

NOTICE

If this document contains any restriction based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry, that restriction violates State and Federal fair housing laws and is void, and may be removed pursuant to Section 12956.1 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.

**FIRST RESTATED DECLARATION
ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP
FOR
HURLEY PLACE CONDOMINIUMS**

TABLE OF CONTENTS

RECITALS	1
ARTICLE I	
Definitions	2
Section 1. "Articles"	2
Section 2. "Assessment"	2
Section 3. "Association"	2
Section 4. "Board of Directors" or "Board"	2
Section 5. "Bylaws"	2
Section 6. "Common Area"	2
Section 7. "Common Expense"	3
Section 8. "Common Facilities"	3
Section 9. "Common Funds"	3
Section 10. "Community Policies"	3
Section 11. "Condominium"	3
Section 12. "Condominium Building"	3
Section 13. "Condominium Building"	3
Section 14. "County"	3
Section 15. "Declarant"	4
Section 16. "Declaration"	4
Section 17. "Exclusive Use Common Areas"	4
Section 18. "Family"	4
Section 19. "Governing Documents"	4
Section 20. "Lease"	4
Section 21. "Majority of a Quorum"	4
Section 22. "Member"	4
Section 23. "Mortgage"	4
Section 24. "Owner"	4
Section 25. "Project"	5
Section 26. "Property"	5
Section 27. "Record"	5
Section 28. "Recreational Common Area"	5
Section 30. "Regulatory Agreement"	5
Section 31. "Single Family Residential Use"	5
Section 32. "Special Assessment"	5
Section 33. "Special Individual Assessment"	5
Section 34. "Unit"	5
ARTICLE II	
Declaration and Property Rights	6
Section 1. Ownership of Condominium; Easements	6
Section 2. Owners' Nonexclusive Easements of Enjoyment	6

Section 3.	Delegation of Use	7
Section 4.	Obligations of Owners	8
Section 5.	Unassigned Parking Areas	9
ARTICLE III	Homeowners Association	9
Section 1.	Association Membership	9
Section 2.	One Class of Membership	10
Section 3.	Voting Rights of Members	10
Section 4.	Transfer of Memberships	10
Section 5.	Assessments	10
Section 6.	Powers and Authority of the Association	10
Section 7.	Association Action; Board of Directors and Officers	12
Section 8.	Community Policies	12
Section 9.	Breach of Rules or Restrictions	12
Section 10.	Limitation on Liability of the Association's Directors and Officers	13
ARTICLE IV	Assessments	14
Section 1.	Assessments Generally	14
Section 2.	Regular Assessments	14
Section 3.	Special Assessments	16
Section 4.	Special Individual Assessments	17
Section 5.	Assessments to Address Emergency Situations	18
Section 6.	Purpose and Reasonableness of Assessments	18
Section 7.	Exemption of Certain of the Property From Assessments	18
Section 8.	Notice and Procedure for Member Approval Pursuant to Sections 2 and 3 ..	19
Section 9.	Maintenance of Assessment Funds	19
Section 10.	Collection of Assessments; Enforcement of Liens	20
Section 11.	Transfer of Condominium Unit by Sale or Foreclosure	21
Section 12.	Priorities	21
Section 13.	Unallocated Taxes	22
Section 14.	Assignment of Rents	22
Section 15.	Waiver of Exemptions	22
ARTICLE V	Architectural Approval of Improvements	22
Section 1.	Approval of Improvements in General	22
Section 2.	Definition of Improvements Requiring Approval/Exclusion for Interior Projects	22
Section 3.	Appointment of Architectural Committee	23
Section 4.	Submission of Plans	23
Section 5.	Architectural Rules	23
Section 6.	Variances	23
Section 7.	Estoppel Certificate	24
Section 8.	Compliance With Regulatory Agreement	24
ARTICLE VI	Association and Owner Maintenance Responsibilities	24
Section 1.	Maintenance and Repair of Open Space and Recreational Common Areas ..	24
Section 2.	Maintenance and Repair of Unit Building Structures	25

