts to minimize any interference with the operation or use of any Project by each Owner and/or occupant.

3.10 Provisions Restricting Delegation of Use. Any Owner may delegate their rights of use and enjoyment of the Project to the members of their family, their guests, tenants, employees, and invitees, and to such other persons as may be permitted by the Bylaws and the Association Rules, subject however, to this Declaration. However, if an Owner has sold his/her Condominium to a contract purchaser or has leased or rented it, the Owner, members of the Owner's family, guests, tenants, employees, and invitees shall not be entitled to use and enjoy any of such rights in the Project while the Owner's Condominium is sold to a contract purchaser or rented to tenants. Instead, the contract purchaser, or tenants, while occupying such Condominium Unit, shall be entitled to use and enjoy such rights and can delegate the rights of use and enjoyment in the same manner as if such contract purchaser or tenants were an Owner during the period of their occupancy. Each Owner shall notify the Secretary of the Association of the names of any contract purchasers of such Owner's Condominium or tenants of such Owner's Condominium Unit. Each Owner, contract purchaser, or tenant also shall notify the Secretary of the Association of the names of all persons to whom such Owner, contract purchaser, or tenant has delegated any rights of use and enjoyment and the relationship that each such person bears to the Owner, contract purchaser, or tenant. Any delegated rights of use and enjoyment are subject to suspension to the same extent as are the rights of Owners. No such delegation shall relieve an Owner from liability to the Association or to other Owner for payment of Assessments or performance of the covenants, conditions and restrictions contained in this Declaration. Any lease, rental agreement or contract of sale entered into between an Owner and a tenant or contract purchaser of a Condominium shall

require compliance by the tenant or contract purchaser with all of the covenants, conditions and restrictions contained in this Declaration, which provision shall be for the express benefit of the Association and each Owner. The Association and each Owner shall have a right to action directly against any tenant or contract purchaser of an Owner, as well as against the Owner, for nonperformance of any of the provisions of this Declaration to the same extent that such right of action exists against such Owner.

3.11 No Restriction on Owner's Right to Ingress and Egress. Except as allowed in Section 16.9 herein, there shall be no restriction upon any Owner's right to ingress and egress to his/her Condominium Unit, which right shall be perpetual and appurtenant to his/her ownership of a Condominium.

ARTICLE IV

USE RESTRICTIONS

4.1 Accessory Dwelling Units. If allowed by state law and local ordinance adopted by the City, Owners may be allowed to construct and install an Accessory Dwelling Unit in his/her Condominium Unit, provided that prior written approval of the Declarant (while it still owns a Condominium Unit in the Project) or the ACC (if established) under ARTICLE VI of this Declaration and written approval is obtained from the City. Owners are advised that Declarant, Land Banker, the Association, and the City do not promise, warrant or guarantee that an Owner shall be granted permission for construction and installation of an ADU. ADUs shall not be sold separate and apart from the primary Condominium Unit, shall only be used for residential purposes, and any uses of ADUs shall be subject to all of the provisions of this Declaration, including, but not limited to, the restrictions on parking (see Section 4.23 below), leasing (see Section 4.27 below), operating a business (see Section 4.29 below), and Maintenance (see ARTICLE V below).

4.2 Alterations. Except as otherwise specifically provided in this Declaration, no Alteration may be made to any Parcel, Condominium Unit or EUA until plans have been submitted and approved by the ACC, as set forth in ARTICLE VI of this Declaration. Declarant and Land Banker shall be exempt from obtaining approval from the ACC.

4.3 Animals. An Owner may keep a reasonable number (as may be determined by the Board in its sole discretion) of customarily uncaged household pets within the Owner's Condominium Unit. Each Owner may also maintain a reasonable number of small caged animals, birds or fish. No other animals are permitted in the Project. No animals may be kept for commercial purposes. No animals, livestock or poultry of any kind shall be raised, bred or kept in any Condominium Unit, except that dogs, cats, and other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. Notwithstanding the foregoing, no pets may be kept on any Parcel, in any Condominium Unit or anywhere in the Project that results in an annoyance or nuisance to other Owners. The Association may prohibit the keeping of any animal that in the sole and exclusive opinion of the Board constitutes a nuisance to any other Owner. No pets shall be allowed in Association Property except as may be permitted by Association Rules. No dog shall enter Association Property except while on a leash that is held by

a person capable of controlling it. Owners shall prevent their pets from soiling any portion of the Association Property and shall clean up after their pets in the Association Property.

4.4 Antenna and Satellite Dish Equipment. No Owner shall install any Antenna Equipment (a) on any real property which such Owner is not entitled to exclusively use or control, as provided in any Antenna Laws, (b) in a particular location if, in the Association's or ACC's opinion, the installation, location or Maintenance of such Antenna Equipment unreasonably affects the safety of the Owners or any other person, or for any other safety-related reason established by the Association, or (c) that is of a size larger than is permitted under the Antenna Laws. Reasonable restrictions which do not significantly increase the cost of the Antenna Equipment or significantly decrease its efficiency or performance may be imposed. No Antenna Equipment may be installed on a Condominium Unit, except as follows: (i) Antenna Equipment that is one (1) meter or less in length or diameter or diagonal measurement, provided that the location, color and screening requirements shall be in accordance with any guidelines imposed by the Association or the ACC referenced in this Declaration, which guidelines shall comply with all applicable Antenna Laws; or (ii) Antenna Equipment not covered under subpart (i) above, the installation of which shall be approved in advance by the Association or ACC. Nothing herein shall be construed to restrict in any manner the Declarant's or government agency's right to authorize a cable television franchisee or other provider of similar services to provide cable television, radio or other similar services to the Project.

4.5 Burning. Propane, electric powered barbecues or other similar equipment may be used on Balconies, Patios and/or Porches, so long as such use does not create a nuisance to neighboring Condominium Units. Fire pits shall not be allowed on Balconies, Patios or Porches. No Owner or resident shall permit any condition to exist in his/her Condominium Unit, including, without limitation, trash piles or weeds, which create a fire hazard or is in violation of local fire regulations.

4.6 Compliance with Project Documents. Each Owner, contract purchaser, lessee, tenant, guest, invitee or other occupant of a Condominium Unit or user of the Association Property shall comply with the provisions of the Project Documents, including the Association Rules.

4.7 Disclosure – California Energy Commission Duct Sealing & Testing Requirement. Based on climate zone maps issued by the California Energy Commission (“CEC”), the Project is located in a designated climate zone in which properties are subject to duct sealing and testing requirements set forth by the CEC. According to the CEC, most California homes have improperly sealed central air conditioning and heating system ducts such that approximately thirty percent (30%) of the conditioned air actually leaks outside the home. In order to combat this waste of energy and money, the CEC updated its residential duct sealing and testing requirements in the Building Energy Efficiency Standards (Title 24). Previously, such duct sealing and testing was required only in certain CEC-designated climate zones when a central air conditioner or furnace is installed or replaced. **The revised standards now make duct sealing and testing mandatory in all California climate zones when such a system is installed or replaced.** Ducts found to leak more than 15 percent or more must be repaired. Once a contractor tests and fixes these ducts, you must have an approved third-party verifier determine that the ducts have been properly sealed. The CEC cautions homeowners that a contractor who fails to obtain a required building permit and fails to test and repair your ducts “is violating the law and exposing you to additional costs and

liability.” If you do not obtain a permit, you may be required to bring your home into compliance with code requirements for that work and may incur additional penalties and fines that have to be paid prior to selling your home. Remember that you have a duty to disclose whether you obtained required permits for work performed to prospective buyers and appraisers. Local governments may mandate more stringent requirements. Please note there are specific alternatives that allow high-efficiency equipment and added duct insulation to be installed instead of fixing duct leaks. Please also be advised that there are separate regulations which govern duct insulation levels required by climate zone and HVAC system. For more information on these requirements, please contact the CEC or visit the official CEC’s “Building Energy Efficiency Standards” portal at <https://www.energy.ca.gov/programs-and-topics/programs/building-energy-efficiency-standards>.

4.8 Disclosure – Commercial/Industrial/Mixed Use Zoned Property. State law requires that the following notice be given: “The Project is located within one mile of a property that is zoned for commercial, industrial, or mixed use. This disclosure must be provided if a search of public records reveals even one parcel of property located within a one (1) mile radius of the Project that is currently zoned for commercial, industrial or mixed use whether or not that property is actually being used for such purposes.”

4.9 Disclosure – Potential ERRC System. Declarant may be required by the City to install an Emergency Responder Radio Coverage system or “ERRC” system which requires radio coverage for emergency responders such as firefighters, police and paramedics, ensuring continuous and effective communication during emergencies. If installed, the ERRC system would include a speaker mounted on the roof of one or more of the Buildings, and if activated during an emergency may emit noises and announcements.

4.10 Disclosure – Supplemental Flood Hazard Zone. The Project is located within a flood hazard zone as designated by a local agency. Supplemental flood hazard zones are in addition to, or different from, areas mapped by the Federal Emergency Management Agency (FEMA) or the California State Office of Emergency Services. Flood hazard zones are areas which historically contain the conditions and type of topography and weather that makes it susceptible to localized flooding. Inclusion of the Project within a flood hazard zone may impact premiums and rates for insurance policies that an Owner or the Association may be required to obtain.

4.11 Disclosure – Train Tracks. Located along East Santa Ana Road which fronts the Project are railroad tracks primarily operated and maintained by Union Pacific Railroad but is also used by Amtrak and Metrolink for passenger train service. The streets used to exit and enter the Project are crossed by these railroad tracks. Thus, the streets leading in and out of the Project may be blocked by a train at any time during the day or night. Residents may expect to experience frequent delays accessing the Project. The railroad tracks may be utilized 24 hours per day, 7 days per week and do not follow any particular schedule, and the trains may be required to blow their whistles or blast their horns at their loudest decibel setting at every intersection, regardless of the time of day or day of the week. Such noise impacts may occur at any time of day or night and may cause significant sleep disturbance. Individual tolerance to noise and vibration caused by trains and these railroad tracks will vary by each individual and such noise and vibration may be considerably less tolerable at night to residents. Declarant has no control over, and no responsibility for, the use or scheduling of the trains and makes no representation or warranty on how noises and vibrations will impact residents of the Project.

4.12 Drainage. There shall be no alteration of the drainage patterns initially installed and constructed by Declarant including, without limitation, drainage swales, drain pipes, area drains, catch basins or connections thereto, and as established by the grading and natural course of surface and subsurface water run-off without the prior approval of the ACC, and any all necessary governmental approvals and permits. Drainage patterns, private storm drain lines and bio-retention areas shall not be altered or modified without prior approval from the City's Public Works Department.

This Declaration provides notice to the Association and each Owner to devote great care and attention to grading and to establish or Maintain positive drainage away from the entire foundation line of the Buildings. Positive drainage is achieved by shaping grades, establishing drainage "swales" or installing underground area drains. The swales and drains provide a receptacle and conduit to drain water away from the foundation, and the rear, side and front of the buildings to offsite drainage disposal. Swales also prevent drainage water from moving across Parcels or other property. This Declaration also provides notice to each Owner that if existing drainage swales established on or around your building are interrupted, blocked, filled, or otherwise altered serious damage can result. Drainage must not be allowed to pond in a yard or run against or under a building, foundation, garage floor, driveway or other Improvements. Serious damage may result even during a short period of time.

If a Condominium Unit or Building constructed by Declarant has a roof gutter system and downspouts which are directly connected to the Project's storm drainage system, the Condominium Unit and Building, as applicable, shall remain connected to the Project storm drainage system at all times; the Association and the Owners may not perform any Alteration which results in additional roof waters draining anywhere other than directly into the Project's storm drainage system.

4.13 Electrical Interference. No electrical or electronic devices, which may unreasonably interfere with television or radio reception of any Owner shall be located, used, or placed on any portion of the Project.

4.14 EV Charging Stations. Declarant may install an EV Charging Station (as referred to in California Civil Code Section 4745(d)) within the open/guest parking spaces in the Project, and if installed, the Association may charge a fee for use of the EV Charging Station. The costs of operating and Maintaining the EV Charging Stations, if installed, shall be part of the Regular Assessments payable by each Owner. Declarant may also install EV Charging Stations or pre-wiring for the installation of EV Charging Stations in each garage of a Condominium Unit, and each Owner shall be solely responsible for the Maintenance and costs of the EV Charging Station in his/her garage.

4.15 Exterior Apparatus. Notwithstanding the provisions of California Civil Code Section 4750.10, no exterior clotheslines or other outside clothes drying or airing facility shall be erected or Maintained on any Parcel, Condominium Unit or EUA in any location where the same would be visible from any street, Association Property or Condominium Unit. Further, no clothes washers, clothes dryers, refrigerators or freezers may be kept, stored, or operated from any exterior area of a Parcel, Condominium Unit or within EUA. Installation of umbrellas and outdoor furniture on Balconies, Patios and Porches may be limited and shall be subject to Association

Rules. Under no circumstances shall room additions or other appurtenances be allowed for any Condominium Unit.

4.16 Installation of Security Cameras. Subject to the approval of the ACC pursuant to ARTICLE VI of this Declaration, Owners may be allowed to install video cameras on the exterior of a Condominium Unit so long as the installation of such devices do not infringe, interfere or invade the privacy of neighboring Parcels, Condominium Units and residents, and utilize the exterior wall penetrations that existed when the Condominium Unit was constructed by Declarant. Additional video cameras will not be allowed to make new penetrations in the exterior walls and surfaces or be attached to the Building frame or structure.

4.17 Invitees. Each Owner shall be responsible for compliance with the provisions of this Declaration by the Owner's Invitees.

4.18 Liability of Owners for Damages. Each Owner shall be liable to the Association for all damages to the Association Property and/or Improvements thereon caused by such Owner, or any occupant or guest, regardless if that portion of said damage, if any, is fully covered by insurance of the Association. A Reimbursement Assessment (as set forth in ARTICLE IX of this Declaration) may be imposed on an Owner and his/her Condominium Unit for all damages to the Association Property. Liability of an Owner shall be established only after notice to the Owner and hearing before the Board, as set forth in Article XIII of the Bylaws.

4.19 Mailboxes. There shall be no exterior newspaper tubes or freestanding mailboxes placed on any Parcel, Building or Condominium Unit.

4.20 Mineral and Water Exploration. Owners are prohibited from exploring the Project for or to remove any water, oil, hydrocarbons or minerals of any kind.

4.21 No View Preservation. Pursuant to the Conditions of Approval, each Owner and resident of the Project are advised that the City does not have a view preservation ordinance and the views from each Condominium Unit and the Project may be and will be subject to change with maturing off-site landscaping (including trees), and the potential for future off-site buildings and other improvements.

4.22 Nuisances. No noxious, illegal or offensive activity shall be carried on upon any Parcel, Condominium Unit, Building, EUA, or in any part of the Project, nor shall anything be done thereon which may be or may become an annoyance or nuisance to or in any way interferes with the quiet enjoyment of each Owner's Parcel, Condominium Unit or the Association Property, or which may increase the rate of insurance for the Project or for any Condominium Unit, or cause any insurance policy to be canceled or to cause a refusal to renew the same, or which will impair the structural integrity of any building, structure or Improvement, or which will create a public nuisance. Likewise, uses and activities within the Project shall be conducted so as not to become obnoxious by reason of noise, odor, refuse, parking impacts, or Maintenance of grounds and in such a manner as will not detrimentally affect adjoining properties and uses.

4.23 Parking and Vehicle Restrictions. All parking within the Project (including enforcement of parking by the Association) shall comply with the requirements of the City, the Conditions of Approval applicable to parking, and this Declaration. The Association shall enforce

its respective parking restrictions by all lawful means, including the levying of fines, citing and/or towing of any violating vehicle. The owner of a violating vehicle shall be responsible for all costs incurred to remedy the violation, including, but not limited to, towing, citations and legal fees.

4.23.1 Garages.

(a) Each Owner shall keep his/her garage area in a neat and orderly condition with any storage areas completely enclosed. In no event shall household storage preclude the parking of Authorized Vehicles in the garage, or result in the parking of Authorized Vehicles in other Permitted Parking Areas.

(b) Garages are designed to hold two (2) Authorized Vehicles parked either side-by-side or in tandem. Garages may not accommodate the parking of two large vehicles. Each Owner shall ensure that the Owner's vehicles will fit into the parking spaces of such Owner's garage, as Owners are prohibited from parking in open/guest parking spaces within the Project.

(c) Garage doors shall be kept closed when not in use.

(d) Garages shall not be converted to ADUs (unless permitted pursuant to Section 4.1 above, and ARTICLE VI herein), living quarters, kitchens, workshops or storage which will preclude the parking of the number of Authorized Vehicles for which the garage was designed to hold.

(e) Each Owner and resident, by accepting a deed to a Condominium, consents to voluntary inspections of the garage by the Association and the City to verify compliance with this Declaration.

4.23.2 Parking. Parking within the Project is limited. There will be twenty (20) open/guest parking spaces within the Project, two (2) of which are handicapped parking spaces.

(a) Authorized Vehicles shall not be parked anywhere in the Project except in Permitted Parking Areas, as set forth in this Declaration. Signage shall be installed prohibiting parking on fire lanes, alleys, drive aisles and in front of garages.

(b) The parking or storage of recreation vehicles such as RVs, boats, trailers, fifth wheels, ATVs, or any Prohibited Vehicles in any Permitted Parking Area or anywhere in the Project is strictly prohibited.

(c) All open parking spaces within the Project are considered Association Property, and its use is subject to Association Rules. Owners and residents are prohibited from parking in any open parking spaces, and such spaces are only for visitor/guest parking only. The Association shall establish a parking permit program for the guest parking spaces. For purposes of this Section, "guest" shall be defined as a person(s) who is invited to visit a resident(s) or take part in a function organized at a Condominium Unit for a period of not more than seven (7) consecutive nights.

(d) There are no driveways and there shall be no vehicles parked on any apron or entry parallel to a garage door, or in any of the private alleys, temporary or otherwise.

(e) Commercial Vehicles shall not be parked within the Permitted Parking Areas or the Project except for purposes of loading or unloading, and then for periods not in excess of six (6) hours. This restriction shall not apply to Commercial Vehicles involved in construction activities in the Project or Commercial Vehicles owned and operated by persons providing services during the time when the services are being rendered.

4.23.3 Enforcement.

(a) In addition to the remedies available under Section 10.2 of this Declaration, the Association may establish and implement rules and procedures from time to time under the California Vehicle Code and other statutes for the issuance of citations for violations of parking or vehicle restrictions set forth herein, for enforcement of civil penalties resulting from such citations through government authorities, if applicable, and for the removal and towing of any vehicles based on, but not limited to, California Vehicle Code Section 22658.

(b) The emergency vehicle access road shall not be obstructed in any manner including by the parking of any vehicles, or the use of traffic calming devices such as speed bumps, speed humps or other configurations. Approved signs or other notices prohibiting the use of the emergency vehicle access road shall be installed and Maintained by the Association.

(c) The Board shall also have the authority to promulgate as part of the Association Rules such further rules and restrictions regarding parking and vehicles within the Project as may be deemed prudent and appropriate.

4.24 Post Tension Foundations. The foundations of Buildings may be post-tension foundations which are interconnected among clusters of Condominium Units. Post-tension foundations involve placing steel cables under high tension in the concrete slab serving as the foundations of Buildings. Owners shall NOT make any Alterations, modifications, sawing, cutting, piercing, or drilling into the foundation of any Condominium Unit which may damage, impair or affect the structural integrity of the foundation. Owners shall not make any Alterations, modifications or install any Improvements that affect the post-tension foundation without prior written approval of the City. A written opinion from an engineer duly licensed by the State of California and qualified in post-tension foundations is required prior to the commencement of any work and if an Owner is uncertain if any particular action will impact or affect the foundation. If the question or uncertainty arises in connection with a request for approval of Alterations pursuant to ARTICLE VI of this Declaration, an engineer shall be agreed upon by the Association and the Owner who has requested approval of the Alterations, and the engineer shall issue a written report/findings acceptable to the Association. The cost of the engineer shall be borne entirely by the Owner who is requesting approval of the Alterations.

4.25 Power Equipment and Car Maintenance. No non-electrically powered power equipment, workshops (other than workshops that can be housed in a garage without necessitating or resulting in the parking of Authorized Vehicles on the private streets or other Permitted Parking Areas in violation of Section 4.23, above) or major car maintenance (defined as any repair or other work on a car that takes in excess of two (2) hours to complete) of any nature shall be permitted on the Project without prior written approval of the Board. In deciding to grant approval, the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, and similar objections. Nothing in this Section shall prohibit the use and storage of hand gardening tools reasonably necessary for routine household and yard Maintenance and upkeep.

4.26 Prohibition of Dumping Oil and Chemicals. Owners and residents are strictly prohibited from disposing of crank case oil and other chemicals in storm drains. Owners and residents are also cautioned in the practice of fertilizing and then over-watering lawns and landscaping resulting in run-off into the storm drains. Owners and residents shall exercise the best methods to prevent the disposal of crank case oil and other chemicals and run-off from over-watering lawns and landscaping because of the adverse environmental effects of such actions.

4.27 Rental of Condominium Units. Except where expressly prohibited by some other agreement or written instrument including, but not limited to, an owner occupancy agreement, Owners may lease or rent his/her Condominium Unit. However, no Condominium Unit may be rented or leased for transient or hotel purposes which shall include, but not be limited to, rental for any period less than thirty (30) days. All leases must be in writing and be expressly subject to the Project Documents, including the Association Rules, and the breach of any provision shall be a default under the lease or rental agreement. Subject to the foregoing restrictions, Owners shall have the right to lease their Condominium Unit, provided that the Board is notified of the name of the tenant and the duration of the lease. The Owner shall provide the tenant/lessee with a copy of the Project Documents.

4.28 Restrictions on Balconies, Patios and Porches. No storage of any kind shall be permitted on Balconies, Patios or Porches with the exception of normal and customary furniture and propane operated barbeques only. Owners shall not attach or secure any equipment to the walls enclosing Balconies, Patios and Porches, and there shall be no permanent ground floor covers on the Patios and Porches. In order to protect the surface of the Balcony, including the waterproof membrane surface, coasters shall be placed on all barbeque, table and chair legs, and the barbeque heat source shall be placed no closer than twenty-four inches (24") from the floor surface of the Balcony. Awnings, trellises and other large outdoor covers are prohibited, but stand up umbrellas and other outdoor furniture are allowed. Potted plants and planters must be raised off of the surface and coasters must be placed on all plant stand legs and wheels. Balconies shall not be used for storage, and personal items may not be draped over the railings. Owners must take appropriate precautions to prevent the waterproof membrane surface from being penetrated by sharp objects. If the waterproof membrane surface is damaged, Owners must promptly notify the Association. If any repair or replacement was due to negligence or fault of an Owner or resident, the Association may impose a Reimbursement Assessment for the costs and expenses.

4.29 Restrictions on Business.

4.29.1 Generally. Except as may be allowed or restricted in this Declaration, or for uses on or within Condominium Units permitted by local ordinances or state or federal law, the construction of Improvements and the business of Declarant or Land Banker in completing the development and sale of Condominium Units in the Project, no Owner or other occupant of a Condominium Unit may undertake any activity in or on any Condominium Unit, nor use any portion of the Project for any business, commercial or non-residential purposes, nor for any other purpose that is inconsistent with the Project Documents. Such purposes including manufacturing, storage, vending, auctions, vehicle or equipment repair, entering into any lease or rental agreement under which the Condominium Unit would be occupied by numbers of persons in excess of the maximum occupancy permitted under applicable law, and transient occupancy of the Condominium Unit (such as hotel, inn, bed & breakfast, hostel, vacation rental, time-share or similar temporary lodging). Any lease or rental agreement for a term of fewer than thirty (30) days, and any lease or rental agreement pursuant to which the lessor provides any services normally associated with transient occupancy, shall be deemed to be for transient purposes and prohibited under this Declaration. All of the foregoing activities are prohibited whether they are engaged in full-time or part-time, whether they are for-profit or non-profit, and whether they are licensed or unlicensed.

4.29.2 Exceptions. This Section shall not be interpreted to prohibit any of the following:

- (a) The hiring of employees or contractors to provide Maintenance services that are consistent with the Project Documents;
- (b) Rental or leasing of a Condominium Unit to Declarant for use as a sales office, Model Unit or parking area for any period of time;
- (c) Exercise by Declarant and/or Land Banker of any rights reserved to them under this Declaration;
- (d) Home-based business uses conducted solely within Condominium Units that are permitted by local ordinances or state statute, is compliant with all laws and regulations (including zoning, health and licensing requirements), no signage of the business is posted anywhere within the Condominium Unit, any building, or the Project, and such business uses are homogenous with the residential use of the Condominium Unit, and is free of adverse conditions to the residents of all other Condominium Units and the Project.
- (e) The provision of in-home health care or assisted living services to any resident of the Condominium Unit;
- (f) The provision of family home child care services as defined in California Health and Safety Code Section 1597.40, *et seq.*, as may be amended, so long as such services comply with all applicable state and local laws including, without limitation, licensing, inspection and zoning requirements;

(g) Small home-based service business that comply with all of the following:

(i) The operator of the business lives in the Condominium Unit on a permanent full-time basis;

(ii) When conducted within the Project, business activities take place solely inside the Condominium Unit;

(iii) The business does not generate in-person visits by suppliers or clientele;

(iv) The business complies with all laws, regulations and ordinances applicable to the Project including, but not limited to, zoning, health and licensing requirements;

(v) The business otherwise complies with the Declaration and is consistent with the residential character of the Project;

(vi) The operator of the business posts no business-related signage anywhere on the any building, Parcel, Condominium Unit or anywhere in the Project;

(vii) There is no visible evidence in the Project of the business;

(viii) The business does not generate noise or odors that are apparent outside the Condominium Unit; and

(ix) The business does not increase the Association's liability or casualty insurance obligation or premium.

(h) Other activities that have been determined by governmental authorities to be consistent with the single-family residential uses in the Project including, for example, residential care facilities that are operated in accordance with California Health and Safety Code Section 1566.5, as may be amended.

4.30 Restrictions on Smoking. Owners of Condominiums, and their residents and guests are prohibited from smoking cigars, cigarettes, hookah, pipes or other lighted or heated tobacco, vapes, e-cigarettes, or any other device intended for inhalation in any manner or in any form in the interior of the Condominium Unit. In addition, unless the Association establishes a designated smoking area within Association Property, there shall be no smoking in any Association Property area.

4.31 Signs and Flags. Subject to the provisions of California Civil Code Sections 4705 and 4710, the Association Rules and the City's sign regulations, no signs or flags of any kind shall be displayed from view on or from any Parcel, Condominium Unit, Association Property or any portion of the Project without the approval of the Association, except as follows (subject to any Association Rules): (a) non-commercial signs or posters not to exceed nine (9) square feet in size

may be displayed from a Condominium Unit; (b) non-commercial flags or banners not to exceed fifteen (15) square feet in size may be displayed from a Condominium Unit; (c) one sign of customary and reasonable dimensions, not to exceed four (4) feet in height and four (4) feet in width, advertising a Condominium Unit for sale, lease, rent or exchange may be displayed from a Condominium Unit; (d) such signs as may be used by Declarant or its assignees in connection with the Project and sale of Condominium Units; or (e) such other signs or notices as are required by law.

4.32 Solar Energy Systems. Declarant intends to install a Solar Energy System on the roof to serve each Condominium Unit. Owner and the solar company shall be solely responsible for Maintenance of the Solar Energy System. Declarant does not warrant, promise, represent or guarantee that the Buildings or Condominium Units will be “solar-ready” for any particular type or manufacturer of Solar Energy Systems, or that it will be compatible for Solar Energy Systems in the future. Declarant shall not be responsible for any damage caused to or resulting from any Solar Energy System if installed by someone other than Declarant or authorized by Declarant. The Association will not be Maintaining any Solar Energy System installed on a Building. Each Owner of a Condominium Unit and the solar company shall be solely responsible for temporarily removing and reinstalling the Solar Energy System if the Association requires such removal to Maintain any portion of the Building, as set forth in Section 5.2.4 of this Declaration. Notwithstanding, and in accordance with California Civil Code Sections 714 and 714.1 each Owner may install or use a Solar Energy System, as defined in California Civil Code Section 801.5, to serve his or her domestic needs, so long as (a) the design and location of the Solar Energy System meets the requirements of all applicable governmental ordinances, regulations, and the Conditions of Approval, and (b) the design and location receives the prior written approval of the ACC (or the Board, if the ACC does not exist). This Section, however, does not entitle any Owner to install a Solar Energy System on any Building or anywhere in the Project if such installation potentially threatens, impedes or impairs the Association's ability to Maintain any Building, Association Property, Association Maintenance Areas, or other areas that the Association is obligated to Maintain pursuant to this Declaration.

4.33 Solar Shade Restrictions. No Owner nor the Association shall allow a tree, shrub, structure or other Improvement to be placed or, if placed, to grow so as to cast a shadow in violation of the standards set forth in the Solar Shade Control Act (California Public Resources Code Section 25980, et seq.). The Owner or the Association, as circumstances warrant, shall bear the burden of calculating compliance of any such tree, shrub, structure or other Improvement with the provisions of California Public Resources Code Section 25982. The restrictions of this Section 4.33 do not apply to the Buildings as may be originally constructed by Declarant, a tree, shrub, structure or other Improvement that had been growing or installed prior to the installation of a Solar Energy System or to the replacement of a tree, shrub, structure or other Improvement that had been growing or installed prior to the installation of a Solar Energy System and which, subsequent to the installation of the Solar Energy System, dies or is removed for reasons of public health or safety. Approval by the ACC of the installation of particular trees, shrubs, structures or other Improvements on a Parcel adjacent to a Solar Energy System or the installation of trees, shrubs, structures or other Improvements by the Association on Association Property adjacent to a Solar Energy System shall not be deemed to waive or alter the provisions of this Section 4.33, and the ACC shall not be liable to the Owner of the Solar Energy System for any such approval.

4.34 Sound Transmissions and Attenuation. No Condominium Unit shall be altered in any manner that would increase sound transmissions, resonances or reverberations to any adjoining or adjacent Condominium Unit(s) including, but not limited to, replacement, modification or penetration of any flooring, floor covering, ceiling or wall, installation or recessed lighting, stereo speakers or the penetration of any floor, ceiling or wall the increases sound transmissions, resonances or reverberations to any other Condominium Unit. Unless installed by Declarant, Owners are specifically prohibited from installing “built-in” speaker systems that penetrate ceilings and walls, and mounting any television or video screen to walls that are directly adjacent to another Condominium Unit. Any Alterations to the flooring and floor coverings (including hard surface or wood flooring in lieu of carpeting) and/or the installation of televisions, video screens, speakers or home theater systems in the interior of a Condominium Unit by an Owner (other than Declarant) requires approval from the ACC, as set forth in ARTICLE VI of this Declaration, and the ACC shall not approve any such installation unless there is an appropriate level of acoustical separation designed and approved by a licensed engineer.

4.35 Sports Apparatus. No basketball standard, fixed sports apparatus, skateboard or bicycle ramps or similar equipment shall be attached to the exterior of any Building or erected, constructed or placed on any Association Property. The purpose of this restriction is to maintain uniformly high aesthetic standards, and to preserve the quiet enjoyment of the respective Condominium Units by the Owners thereof.

4.36 Storage of Waste Materials. Trash, recycling and organic waste will be disposed of in shared bins in covered trash enclosures in two (2) locations within the Project (collectively, the “**Community Trash Areas**”). Condominium Units will not have their own separate waste bins. Each resident/occupant of the Project shall be required to take their trash, recycling and “organic” waste to the Community Trash Areas. Each Community Trash Area will have an area for bulky item pick-up. The costs of the collection of trash, recycling and organic waste will be incurred by the Association and charged to Owners as part of their Regular Assessments. No rubbish, trash, garbage or other waste material shall be kept or permitted in any Condominium Unit except in appropriate sanitary containers, and shall be regularly removed from the Condominium Unit. Storage piles shall not be kept in EUA, and there shall be no unenclosed storage anywhere within the Project. Owners of Condominium Units are strictly prohibited from using attic spaces for storage of personal property or any materials, and access to attic spaces from within the Condominium Unit shall be kept clear.

4.37 Structural Integrity. Nothing shall be done in or on any Parcel, Building, or Condominium Unit by an Owner that will impair the structural integrity of any Parcel, Condominium Unit, Building or any other structure or Improvement.

4.38 Sub-metering for Water. Each Condominium Unit will have installed a domestic water sub-meter. The Association shall allocate to each Owner of a Condominium the costs of water usage provided to the Owner’s Condominium Unit. The allocation for each Condominium shall be determined by actual usage, based on sub-meter readings for each Condominium Unit, and shall be billed to each Owner at the same rate that the Association pays for water services. The amount of the water surcharge assessment shall include any service charge imposed by any company retained by the Association to perform the sub-meter readings or billings. The amount of the water surcharge assessment shall be billed to the Owner either directly by the Association

or by a company retained by the Association to perform the sub-meter readings, determine the appropriate charges or collect the water surcharge assessments on the Association's behalf. The total amount of all water surcharge assessments may not exceed the total amount of the water charges actually paid by the Association plus the service charges paid for by the Association to read the sub-meters, determine the water surcharge assessments and bill the water surcharge assessments. Water surcharge assessments are "Assessments" and are payable and enforceable in the same manner as Regular Assessments are payable and enforceable under ARTICLE IX of the Declaration.