Section 3.	Association Maintenance and Repair Obligations With Respect to Exclusive Use Common Areas	25
Section 4.	Owners' Maintenance and Repair Responsibilities	25
Section 5.	Owners' Rights and Duties Regarding Utilities	26
Section 6.	Association's Right to Recover Certain Maintenance and Repair Costs ..	26
ARTICLE VII	Use of Property and Restrictions	27
Section 1.	Single Family Residential Use	27
Section 2.	Prohibition of Noxious Activities	27
Section 3.	Household Pets	27
Section 4.	Signs	28
Section 5.	Business Activities	28
Section 6.	Garbage and Storage	29
Section 7.	Clotheslines	29
Section 8.	No Exterior Maintenance by Owners	29
Section 9.	Interior Improvements	29
Section 10.	Restriction on Alteration of Common Areas or Building Exteriors	29
Section 11.	Barbecues	29
Section 12.	Machinery and Equipment	30
Section 13.	Diseases and Insects	30
Section 14.	Parking; Trailers, Boats and Motor Vehicles	30
Section 15.	Children	30
Section 16.	Activities Affecting Insurance	30
Section 17.	Window Coverings	31
Section 18.	Variances	31
ARTICLE VIII	Easements	31
Section 1.	Encroachment Easements	31
Section 2.	Annexation Easements	31
Section 3.	Street Easements	32
Section 4.	Utility Easements Granted by Association	32
Section 5.	Other Easements	32
Section 6.	Priority of Easements	32
ARTICLE IX	Insurance	32
Section 1.	Insurance Coverage	32
Section 2.	Coverage Not Available	33
Section 3.	Copies of Policies	33
Section 4.	Individual Fire Insurance Limited	33
Section 5.	Trustee	34
Section 6.	Owner's Insurance	34
Section 7.	Adjustment of Losses	34
Section 8.	Annual Insurance Review	34
Section 9.	Insurance Deductibles	34
ARTICLE X	Damage or Destruction	34
Section 1.	Destruction; Proceeds Equal or Exceed 85 Percent of the Reconstruction Costs	34

Section 2.	Destruction; Proceeds Less Than 85 Percent of Reconstruction Costs . .	34
Section 3.	Rebuilding Procedures	35
Section 4.	Definition of "Eligible Members" Entitled to Vote	35
Section 5.	Rebuilding Contract	35
Section 6.	Rebuilding Not Authorized	36
Section 7.	Minor Repair and Reconstruction	36
Section 8.	Appraiser	37
ARTICLE XI	Condemnation	37
Section 1.	Sale by Unanimous Consent or Taking	37
Section 2.	Distribution and Sale Proceeds of Condemnation Award	37
ARTICLE XII	Partition of Common Area	38
Section 1.	Suspension or Right of Partition	38
Section 2.	Distribution of Proceeds Upon Partition	38
Section 3.	Power of Attorney	38
ARTICLE XIII	Nonseverability or Component Interests	39
Section 1.	Severance Prohibited	39
Section 2.	Limitation On Interests Conveyed	39
ARTICLE XIV	Breach or Default	39
Section 1.	Remedy at Law Inadequate	39
Section 2.	Nuisances	39
Section 3.	Costs and Attorneys' Fees	39
Section 4.	Cumulative Remedies	39
Section 5.	Failure Not a Waiver	40
Section 6.	Enforcement Rights and Remedies of the Association; Limitations Thereon	40
Section 7.	Court Actions	42
Section 8.	Covenants Committee	42
ARTICLE XV	Protection of Mortgagees	42
Section 1.	Mortgages Permitted.	42
Section 2.	Priority of Mortgages	42
Section 3.	Curing Defaults.	43
Section 4.	Resale	43
Section 5.	Relationship With Assessment Liens	43
Section 6.	Changes Requiring Institutional Mortgagee Approval	43
Section 7.	Right of First Refusal	44
Section 8.	Conflicts.	44
Section 9.	Mortgagees' Right To Cure Defaults.	44
Section 10.	Distribution Rights	44
Section 11.	Notices of Action	44
ARTICLE XVI	Notices	45
Section 1.	Mailing Addresses	45
Section 2.	Personal Service Upon Co-Owners and Others	45