4.39 Use and Occupancy. Except as may be allowed by local ordinance, no Parcel, Condominium Unit or EUA, or any portion thereof, shall be occupied and used except for single family residential purposes by the Owners, their contract purchasers, lessees, tenants, or social guests. No trade, retail business or commercial activity shall be carried on or conducted within any Parcel, Condominium Unit or Association Property, except that Declarant, its successors or assigns, may use any Parcel, Condominium Unit or Association Property in the Project owned by Declarant for a Model Unit and display and sales office during construction and until the last Condominium is sold by Declarant. The provisions of this Section shall not prohibit home offices so long as they are merely incidental to the use of the Condominium Unit as a dwelling, are permitted by local law, are conducted in such a manner as to not adversely affect other Owner's use and enjoyment of the Project, and have received prior written approval of the Board.

4.40 View Obstructions. Each Owner, by accepting title to a Condominium Unit, hereby acknowledges that (a) there are no protected views within the Project, and no Condominium Unit is assured the existence or unobstructed continuation of any particular view or any particular source of natural light, and (b) any construction, landscaping, or other installation of improvements by Declarant or other Owners may impair the view from any Condominium Unit. The Owners hereby consent to such impairment of views or sources of natural light.

4.41 Window Coverings. The interiors of windows shall be covered by drapes, shades, shutters or other window coverings and shall not be painted or covered by foil, cardboard or other similar material. Any drapes or other window covering installed in compliance with the Design Guidelines may remain for the useful life thereof. All window coverings must be installed on all windows visible from the streets serving the Project within ninety (90) days after conveyance of title to the Condominium Unit by Declarant, unless the Design Guidelines provide otherwise. In addition, exterior window coverings such as safety/security bars, awnings, screens or shutters will not be allowed to be installed. All window coverings visible from other Condominium Units or Association Property shall be of a material, design and color which, in the opinion of the Board or ACC, is compatible with the exterior design and coloration of adjacent portions of the Project, including other Condominium Units.

ARTICLE V

MAINTENANCE OBLIGATIONS

5.1 Maintenance of Association Property. The Association shall Maintain or provide for the Maintenance of all Association Property and Improvements thereon. The Association shall keep all Association Property and Improvements thereon in good condition and repair, and provide

for all necessary services and cause all acts to be done which may be necessary or proper to assure the Maintenance of the Association Property in first class condition. The Association is prohibited from relinquishing its obligation to Maintain the Association Property without the prior written consent of the City. A general, non-exclusive list allocating Maintenance responsibility of the Association is identified on **Exhibit B**, attached hereto and incorporated herein by reference. The Association's Maintenance Obligations shall include, but not be limited to, the following.

5.1.1 Private streets, alleys, and sidewalks within the Project, and private street signs and approved access gates. All paved areas shall be Maintained clean and free of oil stains and pressure washed as needed to Maintain the areas in a clean and orderly manner.

5.1.2 Private sewer, private storm drain Improvements.

5.1.3 The Buildings including, but not limited to, roofs, gutters, siding, foundations, and railings on Balcony, Patio and Porch surfaces (but excluding the exteriors of windows, sliding glass doors and other glass surfaces, and HVAC).

5.1.4 Compliance with the WQMP including all drainage devices. BMPs shall be incorporated to effectively prevent the entry of pollutants into storm water runoff. The Association shall be responsible for complying with the WQMP. The basins or swales and media filters located within the Association Property shall be Maintained to ensure the stormwater treatment measures do not impair the usability of said Association Property

5.1.5 Any and all pipes, lines, ducts and other equipment located within the UCEs, but excluding therefrom any Utilities EUA.

5.1.6 The Offsite Maintenance Areas, as defined in Section 2.11 herein, which Maintenance shall include (a) normal care and irrigation; (b) repair and replacement of plant materials (including interior and street trees); (c) irrigation systems, as necessary; and (d) general clean-up of the landscaped and open areas.

5.1.7 Restoring any special surface Improvements (other than asphalt paving) within any right-of-way, public utility easement or City easement area including, but not limited to, colored concrete, bricks, pavers, stamped concrete, walls, decorative hardscape, or landscaping that becomes damaged during any excavation, repair or replacement of City-owned water facilities.

5.1.8 The private storm drain system, private sanitary sewer system, electric power service, meters, and asphalt paved area located within the Association Property and through Parcels up to the meters, splice boxes, or other connections that will exclusively serve a Condominium Unit, with the exception of items and services provided by the City.

5.1.9 All private water mains, lines, pipes and associated Improvements up to the meter serving each Condominium Unit.

5.1.10 All Improvements in Association Property located within private storm drainage easements, as shown on the Map, and removal of blockages so long as the blockage is in the Association Property.

5.1.11 Maintain all private street lights, alleys, drive aisles, approved access gates, open parking striping and markings, and identifying devices or signs for guest and disabled access spaces.

5.1.12 The Association shall not be liable to any Owner or resident for any damage claimed to have been suffered or incurred to any landscape Improvements installed by an Owner or resident in the areas to be Maintained by the Association therein.

5.2 Maintenance of Exclusive Use Areas. To the extent that any Owner fails to Maintain the Exclusive Use Areas as set forth herein, or if any recoating, resurfacing, repairs to the coatings/surfaces or enclosures, structural repair and/or replacement work is necessitated by the willful or negligent acts of the Owner, his/her family, guests or invitees, the costs of such special restoration or repairs shall be chargeable to the Owner as a Reimbursement Assessment for said costs, as provided in ARTICLE IX.

5.2.1 Balcony. Owners of Condominium Units shall perform cosmetic Maintenance, upkeep, cleaning and sweeping (as needed) to the surfaces, flooring and railings or walls enclosing the Balcony appurtenant to his/her Condominium Unit. Balcony areas shall be kept free and clear of any unnecessary debris and Maintained in an orderly fashion at all times. The Association shall be responsible for structural repair and/or replacement of the Balcony.

5.2.2 Patios. Owners shall be solely responsible for the cosmetic Maintenance (including cleaning and sweeping as needed) of the Patio including the walls and gates enclosing the Patio appurtenant to his/her Condominium Unit, as applicable. .

5.2.3 Porches. Owners shall be solely responsible for the cosmetic Maintenance (including cleaning and sweeping as needed), of the Porch appurtenant to his/her Condominium Unit.

5.2.4 Solar Energy Systems. Owners shall be solely responsible for the Maintenance of the Solar Energy System serving his/her Condominium Unit. Any Maintenance, repair, replacement or inspection of a Solar Energy System (collectively, “**Solar Work**”) shall be in compliance with this Section:

(a) Solar Contractors. Any Solar Work shall be performed by an actively California-licensed, bonded and adequately insured contractor who is trained and certified to perform the Solar Work (“**Solar Contractor**”) and shall, at all times while performing any Solar Work, maintain insurance as may be required by the Association Rules. The Association shall have the right to impose additional requirements on a Solar Contractor in order to assure that any Solar Work will be performed in a safe manner and in compliance with all applicable laws.

(b) Liens. No Owner shall permit or allow to be enforced against the Association, Association Property or any Condominium Unit not owned by Owner, any mechanics’, materialmen’s, contractors’ or subcontractors’ liens, claims or demands arising from the activities of Owner or his/her agents within the Project, or any portion thereof.

(c) Fixture Filings. Any fixture filings made by an Owner's Solar Contractor shall be recorded against such Owner's Condominium Unit, and shall not encumber any other Condominium Unit, any Association Property or any portion of the Project.

(d) Association Roof Work. Owner agrees that performance of any Solar Work shall not interfere with the Association's Maintenance of the roof on or any portion of the Building ("**Building Work**"). If the Association has to perform Building Work, Owners shall cooperate with the Association in the removal of the Solar Energy Systems in accordance with the Association Rules. Temporary removal of a Solar Energy System shall be subject to any agreement between the Owner and solar provider, provided, however, that the Association shall have the right to require an Owner to remove a Solar Energy System at the Owner's sole cost and expense or the Association (at its sole and absolute discretion) shall have the right to remove the Solar Energy System and to charge the individual Owner whose Solar Energy System is removed for the costs and expenses associated with such removal and replacement as a Reimbursement Assessment.

(e) Owner Responsibility for Damage. Each Owner assumes full responsibility for any damage resulting to persons or property, to any portion of Association Property, such Owner's Condominium Unit or any other Condominium Units in any Building, the roof of or any other portion of the applicable Building or property owned by the Association or other persons caused by the Solar Work including, without limitation, damage to the structural integrity, water-tight properties, durability, load capacity, roof Maintenance expenses or useful life of the roof of the Building. The applicable Owner is liable for any personal injury or damage occurring to the roof or any other portion of the applicable Building or any other Association Property arising from or related to any Solar Work caused, authorized or otherwise permitted by such Owner.

(f) Interruption of Service. Owner agrees that the Association shall not be liable for any interruption in service or for interference with the operation and function of the Solar Energy System when the Association Maintains the roof or other portions of the applicable Building.

(g) Indemnification. Each Owner consents and agrees to indemnify, protect, defend and hold the Association and all other Owners of Condominiums in the Project, and their respective successors and assigns, and its officers, directors, successors and assigns, the property management company for the Association entirely free and harmless from and against any and all claims, costs, expenses, liabilities, actions and damages including, without limitation, attorney's fees and costs and costs of enforcing this indemnification (collectively, "**Solar Claims**") arising from or attributable to any acts or omissions of such Owner, the Solar Contractor, or any of their respective heirs, personal representatives, successors, assigns, officers, agents, employees, subcontractors, or material suppliers arising out of or based upon any Solar Work. This indemnity does not include any Solar

Claims to the extent they arise out of the gross negligence or willful misconduct of the Association or any other Owner.

5.2.5 Utilities. Owners shall be solely responsible for the Maintenance and working condition of the Utilities EUA that serves his/her/their Condominium Unit. Such Maintenance shall include, but not be limited to, the platform upon which HVAC equipment sits (but excluding any landscaping used for screening the HVAC which landscaping shall be Maintained by the Association), fire sprinkler system, water, and plumbing and electrical lines, pipes, conduits, etc., no matter where located, including the walls.

5.3 Maintenance of Condominium Units. Except as otherwise set forth in Declaration and in addition to other provisions herein, each Owner shall be responsible to Maintain Improvements as set forth in this Section. A general, non-exclusive list allocating maintenance responsibilities of Owners for certain components and areas of the Condominium Units are identified on **Exhibit B**, attached hereto and incorporated herein by reference.

5.3.1 Condominium Units. Each Owner shall Maintain the interior surfaces of his/her Condominium Unit in good condition and repair, including, but not limited to, the following:

- (a) All fixtures, appliances, appurtenances and fireplaces, if any;
- (b) Maintain, paint, paper, panel, plaster, tile and finish the interior surfaces of the ceilings, floors, and the perimeter walls of the Condominium Unit, and the bearing walls within the Condominium Unit;
- (c) Repair, paint, finish, alter, substitute, add or remove any fixtures and utility connections attached to ceilings, floor or walls, including fireplaces, toilets, showers, bathtubs, sinks, kitchen appliances, lighting and plumbing fixtures, telephone facilities, doors and windows within the Condominium Unit;
- (d) Maintenance of the interior plumbing of the Condominium Unit up to and including the cleanout serving the Condominium Unit;
- (e) Maintain the interiors and exteriors of any skylights, windows, sliding glass doors, and other glass surfaces of the Condominium Unit; and
- (f) Maintain doors, hardware, locks and screens covering doors and windows of the Condominium Unit, and garage doors.

5.3.2 Failure of Owner to Maintain. If an Owner fails to Maintain his/her Condominium Unit and other Improvements, as provided herein, in a manner which the Board reasonably deems necessary to preserve the safety, appearance and/or value of the Project, the Board may notify the Owner of the work required and request that it be done within a reasonable and specific period. If the Owner fails to perform such Maintenance within said period, the Board shall, subject to the notice and hearing requirements set forth in the Bylaws, have the right to enter the Condominium Unit to cause such Maintenance

work to be performed. The costs of any such Maintenance shall be charged as a Reimbursement Assessment to the Owner as provided in ARTICLE IX hereof. Notwithstanding the foregoing, in the event of an emergency arising of the failure of an Owner to Maintain his/her Condominium Unit, the Board shall have the right, through its agents and employees, to immediately enter the Condominium Unit to abate the emergency and individually charge the cost thereof to such Owner.

5.4 Maintenance of Walls. The Association shall Maintain all perimeter walls and fences surrounding the Project, fencing and walls surrounding Association amenities, if any, and any walls or fences separating Condominium Units from Association Property.

5.5 Maintenance of Fire Sprinkler System. Each Owner shall be solely responsible for the Maintenance and operating condition of the fire sprinkler system (including the lines, pipes and conduits within the Fire System Easement), the fire sprinkler heads, smoke detectors and other life safety systems within the Condominium Unit. The Association shall have a discretionary right to enter and inspect each Condominium Unit to determine that each Owner is fulfilling its obligation to Maintain the fire sprinkler system that serves the Condominium Unit, and to compel compliance if an Owner has failed to properly Maintain the fire sprinkler system.

5.6 Maintenance of Drainage Systems. The Association shall be required to comply with and fulfill all requirements, obligations, duties and standards set forth in the WQMP approved by the City for the long-term management, maintenance and operation of the BMPs and storm water improvements applicable to the Project so as to preserve and keep in good working condition the storm water systems throughout the Project.

5.7 Termite and Wood Destroying Pests Eradication. If determined by the Board to be economically feasible, the Association shall adopt an inspection and prevention program for the prevention and eradication of infestation by wood-destroying pests and organisms for Condominiums in the Project. If the Association adopts such a program, the Association, on no less than fifteen (15) nor more than thirty (30) days' notice, may require each Owner and occupants to vacate the Condominium Unit to accommodate the Association's efforts to eradicate such infestation. The notice must state the reason for the temporary relocation, the date and time of the commencement of the treatment, the anticipated date and time when the treatment will be completed, that the occupants will be responsible for arranging and paying for their own accommodations during the temporary relocation, and that the Association shall not be responsible for any costs associated with the temporary relocation. Any damage caused to a Condominium Unit by such entry by the Association shall be repaired by the Association. All costs associated with the inspection and preventative program and the repair and replacement of Association Property and Improvements thereon in exercising the rights set forth in this Section may be charged as a Special Assessment.

5.8 Enforcement of Maintenance Obligations. If any Maintenance work identified in this ARTICLE V (including blockage of private sewer lines) is necessitated by the acts and/or omissions of the Owner, his/her family, guests or invitees, regardless if said acts and/or omissions were willful or negligent, the costs of such special restoration or repairs shall be chargeable to the Owner as a Reimbursement Assessment as provided in ARTICLE IX.

5.9 Utility Bills. Payment of any utility (e.g., water, electricity) bills for Association Property and Association Maintenance Areas are the obligation of the Association.

5.10 Other Association Obligations. The Association shall contract with a professional management firm to handle Maintenance operations.

5.11 Inspection and Maintenance Guidelines. The Association and each Owner shall adopt and comply with the inspection and Maintenance guidelines for all Improvements as set forth in the WQMP (including, but not limited to, Parcels, Condominium Units and Association Property, etc.) for the periodic inspection and Maintenance of the Association Property Improvements and any other Improvements that the Association is obligated to Maintain. The Association's inspection and Maintenance guidelines shall include a plan for litter control, street sweeping and cleaning of all storm drain inlets.

ARTICLE VI

ARCHITECTURAL REVIEW AND APPROVAL PROCEDURES

6.1 Formation and Composition of ACC. The ACC shall be formed and shall consist of at least three (3) but no more than five (5) Members. Until the first anniversary of the issuance of the Final Public Report for the first Phase of the Project, Declarant may appoint all of the original members and any replacements of the ACC. After the first anniversary of the issuance of the Final Public Report for Phase 1 of the Project, the Board shall have the power to appoint at least one member to the ACC. Declarant shall have the power to appoint a majority of the members of the ACC until ninety percent (90%) of all Condominium Units in the Project have been sold or until the fifth (5th) anniversary of the issuance of the Final Public Report for the first Phase of the Project, whichever occurs first. Upon the sale of ninety percent (90%) of all Condominium Units in the Project or the fifth (5th) anniversary date of the original issuance of the Final Public Report, whichever occurs first, the Board shall have the power to appoint all of the members of the ACC. In the event of death or resignation of any member of the ACC, the successor shall be appointed by the person, entity or group which appointed such member until Declarant no longer has the right to appoint any members to the ACC, and thereafter the Board shall have the full authority to designate such a successor. The members of the ACC shall not be entitled to any compensation for services performed pursuant hereto.

6.2 Duties of the ACC. The ACC shall review and approve, conditionally approve, or deny all plans, submittals, applications and requests made or tendered to it by Owners or their agents for any Alterations, pursuant to the provisions of this Declaration. In connection therewith, the ACC may investigate and consider the architecture, design, layout, landscaping, energy conservation measures, water conservation measures, fence detail, and other features of the proposed Alteration, modification or Improvement. With the consent of the Board, the ACC may hire and the Association shall pay consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the ACC in performing its duties, the costs of which may be passed on to the Owner submitting an application to the ACC for approval.