Section 3.	Deposit in United States Mails	45
ARTICLE XVII	No Public Rights in the Property	45
ARTICLE XVIII	Amendment of Declaration	45
Section 1.	Amendment by Members	45
Section 2.	Mortgagee Approval	46
Section 3.	Effective Date of Amendment	46
Section 4.	Reliance on Amendments	46
ARTICLE XIX	General Provisions	46
Section 1.	Term	46
Section 2.	Construction	46

**FIRST RESTATED DECLARATION
ESTABLISHING A PLAN OF CONDOMINIUM OWNERSHIP
FOR
HURLEY PLACE CONDOMINIUMS**

The Enabling Declaration Establishing a Plan For Condominium Ownership in Hurley Place Condominiums, executed by The Hurley Company, a general partnership ("Declarant"), and recorded on February 3, 1981, in Book 810203, page 366, of the Official Records of Sacramento County, California (the "Original Declaration"), is hereby amended and restated in its entirety to read as follows:

RECITALS

A. Declarant was the original owner of that certain real property located in the County of Sacramento, State of California, which is more particularly described as follows (the "Property"):

Lots 1 through 4, inclusive, as shown on the Plat of Hurley Place, recorded November 5, 1980, in Book 143 of Maps, Map No. 1, in the Office of the Sacramento County Recorder, California.

B. The Property was improved by the construction of a residential condominium project as defined in section 1351(f) of the California Civil Code, providing for separate title in each Condominium Unit within the Property, with each Unit having an undivided interest in the Common Areas, as defined herein (the "Project"). The Project contains 84 Condominium Units.

C. Declarant deemed it desirable to impose a general plan for the development, maintenance, improvement, protection, use, occupancy and enjoyment of the Property and to establish, adopt and impose covenants, conditions and restrictions upon the Property for the purpose of enforcing, protecting and preserving the value, desirability and attractiveness of the Property and the Improvements erected by the Declarant thereon.

D. Declarant also deemed it desirable for the efficient enforcement, protection and preservation of the value, desirability and attractiveness of the Project to create a nonprofit mutual benefit corporation, known as the Hurley Place Owners Association which was delegated and assigned the powers of administering and enforcing said covenants, conditions and restrictions.

E. To effectuate the above-described plans and purposes, Declarant acted pursuant to section 1350 et seq. of the California Civil Code to establish a plan for the development, maintenance, protection, improvement, use, occupancy and enjoyment of the Property as a Condominium Project. Accordingly, Declarant subjected the Property to the covenants, conditions, restrictions, easements, reservations, liens and charges contained herein. Each and all of the covenants, conditions, restrictions, easements, reservations, liens and charges (hereinafter collectively referred to as the "covenants") shall run with the land and shall inure to the benefit of and be binding upon Declarant, its successors and assigns, and all subsequent Owners of all or any portion of the Property, together with their grantees, successors, heirs, executors, administrators, devisees and assigns.

F. On October 31, 1994, fifty-one (51) percent of the total voting power of the Association voted by written ballot in accordance with section 14.02(c) of the Original Declaration and California Corporations Code section 7513 to amend and restate the Original Declaration, all in accordance with the procedures for amendment set forth in the Original Declaration. It was the intention of the Owners to replace the Original Declaration, in its entirety, with the Recordation of this Declaration. The Owners' action to amend and restate the Original Declaration as set forth herein and the fact that the requisite percentage of affirmative votes required in the Original Declaration was achieved, is attested by the execution of this Declaration by duly authorized officers of the Association, as required by section 1355(a) of the California Civil Code. As so amended and restated, these easements, covenants, restrictions and conditions shall run with the Property and shall be binding upon all parties having or acquiring any right, title or interest in the Property or any portion thereof, and shall inure to the benefit of each Owner thereof.

ARTICLE I

Definitions

Section 1. "Articles" means the Articles of Incorporation of the Association, which are filed in the Office of the California Secretary of State, as such Articles may be amended from time to time.

Section 2. "Assessment" means any Regular, Special or Special Individual Assessment made or assessed by the Association against an Owner and the Owner's Condominium in accordance with the provisions of article IV of this Declaration.

Section 3. "Association" means Hurley Place Owners Association, a California nonprofit corporation (formed pursuant to the Nonprofit Mutual Benefit Corporation Law of the State of California), its successors and assigns. The Association is an "association" as defined in Section 1351(a) of the California Civil Code.

Section 4. "Board of Directors" or "Board" means the Board of Directors of the Association.

Section 5. "Bylaws" means the Bylaws of the Association, as such Bylaws may be amended from time to time.

Section 6. "Common Area" means the entire Property other than Units, as defined herein or as shown on the Condominium Plan. Portions of the Common Area are "Exclusive Use Common Area" as defined in section 17, below. The Common Area includes, without limitation, land, parking and driving areas, exterior stairs, decks, balconies, patios and storage areas, bearing walls, columns, girders, subfloors, unfinished floors, roof and foundations, the water heater serving the clubhouse, fire extinguishers, pumps, motors, ducts, flues and chutes, conduits, pipes, plumbing, wires and other utility installations (except the outlets thereof when located within the unit) required to provide power, light, telephone, gas, water, sewage, drainage or heat, exterior sprinkler pipes and sprinklers, central television antenna installations, and cable television wiring which is located outside the boundaries of the Units. That portion of the Common Area which is located upon Lot 1 of the Property is referred to herein as the "Lot 1 Common Area"; that portion of the Common Area which is located upon Lot 3 of the Property is referred to herein as the "Lot 3 Common Area"; that portion of the Common Area which is located upon Lot 4 of the Property is referred to herein as the "Lot 4 Common Area" (see article II, section 1, below).

Section 7. "Common Expense" means any use of Common Funds authorized by article IV hereof and article IX of the Bylaws and includes, without limitation: (a) all expenses or charges incurred by or on behalf of the Association for the management, maintenance, administration, insurance, operation, repairs, additions, alterations or reconstruction of the Property as incurred or as may be estimated from time to time by the Association's Board of Directors; (b) any amounts reasonably required to be set aside as reserves for maintenance, repair and replacement of the Common Facilities and for nonpayment of any Assessments; and (c) the use of such funds to defray costs and expenses incurred by the Association in the performance of its functions or in the proper discharge of the responsibilities of the Board as provided in the Governing Documents.

Section 8. "Common Facilities" refers to that portion of any residential building structure that is not defined as a Unit herein and to the trees, hedges, plantings, lawns, shrubs, landscaping, fences, utilities, berms, pipes, lines, lighting fixtures, buildings, structures, swimming pool and apron area, spa, clubhouse, tennis courts, carports, parking areas, the bicycle storage structure, master antenna system and other facilities constructed or installed, to be constructed or installed, or currently located on or within any portion of the Common Area.

Section 9. "Common Funds" means all funds collected or received by the Association: (a) for use in the maintenance, management, administration, insurance, operation, replacement, repair, additions or alterations to, or reconstruction of all or any portion of the Common Area and Common Facilities; and (b) for use in discharging any and all of the Association's duties and responsibilities as provided in the Governing Documents.

Section 10. "Community Policies" means the rules and regulations adopted by the Board of Directors of the Association pursuant to article III, section 8 of this Declaration, as the same may be in effect from time to time.