6.3 Design Guidelines. The Design Guidelines shall interpret and implement the provisions of this Declaration by setting forth the standards and procedures for architectural materials, landscaping, fences, and similar features which may be used in the Project; provided, however, that the Design Guidelines shall not be in derogation of the minimum standards established by this Declaration. The Design Guidelines may include a schedule of fees for processing submittals (which shall not exceed the amount necessary to defray all costs incurred by the ACC in processing the submittals) and establish the time and manner in which such fees shall be paid. The Design Guidelines shall constitute Association Rules.

6.4 Submission of Plans. No Alterations, Building, fence, wall, obstruction, screen, window, awning, landscape change or structure of any kind shall be commenced, erected or Maintained upon the Condominium Unit by any Owner(s), including Alterations to facilitate access for persons who are blind, visually handicapped, deaf or physically disabled, nor shall any Alterations or modification of Declarant-installed Improvements by any Owner(s) of any kind be made to the exterior thereto until the same has been approved in writing by the ACC. Plans and specifications showing the nature, kind, shape, color, size, materials and location of such Improvements, Alterations, etc., shall be submitted to the ACC for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation. No Owner shall construct or place, and the ACC shall not approve, any building, fence, wall, obstruction, screen, window, awning, landscaping or structure of any kind that blocks or materially interferes with the views from any other Owner's Condominium Unit. Owners are prohibited from installing, constructing, altering or modifying the exteriors of Parcels and/or the Condominium Units without the express written approval of the ACC and the Board. All proposed Alterations contained in this ARTICLE VI shall meet the Design Guidelines, and the Conditions of Approval of the City.

6.5 Basis for Review. The ACC may approve the proposal or application only if the ACC finds that (a) the plans and specifications conform to this Declaration and to the Design Guidelines in effect at the time the proposal was submitted, and (b) the proposed Alteration, modification or addition will be consistent with the standards of the Project and the provisions of this Declaration as to harmony of exterior design, visibility with respect to existing structures and environment, and location with respect to topography and finished grade elevation.

6.6 Form of Approvals, Conditional Approvals and Denials. All approvals, conditional approvals and denials shall be in writing. Any denial must state the reasons for the decision. The failure of the majority of the ACC to act within sixty (60) days after the plans have been submitted to it shall constitute approval.

6.7 Reconsideration of Denial of Application. If the ACC denies an application for Alterations, modifications, *etc.*, to a Condominium Unit, the decision may be appealed to the Board of Directors for reconsideration, unless the denial was made by the Board exercising the duties of the ACC, as set forth in Section 6.2, above, in which case, there shall be no right to reconsideration of the denial. An appeal by an Owner whose application was denied by the ACC shall follow the procedures set forth below:

(a) The appeal shall be in writing and must identify the grounds upon which the appeal or reconsideration is made to the Board.

(b) The appeal shall be delivered (pursuant to California Civil Code Section 4035) to the Board within sixty (60) days after the date of the ACC's written notice to the Owner denying the proposed Alterations, modifications, etc.

(c) The Board shall schedule a meeting within forty-five (45) days of receipt of the written appeal to allow the Owner an opportunity to be heard on his/her request for reconsideration, unless the parties mutually agree to a date beyond or less than the forty-five (45) day period.

(d) Unless expressly requested by an Owner, the meeting with the Board concerning the appeal of the ACC's decision shall not be held in executive session.

(e) The Board shall issue its decision in writing to the Owner within thirty (30) days after the date of the meeting, and said written decision shall be delivered in any manner allowed by California Civil Code Section 4040.

(f) The Board's decision on appeal shall be final, and not subject to further reconsideration by the Board.

6.8 Proceeding with and Completion of Work. Upon approval of the ACC, the Owner shall diligently proceed with commencement and completion of all work so approved. Work must be commenced within one (1) year from the date of approval. All work approved by the ACC must be completed within eighteen (18) months from the date of approval. If the Owner fails to comply with the provisions of this Section, the approval given shall be deemed revoked unless the ACC extends the time for commencement. Any request for an extension, and decision, shall be in writing. No extension shall be granted unless the ACC finds that there has been a material change in the circumstances under which the original approval was granted, or completion is impossible, or would result in great hardship to the Owner due to strikes, fires, national emergencies, natural calamities or other supervening forces beyond the Owner's control.

6.9 Compliance with Approval. If the ACC determines that an Owner has not constructed the Alterations or Improvements consistent with the specifications of the approval granted or within the time permitted for completion and if the Owner fails to remedy such non-compliance in accordance with the directives or orders of the ACC, the Board shall provide Notice and Hearing, pursuant to the Bylaws, to consider the Owner's continuing non-compliance. If the Board finds that there is no valid reason for the continuing non-compliance, the Owner shall have forty-five (45) days from the date of the Board's decision to remedy or remove the non-compliance. If the Owner fails to comply with the Board's directive or order, the Board, in its discretion, may either remove the non-complying Improvement or Alteration, remedy the non-compliance, or compel compliance pursuant Section 10.2 of this Declaration. The costs of such action shall be assessed against the Owner as a Reimbursement Assessment.

6.10 Compliance with Governmental Agency Procedures. Each Owner who seeks approval for Alterations shall first obtain written approval from the ACC prior to any approvals,

permits, *etc.*, required by the City, County or any other governmental agency for permission to permitting the start grading, demolition, construction, landscaping and/or any other work. In addition, to the extent that any Alterations (including any Alterations proposed to be made by the Association) constitute major modifications to the City-approved project plans shall be reviewed and approved by the Planning Commission as part of a modification to the approved plans.

6.11 Waiver. Approval or conditional approval of any plans, drawings or specifications for any Alterations proposed, or for any other matter requiring approval shall not be deemed to constitute a waiver of any right to deny approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

6.12 No Liability. Neither Declarant, the Association, the Board or the ACC nor the members or designated representatives thereof shall be liable for damages to anyone submitting plans and specifications to them for approval, or to any Owner of property affected by this Declaration by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications for Alterations, or for any defect, whether in design or construction, in any structure constructed from such plans and specifications. Neither the Declarant, Association, Board or ACC nor any member or representative thereof, shall be responsible for reviewing or approving any plans with respect to the adequacy of engineering design. Every person who submits plans or specifications to the ACC for approval agrees, by submission of such plans or specifications, and every Owner of said property agrees that he or she will not bring any action, suit or claim against Declarant, Association, Board or the ACC or any members or designated representatives thereof with respect to any matters for which such persons or entities are relieved of liability pursuant to this Section.

ARTICLE VII

ASSOCIATION ADMINISTRATION, MEMBERSHIP AND VOTING

7.1 Association to Manage Project. The management of the Project shall be vested in the Association in accordance with the Project Documents, and all applicable laws, regulations and ordinances of any governmental or quasi-governmental body or agency having jurisdiction over the Project.

7.2 Membership. Each Owner shall be a Member of the Association, and shall remain a Member thereof until such time as ownership ceases for any reason, at which time such membership in the Association shall automatically cease.

7.3 Transferred Membership. Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the sale or encumbrance of the Condominium Unit to which it is appurtenant, and then only to the purchaser, in the case of a sale, or Mortgagee, in the case of an encumbrance of such Condominium Unit. A Mortgagee does not have membership rights until it becomes an Owner by foreclosure or deed in lieu thereof. Any attempt to make a prohibited transfer is void. Any person or entity acquiring fee title or equitable title to a Condominium Unit, whether by reason of a deed from the Owner or through a foreclosure, shall

within fifteen (15) days of acquiring such title inform the Association in writing of the date such title transferred and the name or names in which title is held.

7.4 Voting. Any action required by law or by the Project Documents to be approved by the Owners, the Members or each class of Members, shall be approved, if at all, in accordance with the procedures set forth in the Bylaws and any Association Rules.

7.5 Proxies. For all matters required by law or the Project Documents in which Members are required to vote, including, but not limited to, those matters set forth in California Civil Code Section 5105, and except as specifically allowed by law or a court of law, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary before the appointed time of each meeting. Except for an irrevocable proxy permitted by California Corporations Code Section 7613(d), every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Condominium, as applicable, or upon receipt of notice by the Secretary of the Board of the death or judicially declared incompetence of such Member prior to the counting of the vote. No proxy shall be valid after the expiration of eleven (11) months from the date thereof unless otherwise provided in the proxy, except that the maximum term of any proxy, other than an irrevocable proxy permitted by California Corporations Code Section 7613(d), shall be three (3) years from the date of execution. Any form of proxy or written ballot distributed by any person to the Membership of the Association shall afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon, except it shall not be mandatory that a candidate for election to the Board be named in the proxy or written ballot. The proxy or written ballot shall provide that, where the Member specifies a choice, the vote shall be cast in accordance with that choice. The proxy shall also identify the person or persons authorized to exercise the proxy and the length of time it will be valid. Except as specifically allowed by law or a court of law, proxies shall not be allowed, counted towards, or recognized by the Association in any election for establishing a Quorum.

7.6 Classes of Membership and Voting. The Association shall have two (2) classes of voting Members:

7.6.1 Class A. Class A Members shall be all Owners except Declarant and Land Banker, and shall be entitled to one (1) vote for each Condominium Unit owned, as applicable. When more than one person or entity owns a Condominium Unit, all such persons and entities shall be Members and the vote for such Condominium Unit shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Condominium Unit.

7.6.2 Class B. The Class B Member shall be the Declarant and shall be entitled to cast three (3) votes for each Condominium Unit it and Land Banker owns and is paying the Assessments levied by the Association. This voting right shall cease and Declarant shall automatically become a Class A Member entitled to cast one (1) vote for each Condominium Unit it owns and is paying the Assessments levied by the Association upon the first to occur of the following events:

(a) The second (2nd) anniversary of the first close of escrow for the sale of a Condominium Unit pursuant to the original issuance by the DRE of the most recently issued Final Public Report for a Phase of the Project; or

(b) The fourth (4th) anniversary of the first close of escrow for the sale of a Condominium Unit pursuant to the original issuance by the DRE of the Final Public Report for the first Phase of the Project.

For so long as Land Banker owns any portion of the Project subject to this Declaration, Declarant shall not convert Class B Membership to Class A Membership prior to the time set forth in this Section 7.6.2

7.7 Special Voting Rights of Class A Members for Election of Directors. So long as the Declarant shall be entitled to exercise the Class B voting right to elect a majority of the members of the Board of Directors of the Association, as provided above, the Class A Members shall be entitled to solely elect at least twenty percent (20%) of the members of the Board.

7.8 Commencement of Voting Rights. Voting rights attributable to Condominium Units shall not vest until Assessments against those Condominium Units have been levied by the Association. The power to cast a particular Member's vote may be exercised by the Member's conservator, guardian, the parent(s) entitled to custody of a Member if the Member is a minor, or the executor or administrator of a deceased Member's estate if the Member's interest in the Condominium Unit is subject to estate administration.

7.9 Action Without Meeting. Any action which may be taken by the vote of Members at a regular or special meeting (except those matters set forth in California Civil Code Section 5100 may be taken without a meeting if done in compliance with California Corporations Code Section 7513. If an action is taken without a meeting, the Board shall distribute a written ballot to every Member entitled to vote on the matter. The ballot shall set forth the proposed action, provide an opportunity to specify approval or disapproval of such proposal, and provide a reasonable time within which to return the ballot to the Association. All such written ballots shall be filed with the Secretary of the Association and maintained in the Association's records. Approval by written ballot shall be valid only when the number of votes cast by ballot within the time period specified equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

7.10 Secret Ballot Voting. All voting on matters specified in California Civil Code Section 5100 shall be done by secret ballot and be in compliance with the Association Rules for elections and any and all other statutory provisions.

7.11 Conduct of Members Meetings. Meetings of the membership of the Association shall be conducted in accordance with the provisions of California Civil Code Sections 4900, et seq., and 5000, including the ability to conduct virtual Membership meetings, as may be allowed by California Civil Code Section 4926.

ARTICLE VIII

POWERS, DUTIES AND LIMITATIONS OF THE ASSOCIATION

8.1 Powers and Duties of Association. In addition to the powers and duties enumerated in its Articles and Bylaws or elsewhere provided for herein, and without limiting the generality thereof, the Association and the Board shall have the following powers and duties:

8.1.1 Delegation of Powers. To delegate all powers to committees, officers or employees of the Association as expressly authorized by the Project Documents.

8.1.2 Managing Agent. To employ a managing agent and to contract with independent contractors to perform all or any part of the duties and responsibilities of the Association, provided that any contract with a firm or person appointed as a managing agent or any other contract providing for services of the Declarant, developer, sponsor or builder shall not exceed a one (1) year term renewable by the parties for successive one year periods and shall provide for the right of the Association to terminate the same at the first annual meeting of the Members of the Association, to terminate the same for cause on thirty (30) days written notice, and either party may terminate without cause and without payment of a termination fee on sixty (60) days written notice.

8.1.3 Maintenance. To Maintain the Project as required by the provisions of this Declaration.

8.1.4 Supervision. To supervise all officers, agents and employees of the Association and see that their duties are properly performed.

8.1.5 Assessments, Liens, and Fines. To levy and collect Assessments and as provided in the Project Documents, impose fines or take disciplinary action against an Owner for failure to pay Assessments or for violation of any provision of the Project Documents. Penalties may include, but are not limited to: fines, temporary suspension of voting rights or rights to use of the facilities on the Association Property, or other appropriate discipline for failure to comply with the Project Documents, provided that the accused Member is given notice and the opportunity to be heard by the Board with respect to the alleged violations before a decision to impose discipline is reached. Such notice and hearing procedures shall satisfy the minimum requirements of California Corporations Code Section 7341, which are set forth in Article XIII of the Bylaws.

8.1.6 Enforcement of Project Documents. To enforce applicable provisions of the Project Documents for the ownership, management and control of the Project.

8.1.7 Adoption of Association Rules. To adopt, amend and repeal reasonable rules consistent with this Declaration relating to the use of Association Property and all facilities thereon, and the conduct of Owners and their tenants and guests with respect to the Project and other Owners, in compliance with California Civil Code Section 4340, *et seq.* A copy of the Association Rules as adopted, amended or repealed shall be mailed or otherwise delivered to each Owner and a copy shall be posted in a conspicuous place within

the Association Property. Any modifications, changes, or repeal of the Association, Rules shall follow these procedures:

(a) The Board shall provide written notice to its Members not less than thirty (30) days prior to making the rule change. The written notice shall include the text of the proposed rule change (or deletion, as the circumstances may warrant), and a description of the purpose and effect of the change. The written notice is not required if the Board determines that an immediate rule change is necessary to address an imminent threat to public safety or imminent risk of substantial economic loss.

(b) The decision on the proposed rule change shall be made at a meeting of the Board after consideration of any comments made by Members.

(c) Not more than fifteen (15) days after making the rule change, the Board shall deliver the modifications, changes or repeal of Association Rules to every Member in the manner allowed by California Civil Code Section 4045, unless the rule change was made on an emergency basis and in such an emergency basis the notice shall include the text of the change, a description of the purpose and effect of the rule change, and that the emergency rule change shall be in effect for not more than one hundred twenty (120) days.

8.1.8 Records. Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by five percent (5%) or more of the total voting power of the Association; keep adequate and correct books and records of account, minutes of proceedings of its Members, Board and committees, and a record of its Members giving their names and addresses and classes of membership.

8.1.9 Water and Other Utilities. To acquire, provide and pay for water, sewer, garbage disposal, refuse and rubbish collection, electrical, telephone, and other utility services as necessary for the Association Property and other areas of the Project Maintained by the Association pursuant to this Declaration.

8.1.10 Granting of Easements. To grant easements where necessary for utilities and sewer facilities over the Association Property to serve the Association Property, Association Maintenance Areas, Parcels and Condominium Units.

8.1.11 Exercise of Easements. To exercise all easement rights as granted to it in this Declaration for the purpose of performing the Maintenance authorized herein or for any other purpose reasonably related to the performance by the Association or the Board of their responsibilities, the Association's agents or employees.

8.1.12 Contracts. To contract for goods and/or services for the Association Property facilities and interests, for other areas of the Project that is Maintained by the Association, or for the Association, subject to limitations elsewhere set forth in the Project Documents.

8.1.13 Limit Number of Guests. To limit the number of an Owner's guests who may use any facilities on the Association Property and/or Association Maintenance Areas.

8.1.14 Title to Association Property. To accept title to the Association Property conveyed to it by Declarant.

8.1.15 Acquisition of Property. To acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, Maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association.

8.1.16 Budgets. To prepare budgets and financial statements for the Association as prescribed in this Declaration.

8.1.17 Legal and Accounting. To obtain and pay the cost of legal, accounting and other professional services necessary or proper for the Maintenance and operation of the Project and the enforcement of the Project Documents.

8.1.18 Emergency Repairs. To enter upon any Condominium Unit as necessary in connection with construction, Maintenance or emergency repair for the benefit of the Association Property or the Owners in common.

8.1.19 Election of the Board of Directors. To elect the Members of the Board.

8.1.20 Filling Vacancies. To fill vacancies on the Board created by the removal or resignation of a Board Member.

8.2 Property Taxes and Assessments. Each Owner shall be obligated to pay any taxes or assessments levied by the County Assessor against his/her Condominium Unit and personal property. To the extent not assessed to or paid directly by the Owners, the Association shall pay all real and personal property taxes and assessments levied upon any portion of the Association Property or other property owned by the Association. The Association shall prepare and file annual tax returns with the federal government and the State of California and make such elections as may be necessary to reduce or eliminate the tax liability of the Association.