Section 11. "Condominium" means an estate in real property as defined in California Civil Code section 1351(f), consisting of an undivided interest as a tenant-in-common in a portion of real property referred to herein as the Common Area, together with a fee interest in space called a Unit, all as shown and described in the Condominium Plan. The ownership of each Condominium shall include the ownership of a Unit and the respective undivided interest in the Common Area of the particular phase in which the unit is located, membership in the Association, any exclusive easements appurtenant to the Unit as shown by the recorded Condominium Plan and a nonexclusive easement for ingress and egress over the Common Area that are not a part of a condominium building. Each Unit shall be a separate freehold estate consisting of the airspace described and defined in section 34, below. Each Unit includes the portions of the structure so described and the airspace so encompassed.

Section 12. "Condominium Building" means a residential building structure containing Units.

Section 13. "Condominium Building" means the plan of Condominium and any amendments thereto recorded pursuant to California Civil Code section 1351(e), with respect to the Property. The Condominium Plan was attached to the Original Declaration as Exhibit " " and is recorded in the Official Records of Sacramento County at Book 810203, page 360. The Condominium Plan is incorporated herein by this reference.

Section 14. "County" means the County of Sacramento, State of California, and its various departments, divisions, employees and representatives. If any portion of the Property becomes a portion

of an incorporated city, then the term "County" shall be deemed to include the city in which that portion of the Property is located.

Section 15. "Declarant" means the original developer of the Project, namely The Hurley Company, a general partnership.

Section 16. "Declaration" means this instrument, as it may be amended from time to time. The "Original Declaration" means the Declaration of Conditions, Covenants and Restrictions amended by this document and described in the preamble to this Declaration.

Section 17. "Exclusive Use Common Areas" means the following portions of the Common Area which are set aside and allocated for the exclusive use of one or more, but fewer than all of the Owners and which is appurtenant to the Units owned by said Owners, all as more particularly designated on the Condominium Plan: the carport space (designated a "C-" followed by the Unit number); the balcony space (designated a "B-" followed by the Unit number); and the patio space (designated a "P-" followed by the Unit number).

Section 18. "Family" means one or more persons each related to the other by blood, marriage or legal adoption, or a group of persons not so related who maintain a common household in a Condominium Unit. Article VII, section 1 imposes regulations on the total number of persons who can occupy a Unit.

Section 19. "Governing Documents" refers collectively to this Declaration and to the Articles, the Bylaws and the Community Policies, as the same may be amended from time to time.

Section 20. "Lease" means any agreement (written or verbal) under which a person is permitted to occupy a Unit for compensation of any kind including, without limitation, any fee, service, gratuity or other consideration while the Owner is not in residence. The verb "leasing" shall include renting or otherwise permitting a person other than an Owner to occupy a Unit for compensation of any kind including any fee, service, gratuity or other compensation while the Owner is not in residence.

Section 21. "Majority of a Quorum" means the vote of a majority of the votes cast at a meeting or by written ballot when the number of Members attending the meeting in person or by proxy or casting written ballots equals or exceeds the minimum quorum requirement for Member action, as specified in the Bylaws or by statute.

Section 22. "Member" means every person or entity who holds a membership in the Association and whose rights as a Member are not suspended pursuant to article XIV, section 6 hereof.

Section 23. "Mortgage" means any security device, including any deed of trust, encumbering all or any portion of the Property. "Mortgagee" shall refer to a beneficiary under a deed of trust as well as to a Mortgagee in the conventional sense.

Section 24. "Owner" means any person, firm, corporation or other entity (including contract sellers, but excluding any person or entity holding such interest merely as security for the payment of a debt or the performance of an obligation) which holds an interest in any Condominium and includes (except when the context otherwise requires) the Family, guests, tenants and invitees of such Owner.

Section 25. "Project" means the common interest development consisting of Condominiums which is constructed on the Property.

Section 26. "Property" means that certain real property described in Recital "A" of this Declaration, including all structures and improvements located thereon. The Property is a statutory "condominium project" as defined in California Civil Code section 1351(f).

Section 27. "Record" means, with respect to any document, the recordation or filing of such document in the Office of the Sacramento County Recorder.