8.3 Discharge of Liens. The Association shall discharge by payment, if necessary, any lien against the Association Property, and assess the cost thereof to the Owners responsible for the existence of said lien.

8.4 Payment of Expenses. The Association shall pay all expenses and obligations incurred by the Association in the conduct of its business including, without limitation, all licenses, taxes or governmental charges levied or imposed against the property of the Association.

8.5 Dispute Resolution. In any dispute in which the Association is a party, the Association may perform any act reasonably necessary to resolve any such civil claim or action through dispute resolution proceedings found in ARTICLE XIV herein or in the Dispute Resolution Declaration, as applicable.

ARTICLE IX

ASSESSMENTS

9.1 Agreement to Pay. Declarant, and its successor in interest, if any, for each Condominium Unit owned by it and annexed to the Project, and each Owner, 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: (a) Regular Assessments; (b) Special Assessments for capital improvements or unusual expenses to be established and collected as hereinafter provided; and, (c) Reimbursement Assessments and/or Additional Charges levied against an Owner, to be established and collected as provided in this Declaration and in the other Project Documents. Declarant shall pay Assessments on behalf of Land Banker for Condominiums owned by Land Banker. If, and only if, the Purchase Agreement between Declarant and Land Banker is terminated (as evidenced by a writing recorded in the Official Records), Land Banker shall be solely responsible, and hereby agrees, to pay Assessments on Condominiums owned by Land Banker.

9.1.1 Liability for Payment. All Assessments and Additional Charges, together with any late charges, interest, collection costs and reasonable attorney's fees incurred in collecting delinquent Assessments and Additional Charges, as provided in California Civil Code Section 5650, shall be the obligation of the Owner of such Condominium Unit at the time when the Assessments or Additional Charges fell due. If more than one person or entity was the Owner of a Condominium Unit at the time the Assessments or Additional Charges fell due, the obligation to pay each Assessment and Additional Charge shall be joint and several. The obligation for delinquent Assessments and Additional Charges shall not pass to any transferee unless expressly assumed by him/her. No Owner may exempt himself from liability for his/her Assessments or Additional Charges obligation by waiver of the use or enjoyment of any of portion of the Project.

9.1.2 Funds Held in Trust. The Assessments collected by the Association shall be held by the Association for and on behalf of each Owner and shall be used solely for the operation, care and Maintenance of the Project as provided in this Declaration.

9.1.3 No Offsets. No offsets against any Assessment shall be permitted for any reason including, without limitation, any claim that the Association is not properly discharging its duties.

9.1.4 Assessments in Dispute. If an Owner has a dispute with the Association regarding an Assessment levied by the Association, the Owner shall have the option of (a) paying the disputed amount of the Assessment under protest and filing a small claims action (California Civil Code Section 5658), (b) request a meeting with the Board to discuss the possibility of a payment plan, if applicable (California Civil Code Section 5665), (c) request to participate in the "meet and confer" program (California Civil Code Section 5900, *et seq.*), or (d) or request that the dispute be resolved by alternative dispute resolution with a neutral third party (California Civil Code Section 5925, *et seq.*), or any combination of the above.

9.2 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for paying the costs of and creating reserves for the costs of all obligations which the Association is authorized or obligated to perform as described in this Declaration.

9.3 Vacant Unit Assessment Exemption. Declarant and any other Owner may be exempt from the payment of that portion of any Assessment for any Building or Condominium Unit that does not include a structural Improvement for human occupancy which is for the purpose of defraying expenses and reserves directly attributable to the existence and the use of structural Improvements. The exemption may include, but shall not necessarily be limited to: roof replacement; exterior maintenance; walkway and carport lighting; refuse disposal; cable television; and domestic water supplied to living Condominium Units. Any exemption from the payment of Assessments attributed to dwelling Condominium Units shall be in effect only until the earliest of the following: (a) a notice of completion of the structural Improvements has been recorded; (b) occupation or use of the Condominium Unit; or (c) completion of all elements of the residential structures which the Association is obligated to Maintain.

9.4 Common Facility Assessment Exemption. Declarant and any other Owner may be exempt from the payment of that portion of any Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of Association Property Improvements that are not complete at the time Assessments commence. Any exemption from the payment of Assessments shall be in effect only until (a) a notice of completion of the Association Property has been recorded; or (b) the common facility has been placed into use, whichever occurs earliest.

9.5 Regular Assessments. Regular Assessments shall be payable in equal monthly installments, due on the first day of each month, unless the Board adopts some other basis for collection. Annual increases in Regular Assessments shall be in compliance with California Civil Code Section 5605. Notwithstanding any other provisions contained in this ARTICLE IX, the Board may increase Assessments necessary for emergency situations pursuant to California Civil Code Section 5610. In addition, the restrictions on increases in Regular Assessments (other than for emergency situations), as set forth in California Civil Code Section 5610, do not apply if such increases are made as part of a phased development reviewed by the DRE and are the initial transfers of a Condominium Unit pursuant to a Final Public Report. If before expiration of any fiscal year the Association fails to fix Regular Assessments for the next fiscal year, the Regular Assessment established for the preceding year shall continue until a new Regular Assessment is fixed. Regular Assessments shall include costs and expenses for the Maintenance, repair and replacement of Association Property and other portions of the Project that the Association is required to Maintain as set forth in ARTICLE V of this Declaration, and for the management and operation of the Project and Association, which shall be assessed on a variable basis to each Condominium Unit based on the approximate square footage of the Condominium Unit. Regular Assessments shall include costs and expenses for the Maintenance of Association Property and other portions of the Project that the Association is required to Maintain as set forth in this Declaration, and for the management and operation of the Project and Association, which shall be assessed equally to each Condominium Unit.

9.6 Special Assessments. Special Assessments may be levied in addition to Regular Assessments for (a) constructing capital Improvements, (b) correcting an inadequacy in the

Current Operating Account; (c) defraying, in whole or in part, the costs of any construction, reconstruction, unexpected repair or replacement of Improvements in the Association Property or in any other areas for which the Association is obligated to Maintain, or (d) paying for such other matters as the Board may deem appropriate for the Project. Special Assessments shall be levied in the same manner as Regular Assessments. Increases in Special Assessments shall be subject to the provisions of California Civil Code Section 5605. Notwithstanding any other provisions contained in this ARTICLE IX, the Board may impose Special Assessments necessary for emergency situations pursuant to California Civil Code Section 5610.

9.7 Reimbursement Assessments. The Association shall levy a Reimbursement Assessment against an Owner to (a) reimburse the Association for the costs of repairing damage caused by that Owner or that Owner's Invitee, (b) if a failure to comply with the Project Documents has necessitated an expenditure of monies, including attorneys' fees, by the Association to bring the Owner or the Owner's Condominium Unit or Improvements into compliance or resulted in the imposition of a fine or penalty, or (c) failure to reimburse the Association for costs and expenses incurred on behalf of an Owner, as set forth elsewhere in this Declaration. A Reimbursement Assessment shall be due and payable to the Association when levied. A Reimbursement Assessment shall not be levied by the Association until Notice and Hearing has been given in accordance with the Bylaws. Reimbursement Assessments described in subdivisions (a) and (c) may be enforced by lien after Declarant no longer owns any portion of the Project. Reimbursement Assessments described in subdivision (b) may not be enforced by lien.

9.8 Commencement of Assessments. The right to levy Assessments shall commence as to all Condominium Units in a Phase on the close of escrow first the first conveyance of a Condominium Unit in the Phase. Regular Assessments shall commence as to all Condominium Units in a Phase on the first day of the month following the first conveyance of a Condominium Units under authority of a Final Public Report. Thereafter, Regular Assessments shall be levied on the first day of each month. After annexation of each Phase, the allocation and Assessment charges for Common Expenses shall be reallocated equally among all Condominium Units, including those in the annexed Phase of the Annexable Property.

9.9 Accounts. Assessments collected by the Association shall be deposited into at least two (2) separate accounts with a responsible financial institution, which accounts shall be clearly designated as (a) the Current Operating Account, and (b) the Reserve Account. The Board shall deposit those portions of the Assessments collected for current maintenance and operation into the Current Operating Account for Common Expenses, and shall deposit those portions of the Assessment collected as reserves for replacement and deferred Maintenance of major components which the Association is obligated to Maintain into the Reserve Account. There shall be no commingling of funds collected for Common Expenses.

9.9.1 Withdrawal of Funds. Withdrawal of funds from the Reserve Account shall require the signature of either two (2) Directors or one (1) Director and one (1) Officer of the Association who is not a Director. The Association may expend funds from the Reserve Account only for the purposes set forth in California Civil Code Section 5510(b).

9.9.2 Current Operating Account. All other costs properly payable by the Association for Common Expenses shall be paid from the Current Operating Account.

9.10 Enforcement of Assessments. Pursuant to California Civil Code Sections 5300, 5305, 5310, 5320, 5565 and 5730, the Board shall distribute a statement of the Association's policies and practices in enforcing its remedies against Owners for defaults in the payment of Regular and Special Assessments, including the recording and foreclosing of liens against Owners' Condominium Units. In addition to all other remedies provided by law, including, but not limited to, California Civil Code Section 5700, *et seq.*, the Association or its authorized representative may enforce the obligations of the Owners to pay each Assessment provided for in this Declaration in any manner provided by law or by either or both of the following procedures:

(a) By Suit. The Association may commence and maintain a suit at law against any Owner personally obligated to pay a delinquent Assessment. The suit shall be maintained in the name of the Association. Any judgment rendered in any action shall include the amount of the delinquency, and such Additional Charges, costs, fees, charges, and expenditures and any other amounts as the court may award. A proceeding to recover a judgment for unpaid Assessments may be maintained without the necessity of foreclosing or waiving the lien established herein.

(b) By Lien. The Association or a trustee nominated by the Association may commence and maintain proceedings to establish and/or foreclose Assessment liens. No action shall be brought to foreclose a lien until the lien is created by recording a Notice of Lien. Prior to recording a Notice of Lien, the Association shall comply with the provisions of California Civil Code Section 5673. The Notice of Lien must be authorized by the Board, signed by an authorized agent and recorded in the Official Records. No later than ten (10) days after recordation of the Notice of Lien, copies of the Notice of Lien shall be mailed to all record Owners of the Condominium Unit in the manner set forth in California Civil Code Sections 2924b and 5710. After expiration of the thirty (30) days following the recording of a Notice of Lien, the lien may be foreclosed subject to the right of redemption as set forth in California Civil Code Section 5715(b).

Notwithstanding the provisions of this Section 9.10, in the event Declarant is delinquent in the payment of Assessments for Parcels Land Banker owns, Land Banker shall have the right to cure the delinquency in the payment of any such delinquent Assessments within fifteen (15) calendar days of written notice from the Association to Land Banker prior to the Association taking any of the actions authorized in this Section to enforce any such delinquency.

9.11 Satisfaction of Lien. All amounts paid by an Owner toward a delinquent Assessment shall be credited first to reduce the principal amount of the debt. Upon payment or other satisfaction of a delinquent Assessment for which a Notice of Lien was recorded, the Association shall record a certificate stating the satisfaction and release of the Assessment lien.

9.12 Lien Eliminated by Foreclosure. If the Association has recorded a Notice of Lien and the lien is eliminated as a result of a foreclosure of a Mortgage or transfer pursuant to the remedies provided in the Mortgage, the new Owner of the Condominium Unit shall pay to the Association a pro-rata share of the Regular Assessment for each month remaining in the Association's fiscal year after the date of the foreclosure or transfer pursuant to the remedies provided in the Mortgage.

9.13 Waiver of Homestead Protections. Each Owner does hereby waive, to the extent permitted by law, the protections of any declared homestead or homestead exemption or redemption laws under the laws of the State of California as applied to any action to enforce or collect Assessments levied by the Association.

9.14 Subordination of Lien. Notwithstanding any provision to the contrary, the liens for Assessments created pursuant to this Declaration shall be subject and subordinate to and shall not affect the rights of the holder of a First Mortgage made in good faith and for value. Upon the foreclosure of any First Mortgage on a Condominium Unit, any lien for Assessments which became due prior to such foreclosure shall be extinguished; provided, however, that after such foreclosure there shall be a lien on the interest of the purchaser at the foreclosure sale to secure all Assessments, whether Regular or Special, charged to such Condominium Unit after the date of such foreclosure sale, which lien shall have the same effect and shall be enforced in the same manner as provided herein. For purposes of this Section, a Mortgage may be given in good faith or for value even though the Mortgagee has constructive or actual knowledge of the Assessment lien provisions of this Declaration.

ARTICLE X

AMENDMENT AND ENFORCEMENT OF RESTRICTIONS

10.1 Amendment of Declaration.

10.1.1 Prior to First Close of Escrow. Prior to the close of escrow on the conveyance of the first Condominium Unit, Declarant may, with the consent of Land Banker for so long as Land Banker owns any portion of the Project subject to this Declaration and which consent shall not be unreasonably withheld, amend or revoke this Declaration subject to the requirements of California Business & Professions Code Sections 11012 and 11018.7.

10.1.2 After First Close of Escrow. After conveyance of the first Condominium Unit, this Declaration may be amended or revoked only by the affirmative vote or written consent of Members representing a majority of the voting power of each class of Members of the Association and, if applicable, by Mortgagees. If only one class of membership exists at the time an amendment is proposed, then it must be approved by at least a bare majority of the total voting power of the Association, which shall include at least a bare majority of the votes of Members other than Declarant. The percentage of the voting power necessary to amend a specific clause or provision of this Declaration shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause or provision. If the approval of two (2) classes of membership is required, prior approval must be obtained from the FHA and/or VA if either is First Mortgagees. Any amendment shall be executed by the President and Secretary of the Association and must be recorded and shall become effective only upon being recorded in the Official Records.

10.1.3 Amendments Requiring Institutional Mortgagee Consent. Approval of any proposed amendment to the Project Documents by Mortgagees shall be implied if a Mortgagee fails to submit a response to any written proposal for an amendment within

sixty (60) days after it receives proper notice or the proposal, provided the notice to the Mortgagee was delivered by certified or registered mail, with a “return receipt” requested.

(a) Any amendments to the Project Documents of a “material adverse nature” to Mortgagees shall require approval of at least fifty-one percent (51%) of Mortgagees and sixty-seven percent (67%) Owners. Amendments of a “material adverse nature” include the following:

- (i) Voting rights;
- (ii) Increases in Assessments that raise previously assessed amount by more than twenty-five percent (25%), Assessment liens, or the priority of Assessment liens;
- (iii) Reductions in reserves for Maintenance of Association Property;
- (iv) Responsibility for Maintenance;
- (v) Reallocation of interests in the Association Property or rights to their use;
- (vi) Redefinition of any Parcel boundary;
- (vii) Convertibility of Condominium Units into Association Property or vice versa;
- (viii) Expansion or contraction of the Project, or the addition, annexation (except for the Annexable Property) or withdrawal of real property to or from the Project;
- (ix) Hazard or fidelity insurance requirements;
- (x) Imposition of any restrictions on the leasing of Parcels or Condominium Units;
- (xi) Imposition of any restrictions on an Owner’s right to sell or transfer his or her Condominium Unit;
- (xii) A decision by the Association to establish self-management when professional management had been required by the Project Documents or by an Institutional Mortgagee;
- (xiii) Restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in the Project Documents;

(xiv) Any provisions that expressly benefit Mortgage holders, insurers or guarantors; or

(xv) Any action to terminate the legal status of the Project for any reason whatsoever.

(b) Prior approval of at least sixty-seven percent (67%) of Mortgagees and sixty-seven percent (67%) of Owners other than Declarant shall be required before the Association may do any of the following:

(i) By act or omission, seek to abandon or terminate the Project, other than after substantial destruction or condemnation occurs;

(ii) By act or omission, abandon, partition, subdivide, encumber, sell or transfer any property or Improvements owned, directly or indirectly, by the Association for the benefit of the Condominium Units and Owners (excepting therefrom, the granting of easements for public utilities or for other public purposes consistent with the intended use of the Project);

(iii) By act or omission, change, waive or abandon any scheme of regulations or enforcement thereof pertaining to architectural design or exterior appearance of Condominium Units, the exterior Maintenance of Condominium Units, or the upkeep of laws, plantings or other landscaping in the Project;

(iv) By act or omission, change the method of determining the obligations, Assessments, dues or other charges that may be levied against and Owner;

(v) Fail to maintain the fire and extended coverage insurance on insurable portions of Association Property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value based on current replacement cost; and

(vi) Use hazard insurance proceeds for losses to any property or Improvements owned by the Association other than for the repair, replacement or reconstruction of the property and Improvements.