Section 28. "Recreational Common Area" means Lot 2 of the Property and all improvements located thereon. The Recreational Common Area is owned by the Association.

Section 29. "Regular Assessment" means an Assessment levied against an Owner and the Owner's Condominium in accordance with article IV, section 2 hereof.

Section 30. "Regulatory Agreement" means that certain agreement between the Association and the Secretary of Housing and Urban Development attached to the Original Declaration as Exhibit 3 and incorporated herein by this reference.

Section 31. "Single Family Residential Use" means occupancy and use of a Unit for single family dwelling purposes in conformity with this Declaration and the requirements imposed by applicable zoning or other state or municipal laws, ordinances, rules and regulations. In no event shall any Unit be occupied by more individuals than permitted by applicable law, zoning or regulation.

Section 32. "Special Assessment" means an Assessment levied against an Owner and the Owner's Condominium in accordance with article IV, section 3 hereof.

Section 33. "Special Individual Assessment" means an Assessment levied against an Owner and the Owner's Condominium in accordance with article IV, section 4 hereof.

Section 34. "Unit" means the elements of a Condominium that are not owned in common with the other Owners of Condominiums in the Property. Each such Unit shall be a separate freehold estate consisting of the space bounded by and contained within the unfinished interior surfaces of the perimeter walls, floors, ceilings, windows and doors of each Unit. Accordingly, the boundaries of each Unit begin at the gypsum finishing, plaster, paint, wallpaper or paneling on the perimeter walls and ceilings of the Unit and with any vinyl or carpet finishing, if any, on the floors of the Unit. The respective elements and the boundaries of each Unit are more particularly described in the Condominium Plan. In interpreting deeds and plans, the existing physical boundaries of a Unit, or of a Unit reconstructed in substantial accordance with the original plans, shall be conclusively presumed to be the Unit's boundaries rather than the description expressed in the deed or plans, regardless of minor variances between the boundaries as shown on the plans or the deed and those of the building containing the Unit and regardless of settling or lateral movement of the building and regardless of minor variations between boundaries shown on the Condominium Plan or in the deed to a Unit and those of the building.

Whenever reference is made to a "Unit," whether in this Declaration, the Condominium Plan, any deed or elsewhere, it shall be assumed that such reference is made to the Unit as a whole, including each of its component elements (including the airspace so encompassed), and to any and all Exclusive Use

Common Areas, if any, appurtenant to the Unit. The term "Unit" does not include those areas of the Property that are defined herein as Common Area or Common Facilities (other than Exclusive Use Common Areas).

ARTICLE II

Declaration and Property Rights

Section 1. Ownership of Condominium; Easements. The interest of every Owner of a Condominium within the Property shall include the Owner's Unit, an undivided interest in the Common Area appurtenant to such Unit, a membership in the Association, any Exclusive Use Common Area allocated to such Unit and any nonexclusive easements appurtenant to such Unit over the Common Area as described in this Declaration or the Condominium Plan. The common interest portion of a Condominium appurtenant to each Unit is declared to be permanent in character and cannot be altered or severed from other interests in the Project, except as otherwise provided in articles XII and XIII hereof. An Owner's undivided interest in his or her Condominium shall be deemed to be conveyed or encumbered together with its respective Unit even though the instrument of conveyance or encumbrance may refer only to the fee title to the Unit. Owners of Units 1 through 28, inclusive, each own an undivided 1/28th interest in the Lot 1 Common Area. Owners of Units 29 through 56, inclusive, each own an individual 1/28th interest in the Lot 3 Common Area. Owners of Units 57 through 84, inclusive, each own an undivided 1/28th interest in the Lot 4 Common Area.