10.1.4 Governmental Approvals. Any amendment to any provision of this Declaration in which the Association relinquishes responsibility for the Maintenance of Association Property, as set forth in this Declaration, shall require written approval from the City. Any proposed amendments shall be submitted to the City Engineer, Planning and Building Director or designee, and shall be approved by the City Attorney prior to the amendment being valid. Any such amendments without City approval shall be null and void. If the consent or approval of any governmental agency, VA, FNMA, or FHA is required under this Declaration with respect to any amendment or revocation of any provision of this Declaration, no such amendment or revocation shall become effective

unless such consent or approval is obtained pursuant to the requirements of the governmental agency, VA, FNMA or FHA.

10.1.5 Unilateral Right to Amend the Declaration. Declarant (at any time prior to the sale of all Condominium Units in the Project and subject to the provisions of California Business & Professions Code Section 11018.7) may, with the written consent of Land Banker for so long as Land Banker owns real property subject to this Declaration, or the Association (upon Declarant's sale of all Condominium Units in the Project) shall have the unilateral right to amend this Declaration without the approval of Members in order to bring this Declaration into compliance with all requirements and regulations of the City, County any Federal or state agency, an insurer or governmental guarantor of a First Mortgage, or federally insured Mortgagee and/or lender including, but not limited to, DRE, FHA, VA, FNMA and/or FHLMC, or correct any errors, mistakes or conflicts in the provisions in this Declaration.

10.2 Enforcement.

10.2.1 Generally. The Association, any Owner, including Declarant and Land Banker as an Owner, or the City as a third party beneficiary, shall have the right, but not the obligation, to enforce compliance with the Project Documents in any manner provided by law or in equity, or in bringing an action for damages, an action to enjoin the violation or to specifically enforce the provisions of the Project Documents, to enforce the liens provided for herein (except that no Owner shall have the right to enforce independently of the Association any Assessment. Additional Charges or Assessment lien created herein) and any statutory lien provided by law, including the foreclosure of any such lien and the appointment of a receiver for an Owner and the right to take possession of the Condominium Unit in the manner provided by law. The City's enforcement rights, as a third party beneficiary, shall be as to Association Property and utility maintenance, the WQMP, and internal parking. In the event the Association or any Owner shall employ an attorney to enforce the provisions of the Project Documents against any Owner, the prevailing party shall be entitled to reasonable attorney's fees and costs in addition to any other amounts due as provided for herein. All sums payable hereunder by an Owner shall bear interest at the maximum rate permitted by law from the due date less any grace period provided, or if advanced or incurred by the Association or any other Owner pursuant to authorization contained in the Project Document commencing fifteen (15) days after repayment is demanded. Except as otherwise provided, the Association or any Owner(s) shall have the right, but not the obligation, to enforce, in any manner permitted by law or in equity, any and all of the provisions of this Declaration.

10.2.2 Enforcement by Declarant. Declarant shall have the right, but not the obligation, to enforce the provisions of this Declaration while it is still a record owner of at least one (1) Condominium Unit, including any decision made by the ACC, in any manner provided by law or in equity, and in any manner provided in this Declaration. The provisions of this Declaration are equitable servitudes and covenants running with the land, enforceable by Declarant against the Association and/or an Owner, tenant or occupant of any Condominium Unit in the Project. Declarant has no obligation to enforce any provision of this Declaration. Declarant may elect to enforce any provision of this Declaration at any

time against the Association, or any Owner and no such action shall be construed to imply any obligation on the part of Declarant to enforce the same provision against another Owner.

10.2.3 Enforcement by Land Banker. Land Banker shall have the right, but not the obligation, to enforce the provisions of this Declaration independent of Declarant and as a “proxy” of Declarant while it is still a record owner of at any portion of the Project, including any decision made by the ACC, in any manner provided by law or in equity, and in any manner provided in this Declaration that would affect or may affect the real property owned by Land Banker. The provisions of this Declaration are equitable servitudes and covenants running with the land, enforceable by Land Banker against the Association and/or any Owner, tenant or occupant of any Condominium in the Project. Land Banker has no obligation to enforce any provision of this Declaration. Land Banker may elect to enforce any provision of this Declaration at any time against the Association or any Owner and no such action shall be construed to imply any obligation on the part of Land Banker to enforce the same provision against another Owner.

10.2.4 Violation of Law. The Association may treat any Owner’s violation of any state, municipal or local law, ordinance or regulation which creates a nuisance to other Owners in the Project or to the Association or pertaining to the ownership, occupation or use of any property, Parcel, Condominium Unit, EUA, or Association Property, within the Project is hereby declared to be a violation of the Project Documents and subject to any or all of the enforcement procedures set forth in this Declaration as long as the Association complies with the Notice and Hearing requirements.

10.2.5 No Forfeiture or Abridgement of Rights. The Association shall not cause a forfeiture or abridgement of an Owner’s right to the full use and enjoyment of his/her Condominium Unit for the Owner’s failure to comply with the provisions of the Project Documents, including Association Rules, except by judgment of a court of law or a decision arising out of arbitration or on account of a foreclosure or sale under a power of sale for failure of the Owner to pay Assessments duly levied by the Association.

10.2.6 Remedies Cumulative. Each remedy provided by this Declaration is cumulate and not exclusive.

10.2.7 No Waiver. The failure to enforce the provisions of any covenant, condition or restriction contained in this Declaration shall not constitute a waiver of any right to enforce any such provisions or any other provisions of this Declaration for the same or different violation thereof.

10.3 Exemption and Rights of Declarant. Nothing in this Declaration shall limit, condition or abridge the unfettered right of Declarant to specify and approve the design for the complete construction of Improvements on Parcels owned by Declarant, or to alter or modify completed Improvements or to construct such additional Improvements as Declarant and Land Banker deem advisable prior to the final sale of all of the Condominiums in the Project. Such right shall include, but shall not be limited to, designing, erecting, constructing, and Maintaining on any portion of the Project owned by Declarant and Land Banker such structures and displays as may

be reasonably necessary for the conduct of its business of completing the work and disposing of the same by sale, lease, or otherwise. Declarant and Land Banker specifically reserve the right to use any unsold Condominiums on the Project for models, construction offices, trailers, and sales offices, and further reserve the right to rent any unsold Condominiums and the Improvements thereon. This Declaration shall not limit the right of Declarant and Land Banker at any time prior to acquisition of title by a purchaser from Declarant or Land Banker to establish on the Project additional easements, reservations, and rights of way for itself, utility companies, or others as may from time to time be reasonably necessary for the proper development and disposal of the Condominiums. Declarant, with the consent of Land Banker pursuant to the Purchase Agreement, as applicable, reserves the right to alter its construction plans and designs as it deems appropriate.

ARTICLE XI

BUDGETS AND FINANCIAL STATEMENTS

11.1 Preparation and Distribution of Budget. The Board shall annually prepare, adopt and distribute a Budget in accordance with the requirements of California Civil Code Sections 5300, 5305, 5320, and 5565. A summary of the Budget may be distributed in lieu of the entire Budget if the requirements set forth in California Civil Code Section 5300 are satisfied.

11.2 Annual Report. The Board shall annually prepare and distribute an annual report in accordance with the requirements of California Civil Code Sections 5300, 5305, 5310, 5320, 5565 and 5730. The annual report shall separately address the Budget.

11.3 Quarterly Reconciliation. Pursuant to California Civil Code Section 5500, at least quarterly, the Board shall: (i) cause a current reconciliation of the Association's Current Operating Account(s) to be made and review the same; (ii) cause a current reconciliation of the Association's Reserve Account to be made and review the same; (iii) review the current year's actual reserve revenues an expense compared to the current year's Budget; (iv) review the most current account statements prepared by the financial institution where the Association has its Current Operating and Reserve Accounts; and (v) review an income and expense statement for the Association's Current Operating and Reserve Accounts.

11.4 Reserve Account Study. The Board shall (i) cause a study of the Reserve Account to be conducted every three (3) years as required by California Civil Code Section 5550(a), (ii) review the study annually, and (iii) consider and implement necessary adjustments to the Board's analysis of the Reserve Account requirements as a result of that review in compliance with the provisions of California Civil Code Section 5550.

11.5 Notice of Increased Assessments. The Board shall provide notice by first-class mail to the Owners of any increase in Regular Assessments or the levy of any Special Assessments in accordance with the provisions of California Civil Code Section 5615.

11.6 Statement of Outstanding Charges. Within ten (10) days of a written request by an Owner, the Association shall provide to the Owner a written statement which sets forth the amounts of delinquent Assessments, penalties, attorney's fees and other Additional charges against that

Owner's Condominium Unit. A charge for the statement may be made by the Association, not to exceed the reasonable costs of preparation and reproduction of the statement.

11.7 Owner's Right to Conduct an Independent Audit. Each Owner shall have the right to conduct an independent audit of the Association's financial records at the Owner's expense. The financial records that may be made available to the requesting Owner shall comply with California Civil Code Section 5200, *et seq.*

ARTICLE XII

INSURANCE, DESTRUCTION AND CONDEMNATION

12.1 Insurance. The Association shall maintain casualty, liability and other insurance on behalf of the Association as required by the provisions of this Declaration. The amount, term and coverage of any policy required hereunder (including the type of endorsements, the amount of the deductible, the named insureds, the loss payees, standard mortgage clauses, notices of changes or cancellations, and the insurance company rating) shall satisfy the minimum requirements for the Project by the FNMA, FHLMC, or any successor to either of those entities (with the exception of earthquake insurance which the Board shall have complete discretion to purchase). If the FNMA or FHLMC requirements conflict, the more stringent requirements shall be met. If FNMA and FHLMC do not impose requirements on any policy required hereunder, the term, amount and coverage of such policy(ies) shall be no less than that which is customary for similar policies on similar projects in the area. If the Association is unable to purchase a policy or if the Association believes that the cost of the policy is unreasonable, the Board shall call a special meeting of Members to determine what action to take.

12.2 General Provisions and Limitations. All insurance policies shall be subject to and, where applicable, shall contain the following provisions and limitations:

12.2.1 Underwriter. All policies (except earthquake insurance) shall be written with a company legally qualified to do business in the State of California and holding a "B" or better general policyholder's rating and a "6" or better financial performance index rating as established by Best's Insurance Reports, reinsured by a company described above, or if such a company is not available, the best rating possible or its equivalent.

12.2.2 Named Insured. Unless otherwise provided in this Section, the named insured shall be the Association or its authorized representative, as trustee for the Owners. However, all policies shall be for the benefit of Owners and their Mortgagees, as their interests may appear.

12.2.3 Authority to Negotiate. Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board or its authorized representative as trustee who shall have exclusive authority to negotiate losses under any policy provided property or liability insurance to perform such other functions as are necessary to accomplish this purpose; provided, however, that no Mortgagee having an interest in such losses may be prohibited from participating in any settlement negotiations related thereto.

12.2.4 Contribution. In no event shall the insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchased by Owners or their Mortgagees.

12.2.5 General Provisions. To the extent possible, the Board shall make every reasonable effort to secure insurance policies providing for the following:

- (a) A waiver of subrogation by the insurer as to any claims against the Board, the manager, the Owners and their respective servants, agents and guests;
- (b) That the policy will be primary, even if an Owner has other insurance which covers the same loss;
- (c) That no policy may be canceled or substantially modified without at least ten (10) days prior written notice to the Association and to each First Mortgagee listed as a scheduled holder;
- (d) An agreed amount endorsement, if the policy contains a coinsurance clause;
- (e) A guaranteed replacement cost or replacement cost endorsement; and
- (f) An inflation guard endorsement.

12.2.6 Term. The period of each policy shall not exceed three (3) years. Any policy for a term greater than one (1) year must permit short rate cancellation by the insureds.

12.2.7 Deductible. The policy may contain a reasonable deductible and the amount of the deductible shall be added to the face amount of the policy in determining whether the insurance equals replacement cost.

12.3 Types of Coverage. Unless the Association determines otherwise pursuant to Section 12.1, the Board shall obtain at least the following insurance policies in the amounts specified:

12.3.1 Property Insurance for Association Property. A Special Form or "All Risk" policy of property insurance for all insurable Association Property Improvements and Association Maintenance Areas, including fixtures and Building service equipment, against loss or damage by fire or casualty, in an amount equal to the full replacement cost (without respect to depreciation) of the Association Property, and exclusive of land, foundations, excavation and other items normally excluded from coverage. A replacement cost endorsement shall be part of the policy.

12.3.2 Liability Insurance. A combined single limited policy of liability insurance in an amount not less than Two Million Dollars (\$2,000,000) covering the Association Property and all damage or injury caused by the negligence of the Association, the Board

or any of its agents, or the Owners against any liability to the public or to any Owner incident to the use of or resulting from any accident or intentional or unintentional act of an Owner or a third party occurring in or about any Association Property. If available, each policy shall contain a cross liability endorsement in which the rights of the named insured shall not be prejudiced with respect to any action by one named insured against another named insured.

12.3.3 Worker's Compensation. Worker's compensation insurance to the extent necessary to comply with all applicable laws of the State of California or the regulations of any governmental body or authority having jurisdiction over the Project.

12.3.4 Fidelity Bond. A fidelity bond naming the Board, the Owners, the Association and such other persons as the Board may designate as obligees, in an amount equal to at least one-fourth (1/4) of the total sum budgeted for the Current Operating Account and Reserve Account for the current fiscal year. The fidelity bond shall contain a waiver of any defense based on the exclusion of person serving without compensation.

12.3.5 Directors and Officers. Errors and omissions insurance coverage individual liability of Directors and Officers for their negligent acts or omissions while acting in their capacities as Directors and Officers in an amount equal to at least the minimum amount specified in California Civil Code Section 5800(a)(4).

12.3.6 Other Insurance. Other types of insurance as the Board may determine in its sole discretion to be necessary to fully protect the interests of the Owners and Association.

12.4 Waiver of Subrogation. All insurance carried by the Association, or the Owners, shall contain provisions whereby the insurer waives rights of subrogation as to the Association, Directors, Officers, Declarant, Owners, occupants of Condominium Units, their family, guests, agents and employees.

12.5 Insurance by Owner. Each Owner shall obtain and maintain, at his/her expense, fire and casualty coverage as may be required by the Owner's individual Mortgagee, or if no Mortgagee encumbers a Condominium Unit, fire and casualty coverage as may be determined by the Board, with respect to damage or destruction to personal property, upgrades or additions to any fixtures or Improvements within Owner's Condominium Unit that is not covered by Section 12.3.1, above, provided, however, that no Owner shall be entitled to maintain insurance coverage in a manner so as to decrease the amount which the Association, on behalf of all Owners and their Mortgagees, may realize under any insurance policy which the Association may have in effect at any time. If a Condominium is subject to an FHA-insured Mortgage, the Owner of said Condominium shall obtain an HO-6 or "walls-in" coverage policy if required by an FHA-insured Mortgagee. All such individually carried insurance as set forth in this Section 12.5 shall also contain a waiver of subrogation rights by the carrier as to other Owners, the Association and Eligible First Mortgagee of such Condominium Unit. It is recommended that Owners obtain general liability insurance for injuries or damage caused to any person or personal property or Improvements caused by Owner and loss assessment coverage in an amount as may be recommended by a qualified consultant. If a policy carried by the Association offers coverage for

a claim made by an Owner as a result of damage to any Improvement or personal property, the Owner shall be responsible for paying any deductible, if the Owner wishes to adjust the claim under the Association's policy. Each Owner is strongly urged to contact an insurance specialist to determine the appropriate type and amount of insurance including insurance to cover the Parcel, Condominium Unit, as applicable, and personal property.

12.6 Annual Review of Policies. The Board shall review the adequacy of all insurance, including the amount of liability coverage and the amount of property damage coverage, at least once a year. At least once every three (3) years, the review shall include a replacement cost appraisal of all insurable Association Property Improvements without respect to depreciation. The Board shall adjust the policies to provide the amounts and types of coverage and protection that are customarily carried by prudent owners of similar property in the area in which the Project is situated.

12.7 Payment of Premiums. Premiums on insurance maintained by the Association shall be a component of Common Expenses, funded by Assessments levied by the Association.

12.8 Damage or Destruction.

12.8.1 Association. The Board shall have the duty to repair and reconstruct the Association Property without the consent of Members and irrespective of the amount of available insurance proceeds or other funds, in all instances of partial damages destruction where the estimated cost of repair and reconstruction does not exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. If there is total damage or destruction of any Improvement, including Association Property which are insured under an insurance policy held by the Association, the Association shall proceed with the filing and adjustment of all claims arising under the existing policies to restore, rebuild and reconstruct such Improvements to substantially the same condition and appearance in which it existed prior to the damage or destruction. The insurance proceeds shall be paid to and held by the Association.

(a) Bids. Whenever restoration, rebuilding or reconstruction is to be performed pursuant to this Section 12.8.1, the Board shall obtain such bids from responsible licensed contractors to restore the damaged Improvements as the Board deems reasonable, and the Board, on behalf of the Association, shall contract with the contractor whose bid the Board deems to be the most reasonable.

(b) Proceeds. The costs of restoring, rebuilding or reconstructing the damaged Improvements shall be funded pursuant to the provisions and in the priority established in this Section 12.8.1. A lower priority procedure shall be utilized only if the aggregate amount of funds then available pursuant to the procedures of higher priority as insufficient to restore the damaged Improvements. The priorities are as follows:

(i) Any and all insurance proceeds paid to the Association under existing insurance policies.

(ii) Any and all reserve account funds designated for the repair or replacement of the Improvement(s) that has been damaged or destroyed.

(iii) Any funds raised by a Special Assessment against all Owners levied by the Board up to the maximum amount permitted without approval of the Members as allowed by law.

(iv) Any funds raised by a Special Assessment against all Owners levied by the Board pursuant to a vote of the Members pursuant to Section 12.8.1(c) below.

(c) Additional Special Assessment. If the total funds available pursuant to Section 12.8.1(b) are insufficient to restore, rebuild or reconstruct the damaged or destroyed Improvement(s), then a special meeting of the Members shall be called for the purpose of voting whether to impose an additional Special Assessment and deciding upon the amount thereof. The Board shall then contract for the restoration, rebuilding or reconstruction of the damaged Improvement(s) as described above, making use of all funds available to it.

12.8.2 Owners. Subject to the provisions herein, if all or any portion of a Building or Condominium Unit is damaged or destroyed by fire or other casualty and the loss is not covered by an insurance policy held by the Association, the Owner(s) of the Improvement shall either (a) restore the damaged Improvements or (b) remove all damaged Improvements, including foundation and leave the Condominium Unit in a clean and safe condition. Any restoration, rebuilding or reconstruction under subdivision (a) above must be performed so that the Improvements are in substantially the same condition in which they existed prior to the damage or destruction, unless the Owner complies with the provisions of ARTICLE VI of this Declaration. Unless extended by the Board, the Owner must commence such work within one hundred twenty (120) days after the damage occurs and must complete the work within one (1) year thereafter.

12.9 Condemnation.

12.9.1 Condemnation Affecting Association Property.

(a) Sale in Lieu. If an action for condemnation of all or a portion of Association Property is proposed or threatened by an entity having the right to eminent domain, then on the unanimous written consent of all of the Owners, and subject to the rights of all Mortgagees, if any, Association Property, or a portion of it, may be sold by the Board. Subject to California Corporations Code Section 8724, the proceeds of the sale shall be distributed among the Condominium Units on the same basis as their Regular Assessment obligations and between the Owners and their Mortgagees as their respective interests shall appear; provided, however, there shall be no reallocation of interests in Association Property resulting from a partial condemnation or partial destruction of the Project may be effected without approval of at least fifty-one percent (51%) of Eligible First Mortgagees.

(b) Award. If Association Property, or a portion of it, is not sold, but is instead taken, the judgment of condemnation shall by its terms apportion the award among the Owners and their respective Mortgagees. If the judgment of condemnation does not apportion the award, then the award shall be distributed as provided above.

12.9.2 Condemnation Affecting Condominium Units. If an action for condemnation of all or a portion of, or otherwise affecting a Condominium Unit is proposed or threatened, the Owner and the Mortgagees of the affected Condominium Unit, as their respective interests shall appear, shall be entitled to the proceeds of any sale or award relating to the affected Condominium Unit. If any Condominium Unit is rendered irreparably uninhabitable as a result of such a taking, the Condominium Unit shall be deemed deleted from the Project and the Owners and Mortgagees of the affected Condominium Unit, upon receiving the award and any portion of the reserve funds of the Association reserved for the Condominium Unit, if any, shall be released from the applicability of the Project Documents and deemed divested of any interest in the Association Property. Any restoration or repair of the Condominium Unit after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with the Declaration and the original plans and specifications unless approval of fifty-one percent (51%) of the First Mortgagees is obtained. Any action to terminate the Project after substantial destruction or condemnation of the Project occurs or for other reasons to be agreed to by Mortgagees shall require approval of at least fifty-one percent (51%) of Mortgagees.

ARTICLE XIII

MORTGAGEE PROTECTIONS

13.1 Mortgages Permitted. Any Owner may encumber his or her Condominium Unit with Mortgages.

13.2 Priority of Mortgage. Notwithstanding any other provision of this Declaration, it is hereby provided that a breach of any of the conditions contained in the Project Documents by any Owner or of any re-entry by reason of such breach shall not defeat or render invalid the lien thereof. Any lien which the Association may have on any Condominium Unit in the Project for the payment of Common Expense Assessments attributable to such Condominium Unit will be subordinate to the lien or equivalent security interest of any First Mortgage on the Condominium Unit recorded prior to the date of recordation of a Notice of Lien.

13.3 Rights of Institutional Mortgagees. Any Institutional Mortgagee who obtains title to a Condominium Unit pursuant to the remedies provided in the First Mortgage, including judicial foreclosure under a power of sale (but excluding voluntary conveyance to the First Mortgagee), shall not be liable for the Condominium Unit's unpaid Regular Assessments, including Additional Charges, accrued prior to acquisition of title by the Institutional Mortgagee. Thereafter, the Institutional Mortgagee, as Owner of the Condominium Unit shall be obligated to pay any and all future Assessments levied against the Condominium Unit as long as the Institutional Mortgagee remains in title, including any Special Assessments levied by the Association to raise funds needed

because of uncollected delinquent Assessments, as long as the Special Assessment is allocated among all of the Condominium Units as provided in ARTICLE IX of this Declaration.

13.4 Rights of Mortgagees Upon Default of Mortgagor. In the event of a default by any Owner in any payment due under the terms of any Mortgage held by an Institutional Mortgagee encumbering a Condominium Unit, or the promissory note secured by the Mortgage, the Mortgagee or his or her representative, upon giving written notice to such defaulting Owner and the Association, and placing of record a notice of default, is hereby granted a proxy and may exercise the voting rights of such defaulting Owner attributable to such Condominium Unit at any regular or special meeting of the Association held during such time as such default may continue. Unless such written notice is provided to the defaulting Owner and the Association, any Mortgagee may appear (but cannot vote) at meetings of Members and the Board to draw attention to violations of this Declaration that have not been corrected or made the subject of remedial proceedings or Reimbursement Assessments.

13.5 Payment of Taxes or Premiums by Mortgagees. Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Association Property, unless such taxes or charges are separately assessed against the Owners, in which case the rights of Mortgagees shall be governed by the provisions of their Mortgages. Mortgagees may, jointly or singly, also pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Association Property and Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of any Mortgagee which requests the same to be executed by the Association.

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

13.7 Conflict with Declaration. To the extent that any of the provisions of this Declaration conflict with the rules and regulations of FNMA, FHA, VA and/or FHLMC for those Condominium Units in which these entities are either holders, insurers or guarantors of a First Mortgage on said Condominium Unit, the rules and regulations of FNMA, FHA, VA and/or FHLMC shall control.

13.8 Notice to Mortgagees. First Mortgagees are entitled to timely written notice from the Association of (a) any condemnation or casualty loss that affects a material portion of the Project or the Condominium Unit securing the Mortgage; (b) any sixty (60) day delinquency in the payment of Assessments or Additional Charges owed by the Owner of any Condominium Unit on which it holds the Mortgage if the delinquency is not cured within sixty (60) days after its due date; (c) a lapse, cancellation or material modification of any insurance policy maintained by the Association; (d) any proposal to take any action specified in this ARTICLE XIII, or Sections 12.8 and 12.9 herein; (e) any default by the Owner of a Condominium Unit that is subject to a First Mortgage held by the First Mortgagee in the performance of his or her obligations under this Declaration or the Bylaws which is not cured within sixty (60) days; and (f) any proposed action that requires the consent of a specified percentage of First Mortgagees.

13.9 Inspect Books and Records. Any Owner, First Mortgagee and insurers of any First Mortgage shall be entitled to inspect and copy the books, records, financial statements, the Declaration, Bylaws and Association Rules of the Association. The Association shall also make available to prospective purchasers of Condominium Units current copies of the Declaration, Bylaws, Association Rules and the most recent annual audited financial statement, if any is prepared. The Association must provide an audited financial statement for the immediately preceding fiscal year if the First Mortgagee submits a written request for it. Said financial statement shall be furnished by the Association within a reasonable time following such request.

ARTICLE XIV

DISPUTE RESOLUTION PROCEDURES

14.1 In General. This ARTICLE XIV contains procedures concerning disputes between Owners, the Association and the Declarant related to the Project or each other (the “***Dispute Resolution Procedures***”). The procedures in this ARTICLE XIV do not apply to Declarant’s normal customer service procedures pertaining to the Condominium Unit, and Owners are encouraged to resolve any potential disputes or claims through Declarant’s normal customer service procedures prior to initiating the procedures in this ARTICLE XIV. HOWEVER, these Dispute Resolution Procedures ***shall not be applicable*** to disputes between the Association and/or Owners, on the one hand, and Declarant, on the other hand, including, but not limited to, disputes, issues, claims, damages, causes of action, demands or notices governed or controlled by Right to Repair Act. Any and all disputes described in the Dispute Resolution Declaration between the Association/Owners and Declarant shall be governed by the Dispute Resolution Declaration recorded against the Project. In the event any other developer acquires any portion of the Project from Land Banker for purposes of development and the sale of Condominiums to the homebuying public, Land Banker and/or any such developer shall have the right, without the necessity of consent from the Owners or the Association, to record against said acquired real property its own dispute resolution procedures for claimed construction defects in such real property.

14.2 Disputes Between Association and Owners. All disputes, controversies, claims and demands between the Association and any Owner pertaining to the subject areas described in California Civil Code Section 5900 shall be governed by the procedures set forth in this Section 14.2.

14.2.1 Election of Statutory Procedures. Except as excused by law, prior to the initiation of a Request for Resolution or any legal proceeding, the Association and any Owner shall “meet and confer” using the procedures set forth in California Civil Code Section 5900, *et seq.*

14.2.2 Request for Resolution. If the Association and Owner are unable to resolve their dispute, controversy, claim or demand through the “meet and confer” procedures of California Civil Code Section 5900, *et seq.*, and to the extent applicable, prior to the initiation of any legal proceeding, the parties shall comply with the Request for Resolution procedures set forth at California Civil Code Section 5925, *et seq.*

14.2.3 Attorney's Fees and Costs. In any action, including arbitration and civil action, between the Association and any Owner (but excluding Declarant as an Owner) to enforce the Project Documents, the prevailing party shall be entitled to recover reasonable attorney's fees and costs, pursuant to California Civil Code Section 5975.

14.3 Disputes Between Owners. Disputes between Owners shall be governed by this Section.

14.3.1 Mediation. If the Owners cannot informally resolve any disputes, controversies, claims and demands between themselves, the matter shall be submitted to mediation using a mediator who is acceptable to the parties. If the parties cannot agree on a mediator, any party may petition the Superior Court of the County for appointment of the mediator by the presiding judge. No person shall serve as a mediator in any dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or prevent a prompt commencement of the mediation process. The following rules and procedures shall apply in all cases unless the parties agree otherwise:

(a) Any Owner may initiate mediation by serving written notice to any other Owner(s) demanding that the dispute, controversy, claim or demand be resolved by the mediation procedures of this Section 14.3.1. The parties shall have thirty (30) days from the date of the written notice to mutually agree on a mediator. Within ten (10) days of the selection of the mediator, each party shall submit a brief memorandum setting forth its position with regard to the issues that need to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all parties shall attend unless otherwise agreed. The mediation shall be commenced within ten (10) days following the submittal of the memoranda and shall be concluded within fifteen (15) days from the commencement of the mediation unless the parties mutually agree to extend the mediation period. Mediation shall be held in the County or such other place that is mutually acceptable by the parties.

(b) The mediator has discretion to conduct the mediation in the manner which is most appropriate for settlement of the dispute. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the parties agree and assume the expenses of obtaining such advice. The mediator does not have the authority to impose a settlement on the parties.

(c) Prior to the commencement of the mediation session, the mediator and all parties to the mediation shall execute an agreement in order to exclude the use of any testimony or evidence produced at the mediation in any subsequent dispute resolution forum including, but not limited to, binding arbitration (as set forth in Section 14.3.2 of this Declaration), court or judicial reference proceedings, pursuant to California Evidence Code Section 1115, et seq., or successor statutes.

Pursuant to California Evidence Code Section 1119, the agreement shall specifically state:

“No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation is admissible or subject to discovery, and disclosure of the evidence shall not be compelled, in any arbitration, administrative adjudication, civil action, or other noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given. No writing, as defined in Section 250, that is prepared for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation, is admissible or subject to discovery, and disclosure of the writing shall not be compelled, in any arbitration, administrative adjudication, civil action, or other noncriminal proceeding in which, pursuant to law, testimony can be compelled to be given. All communications, negotiations or settlement discussions by and between participants in the course of a mediation or a mediation consultation shall remain confidential.”

(d) Persons other than the parties, the representatives and the mediator may attend mediation sessions only with the permission of the parties and the consent of the mediator. Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the mediator. All records, reports, documents or other information received by the mediator while serving in such capacity shall be confidential. There shall be no stenographic record of the mediation process, excepting therefrom, any settlement of the dispute which may, at the option of the parties, be memorialized in writing and signed by the parties.

(e) The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, the expenses of any witnesses, or the costs of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties unless they agree otherwise.

14.3.2 Arbitration. If the Owners are unable to resolve their dispute pursuant to Section 14.3.1, above, the dispute shall be submitted to binding arbitration conducted pursuant to the procedures and rules of the Judicial Arbitration and Mediation Services, Inc. (“**JAMS**”) or any successor thereto, and subject to the following provisions:

(a) The fees and costs of arbitration shall be borne equally by the parties or, if the parties cannot agree, then as determined by the arbitrator(s) with the costs and fees of the arbitration to ultimately be borne as determined by the arbitrator(s).

(b) The arbitrator(s) shall be selected no later than sixty (60) days from JAMS’ receipt of the demand for arbitration. The arbitrator(s) shall comply with California Code of Civil Procedure Section 1297.121, and may be challenged on

any of the grounds listed therein or as set forth in California Code of Civil Procedure Section 1297.124.

(c) The arbitration shall be held in the County unless the parties agree to a different location.

(d) The arbitrator(s) shall have the authority to recognize any and all available remedies, whether in law or equity, for any cause of action, claim or demand that is the basis for the arbitration, with the exception of punitive damages which may be limited or prohibited as authorized by the parties.

14.3.3 Litigation. The Owners covenant that they shall forbear from commencing any litigation without complying with the procedures set forth in Sections 14.3.1 and 14.3.2 above. If any Owner fails or refuses to participate in the mediation and arbitration proceedings, the other party or parties may bring an action in any court of competent jurisdiction to resolve the dispute, including obtaining an order compelling compliance with the procedures described in Sections 14.3.1 and 14.3.2, above. Nothing herein shall prevent any Owner from commencing any legal action which in the good faith determination of the Owner is necessary to preserve any Owner's rights under any applicable statute of limitations, provided that the Owner shall take no further steps in prosecuting the action until it has complied with the procedures described in Sections 14.3.1 and 14.3.2, above. Notwithstanding any other provision herein to the contrary, in any dispute between the Owners, the prevailing party shall be entitled to reasonable attorney's fees and costs. Any and all communications by and between the parties, whether written or oral, which are delivered by the parties or their attorneys or other representatives in an effort to settle the claim shall be considered communications undertaken in the course of effecting a settlement or compromise and as such shall not be admissible as the admission on the part of any party or any representative or agent of the party to be utilized for any such purpose in any action or proceeding. Nothing herein shall be considered to reduce or extend any applicable statute of limitations or repose.

14.4 Exceptions; Admissibility of Communications; Statute of Limitations. Disputes that are governed by the procedures set forth in the Dispute Resolution Declaration shall not apply to any action taken by the Association against Declarant for delinquent Assessments, which shall be governed by ARTICLE IX entitled "Assessments", or in any action involving any Bonds, which shall be governed by the provisions of ARTICLE XV entitled "Enforcement of Bonded Obligations." Any and all communications by and between the parties, whether written or oral, which are delivered by the parties or their attorneys or other representatives in an effort to settle the claim shall be considered communications undertaken in the course of effecting a settlement or compromise and as such shall not be admissible as an admission on the part of any party or any representative or agent of the party to be utilized for any such purpose in any action or proceeding. Nothing herein shall be considered to reduce or extend any applicable statute of repose or limitations.

14.5 Legal Proceeding Against Declarant. Not later than thirty (30) days prior to the filing of any legal proceeding by the Association against the Declarant for alleged damage to Association Property or other Improvements that the Association is obligated to Maintain or repair,

the Board shall provide written notice to each Eligible First Mortgagee and Member of the Association. This notice shall specify all of the following: (a) that a meeting will take place to discuss problems that may lead to the filing of a legal proceeding; (b) the options, including civil actions, that are available to address the problems; and (c) the time and place of this meeting. In addition, if there is available information, the Association may also elect to provide the following: (i) a good faith estimate of the costs to repair the alleged defects prepared by a licensed contractor who has submitted a bid to perform the necessary repair work; (ii) how the necessary repairs will be funded; (iii) the name of the attorney whom the Association is contemplating retaining and an estimate of the attorney's fees, consultant's fees and any other costs to be incurred to prosecute such proceedings; and (iv) how such fees and costs will be funded. Nothing in this Section shall abrogate a Member's duty to disclose to prospective purchasers the alleged defects, and the potential impact the proceedings may have on the marketability and availability of financing and/or insurance for the Condominium Units in the Project. Notwithstanding, if the Association has reason to believe that the applicable statute of limitations will expire before the Association files the legal proceeding, the Association may give the notice, as described above, within thirty (30) days after the filing of the legal proceeding.

ARTICLE XV

ENFORCEMENT OF BONDED OBLIGATIONS

15.1 Bonded Obligations. When Association Property Improvements have not been completed prior to the issuance of the original Final Public Report to which the Association Property is subject and the Association is the obligee under a Bond to secure performance of the commitment of Declarant to complete the Association Property Improvements, the following provisions shall apply:

15.1.1 Completed Improvements. If all Improvements identified in the planned construction statement appended to the Bond are covered by one or more recorded notices of completion, the Board shall execute all required documents by the surety to release the Bond.

15.1.2 Improvements Not Completed. If 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, the Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond. If the Association has given an extension in writing for the completion of any Association Property Improvements, the Board shall consider and vote on the aforesaid question if a notice of completion has not been filed within thirty (30) days after the expiration of the extension.

15.1.3 Action by Members. If the Board fails or refuses to initiate action to enforce the bonded obligations, upon receipt of a petition for a special meeting signed by Members representing five percent (5%) or more of the total voting power of the Association, the Board shall call a special meeting of the Members to override the Board's failure or refusal to act. The special meeting shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt of the petition by the Board. At the special meeting, the

affirmative vote of a majority of Members, excluding any votes of Declarant, shall be required to take action to enforce the obligations under the Bond and shall be deemed to be the decision of the Association. The Board shall thereafter implement the decision by initiating and pursuing appropriate action in the name of the Association.

15.2 Release of Bond. Upon satisfaction of Declarant's obligation to complete the Association Property Improvements, the Association shall acknowledge in writing that it approves the release of the Bond and shall execute any other documents that may be reasonably necessary to affect the release of the Bond. The Association may not condition its approval on the satisfaction of any condition other than completion of the Association Property Improvements. If the Association breaches any of the foregoing obligations, it will be liable to Declarant for any damages incurred thereby, including reasonable attorney's fees. Any dispute between Declarant and the Association shall be resolved in accordance with the provisions of the escrow instructions which accompany the Bond.

ARTICLE XVI

GENERAL PROVISIONS

16.1 Term. The covenants and restrictions of this Declaration shall run with and bind the Project, and shall inure to the benefit of and be binding on the Association and the Owners, their legal representatives, heirs, grantees, tenants, successors and assigns, subject to this Declaration, for a term of fifty (50) years from the date this Declaration is recorded. Thereafter, this Declaration shall be automatically extended for successive periods of ten (10) years.

16.2 Owner's Compliance. Each Owner, tenant or occupant of a Condominium Unit shall comply with the provisions of this Declaration, and (to the extent they are not in conflict with the Declaration), the Project Documents and the decisions and resolutions of the Association or the Board, as lawfully amended from time to time. Failure to comply with any such provisions, decisions, or resolutions, shall be grounds for an action to recover all Additional Charges, for damages, for injunctive relief, or to enforce such provisions, decisions or resolutions. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in the Project Documents shall be deemed to be binding on all Owners, their successors and assigns.

16.3 Notices. Unless otherwise stated in this Declaration or as allowed by law, any notice permitted or required by the Project Documents may be delivered in any manner set forth in California Civil Code Sections 4040, 4045, 4050 and 4055. If delivery is by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, first class or registered, postage prepaid, addressed to the person to be notified at the current address given by such person to the Secretary of the Board or addressed to the Condominium Unit of such person if no address has been given to the Secretary.

16.4 Notice of Transfer. No later than fifteen (15) days after the sale or transfer of any Condominium Unit whereby the transferee becomes the Owner thereof, the transferee shall notify the Association in writing of such sale or transfer. Such notice shall set forth: (a) the Condominium Unit involved; (b) the name and address of the transferee and transferor if known; and (c) the date

of sale. Unless and until such notice is given, the Association shall not be required to recognize the transferee for any purpose, and any action taken by the transferor as an Owner may be recognized by the Association. Prior to receipt of any such notification by the Association, any and all communications required or permitted to be given by the Association shall be deemed duly given and made to the transferee if duly and timely made and given to said transferor.

16.5 Delivery of Project Documents to Transferee. Prior to transfer of title to a Condominium Unit, the transferor shall provide to the prospective transferee a copy of the Project Documents, the documents identified in the Dispute Resolution Declaration, and such other documents and information as are required by California Civil Code Sections 4525 and 4535 at the close of escrow, buyer shall be deemed to have all of these documents and shall be bound by them.

16.6 Easements Reserved and Granted. Any easements appurtenant to a Condominium Unit referred to in this Declaration shall be deemed reserved and/or granted by reference to this Declaration in a deed to said Condominium Unit.

16.7 Termination of any Responsibilities of Declarant. If Declarant conveys all of its right, title and interest in and to the Project to any partnership, individual or corporation, then and in such event, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership, individual or corporation shall be obligated to perform all such duties and obligations of the Declarant.

16.8 Mergers and Consolidations. To the extent permitted by law, the Association may participate in mergers and consolidations with other non-profit organizations organized for the same purposes as this Association, provided that any such merger or consolidation shall be the written consent of all of the Members or the assent by vote of two thirds ($\frac{2}{3}$) of the Members voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be given to all Members at least thirty (30) days in advance.

16.9 Limitation of Restrictions on Declarant and Land Banker. Nothing in this Declaration shall be understood or construed to (a) prevent Declarant or Land Banker, its contractors, or subcontractors from doing on the Project or any Parcel, Condominium Unit or parcel, whatever is reasonably necessary or advisable in connection with completing the Project as proposed; or, (b) prevent Declarant or Land Banker, or its representatives from erecting, constructing and Maintaining on any part or parts of the Project, such structures as may be reasonable and necessary for the conduct of its business of completing the Project and establishing said Project as a residential community and disposing of the same in Condominium Units by sale, lease, or otherwise; or, (c) prevent Declarant or Land Banker from conducting on any part of the Project its business of completing the Project and of establishing a plan of ownership and of disposing of said Project in Condominium Units by sale, lease or otherwise; or, (d) prevent Declarant or Land Banker from maintaining such sign or signs on any of the Project as may be necessary for the sale, lease or disposition thereof, provided, however, that the maintenance of any such sign shall not unreasonably interfere with the use by any Owner of his/her Parcel, Condominium Unit or the Association Property. The foregoing limitations of the application of the restrictions to Declarant and Land Banker shall terminate upon the sale of Declarant's or Land Banker's interests in the Project, or ten (10) years after the close of the first escrow, whichever

occurs earlier. Any action taken by Declarant and/or Land Banker pursuant to any provision of this Section 16.9 will not unreasonably interfere with the owners' rights and use of the Project. The rights of Land Banker herein shall only exist while it owns any portion of the Project.

16.10 Assignment by Declarant. The rights of Declarant in this Declaration may be assigned by Declarant to any successor to all or any part of Declarant's interest in the Project, as developer, by an express assignment incorporated in a recorded deed that transfers any such interest to a successor or to a Mortgagee acquiring Declarant's interest in the Project by foreclosure or by deed in lieu of foreclosure provided, however, that so long as Land Banker owns any real property subject to this Declaration, Declarant shall not assign any of its rights, powers, authority, obligations, etc., to any other party without the prior written consent of Land Banker. In addition, Declarant shall not execute or consent to the execution or the recordation of any document or writing affecting the Project without the written consent of Land Banker which it may withhold it is absolute discretion for so long as Land Banker owns any portion of the Project.

16.11 Severability. Should any provision or portion hereof be declared invalid or in conflict with any law of the jurisdiction where this Project is located, the validity of all other provisions and portions hereof shall remain unaffected and in full force and effect.

16.12 Estoppel Certificate. Within ten (10) days of the mailing or delivery of a written request by any Owner, the Board shall provide the Owner with a written statement containing the following information: (a) whether to the knowledge of the Association, the Owner or the Owner's Condominium Unit is in violation of any of the provisions of the Project Documents; (b) the amount of Regular and Special Assessments, including installment payments, paid by the Owner during the fiscal year the request is received; and, (c) the amount of any Assessments levied against the Owner's Condominium Unit that are unpaid as of the date of the statement, including any Additional Charges, late charges, interest, or cost of collection that as of the date of the statement are or may be made a lien against the Owner's Condominium Unit as provided by the Project Documents.

16.13 Successor Statutes. Any reference in the Project Documents to a statute shall be deemed a reference to any amended or successor statute.

16.14 Conflict with Project Documents. If there is a conflict among or between the Project Documents, the provisions of this Declaration shall prevail; thereafter, priority shall be given to Project Documents in the following order: Articles, Bylaws, and Association Rules.

16.15 Exhibits. All exhibits attached to this Declaration are incorporated by this reference as though fully set forth herein.

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

16.17 Owner's Acknowledgment. Each Owner shall sign an acknowledgment that he/she has received and read the Project Documents.

16.18 Construction of Provisions. The provisions of this Declaration shall be liberally construed to effect its purpose of creating a uniform plan for the development and operation of a

common interest development pursuant to the provisions of the Davis-Stirling Common Interest Development Act, California Civil Code Section 4000, *et seq.*, as may be supplemented, amended and/or superseded.

16.19 Indemnification of City. Declarant, the Owners and the Association each agree to save, defend, indemnify and hold harmless City, and its directors, officers, agents and employees from and against all loss, liability, expenses, damages and costs (including reasonable fees, witness fees, and any other costs and expenses) for any accident, loss or damage to persons or property arising from or related to City's enforcement, or lack thereof, of any of the rights and remedies of City pursuant to this Declaration. Declarant, Owners, and the Association each understand and acknowledge that City is a third-party beneficiary under this Declaration and has the right, but not the obligation, to enforce any of its rights or remedies herein. Nothing in this Section 16.19 is intended to and/or shall operate in a manner to affect any otherwise applicable immunity or protection upon which City may be entitled to rely.

Signature(s) and Acknowledgement Page(s) Follow

[Declarant's Signature Page to Declaration]

IN WITNESS WHEREOF, the undersigned has executed this Declaration.

Dated: _____, 20__

MERITAGE HOMES OF CALIFORNIA, INC.,
a California corporation,

By: _____

Name: _____

Its:

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On _____, 20____, before me, _____,
Notary Public, personally appeared _____, who proved to me on
the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity
upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

CONSENT OF LAND BANKER

The undersigned, as the record owner of real property identified on **Exhibit A** of this “Declaration of Covenants, Conditions and Restrictions for The [Project Title]” (the “**Declaration**”), to which this Consent is attached, and the “Seller” under that “Memorandum of Purchase Agreement” between the undersigned and Meritage Homes of California, Inc., a California corporation, do hereby consent to the recordation of the Declaration.

Dated: _____, 20____

MTHCALV-I SANTA ANA STREET, LLC,
a Delaware limited liability company

By: MTHCA LAND VENTURE I LLC,
a Delaware limited liability company,
its Sole Member

By: CALIFORNIA URBAN HOMES, LLC,
a California limited liability company,
its Managing Member

By: MERITAGE HOMES OF
CALIFORNIA, INC.,
a California corporation,
its Sole Member

By: _____
Name: _____
Its: _____

Acknowledgement Page Follows

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 20____, before me, _____,
Notary Public, personally appeared _____, who proved to me on
the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity
upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

EXHIBIT A

DESCRIPTION OF REAL PROPERTY

That certain real property in the City of Costa Mesa, County of Orange, State of California, and described as follows:

Parcels 1 and 2 of "Tract No. 19290," as shown on a map filed on _____, 20____, in Book _____ of Maps, at Pages ____ to ____, inclusive, in the Official Records of the Orange County Recorder's Office, State of California.

EXHIBIT B

MAINTENANCE RESPONSIBILITY CHART

The following represents a *non-exclusive* list of Improvements to be Maintained either by the Owner or Association. Its purpose is to describe Maintenance responsibilities over certain items where there may be some uncertainty as to the responsible maintaining party. The reference to “HOA” refers to the Association. References to “Unit” shall refer to Condominium Unit.

<u>Improvement</u>	<u>Clean</u>	<u>Maintain</u>	<u>Repair</u>	<u>Replace</u>	<u>Paint</u>	<u>Resurface</u>	<u>Repave</u>
Interior doors and hardware (locks, hinges, etc.)	Owner	Owner	Owner	Owner	Owner	N/A	N/A
Unit entry door, hardware and weather stripping	Owner	Owner	Owner	Owner	HOA (exterior surface only)	N/A	N/A
Doorbells	N/A	Owner	Owner	Owner	N/A	N/A	N/A
Unit garage doors, openers, hardware, and opening equipment	Owner	Owner	Owner	Owner	HOA (exterior surface only)	N/A	N/A
Windows and window surfaces of Units	Owner	Owner	Owner	Owner	N/A	N/A	N/A
Exterior window frames of Units	N/A	HOA	HOA	HOA	N/A	N/A	N/A
Sliding glass doors	Owner	Owner	Owner	Owner	N/A	N/A	N/A
Exterior sliding glass door frame of Units	N/A	HOA	HOA	HOA	N/A	N/A	N/A
Exterior light fixtures	Owner	Owner	Owner	Owner	Owner	N/A	N/A
Exterior light fixtures on HOA’s meter	HOA	HOA	HOA	HOA	HOA	N/A	N/A
Light bulb for address lights	HOA	HOA	HOA	HOA	N/A	N/A	N/A
Address light fixture	HOA	HOA	HOA	HOA	N/A	N/A	N/A

<u>Improvement</u>	<u>Clean</u>	<u>Maintain</u>	<u>Repair</u>	<u>Replace</u>	<u>Paint</u>	<u>Resurface</u>	<u>Repave</u>
Electric meter and water sub-meter (and water lines after it reaches the sub-meter) that serves a Unit	Owner	Owner	Owner	Owner	N/A	N/A	N/A
Water and sewer lines and pipes in AP	HOA	HOA	HOA	HOA	N/A	N/A	N/A
Utility closet (for meter clusters and other equipment for Units)	HOA	HOA	HOA	HOA	HOA	N/A	N/A
Plumbing systems (including pipes in interior walls)	Owner	Owner	Owner	Owner	N/A	N/A	N/A
Electrical systems (including lines in interior walls)	N/A	Owner	Owner	Owner	N/A	N/A	N/A
Smoke detectors and carbon monoxide detectors	Owner	Owner	Owner	Owner	N/A	N/A	N/A
Fire sprinkler lines and sprinkler heads serving the Unit	Owner	Owner	Owner	Owner	N/A	N/A	N/A
Back up battery for smoke detectors and carbon monoxide detectors	N/A	Owner	N/A	Owner	N/A	N/A	N/A
Drainage systems within Association Property	HOA	HOA	HOA	HOA	N/A	N/A	N/A

<u>Improvement</u>	<u>Clean</u>	<u>Maintain</u>	<u>Repair</u>	<u>Replace</u>	<u>Paint</u>	<u>Resurface</u>	<u>Repave</u>
Landscape, irrigation and associated plantings within Association Property	HOA	HOA	HOA	HOA	N/A	N/A	N/A
Utility facilities, equipment, lines, pipes, trenches, and conduits that exclusively service AP	HOA	HOA	HOA	HOA	N/A	N/A	N/A
Cluster mailboxes (excluding locks, keys and door)	HOA	HOA	HOA	HOA	HOA	N/A	N/A
Foundation for Buildings	N/A	HOA	HOA	HOA	N/A	N/A	N/A
Balcony, Patio and Porch waterproof membrane of Units (if any)	Owner	Owner	HOA	HOA	HOA	N/A	N/A
Balcony, Patio and Porch structural components of Units	N/A	HOA	HOA	HOA	HOA	N/A	N/A
HVAC system, pad	Owner	Owner	Owner	Owner	N/A	N/A	N/A
Landscape screening for HVAC systems	HOA	HOA	HOA	HOA	N/A	N/A	N/A
Offsite Maintenance Areas	HOA	HOA	HOA	HOA	N/A	N/A	N/A
Private roadway, alleys, curbs and sidewalks	HOA	HOA	HOA	HOA	N/A	HOA	HOA
Roofs, gutters and downspouts of Buildings	HOA	HOA	HOA	HOA	HOA	N/A	N/A
Solar energy system	Owner	Owner	Owner	Owner	N/A	N/A	N/A

<u>Improvement</u>	<u>Clean</u>	<u>Maintain</u>	<u>Repair</u>	<u>Replace</u>	<u>Paint</u>	<u>Resurface</u>	<u>Repave</u>
Trash enclosures and bulk item areas	HOA	HOA	HOA	HOA	HOA	HOA	HOA
Monuments, furniture and structures in courtyard areas	HOA	HOA	HOA	HOA	HOA	HOA	HOA