Section 2. Owners' Nonexclusive Easements of Enjoyment. Every Owner of a Condominium shall have a nonexclusive right and easement of enjoyment in and to the Project's Recreational Common Area, including ingress and egress to and from the Owner's Unit. However, such nonexclusive easements shall be subordinate to, and shall not interfere with, the Exclusive Use Common Areas appurtenant to a Unit. Each such nonexclusive easement shall be appurtenant to and shall pass with the title to every Condominium, subject to the following provisions:

(a) The right of the Association to designate and control the use of the bicycle storage structure and any unassigned parking spaces situated within the Common Area and to reasonably limit the number of guests of Owners who may use any Common Facilities located within the Recreational Common Area.

(b) The right of the Association to adopt rules and regulations as provided in article III, section 8 hereof (the "Community Policies") and, in the event of a breach of the Community Policies or of any other provision of the Governing Documents, to initiate disciplinary action against the violating Owner or tenant in accordance with article XIV, section 6 of this Declaration. Such action may include the levying of fines and/or the temporary suspension of an Owner's voting rights or the right of an Owner, the Owner's tenants and guests to use any recreational Common Facilities.

(c) The right of the Association, in accordance with the Governing Documents, to borrow money for the purpose of improving the Common Areas or Common Facilities; provided, however, that any such indebtedness shall be considered an expense of the Association for purposes of determining whether membership approval is required pursuant to the Special Assessment provisions of article IV, section 3 hereof.

(d) The right of the Association to consent to or join in the grant or conveyance of easements, leases, licenses or rights-of-way in, on or over the Recreational Common Areas; however, such grants or conveyances must be consistent with the intended use of the Property as a residential Condominium project and shall not impair the ingress and egress to or from any Unit.

(e) All easements affecting the Recreational Common Area which are described in article VIII, below.

Section 3. Delegation of Use.

(a) Delegation of Use and Leasing of Units, Generally. Any Owner may delegate, in accordance with and subject to the Governing Documents, his or her rights to use and enjoy the Common Area and Common Facilities to his or her Family members, tenants or contract purchasers who reside in the Unit; provided that any Lease of the Owner's Unit may be only to a single family for Single Family Residential Use and for a minimum lease term of 90 days. Any lease or rental must be for the entire Condominium Unit.

During any period when a Unit has been Leased, the Owner, the Owner's Family, guests and invitees shall not be entitled to use and enjoy the recreational Common Facilities while the Owner's Unit is occupied by such tenant or lessee, unless the Owner is contemporaneously residing in another Unit within the Property. An Owner who is selling his or her Unit pursuant to a contract of sale must delegate, in accordance with the Governing Documents, the Owner's membership rights and rights of enjoyment to the Common Area and Common Facilities to the Owner's contract purchaser/vendor. An Owner who leases or rents his or her Unit shall retain the right to enter the Property and the Owner's Unit to perform all the functions and responsibilities common of landlords.

Any Lease of a Unit shall be by written agreement which shall expressly provide that (i) the Lease is subject to the provisions of the Governing Documents, all of which shall be deemed incorporated by reference in the Lease; and (ii) that any failure by the tenant or lessee to comply with the Governing Documents shall entitle the Association to exercise the remedies described in subparagraphs below. The lessor-Owner shall provide each tenant or lessee with a copy of this Declaration and any Community Policies applicable to leasing, and shall be responsible for compliance by the Owner's tenant or lessee with all applicable Governing Document provisions during the tenant's/lessee's occupancy and use of the Unit.

(b) Discipline of Lessees. Subject to subparagraph (c), below, in the event that any tenant or lessee fails to honor the provisions of any Governing Document, the Association shall be entitled to take such corrective action as it deems appropriate under the circumstances in order to preserve the quiet enjoyment of other Owners and residents within the Project. Without limiting, the foregoing, the Association's actions may include suspension of the tenant's privileges to use the Common Area and/or Common Facilities, the imposition of fines and penalties against such Owner, or the right to terminate the Lease upon 30 days' prior written notice to the tenant. Whether or not such right is stated in the Lease for a Unit, every Owner who rents his or her Unit automatically assigns to the Association this right of determining a tenant's default under any of the Governing Documents and of terminating the tenancy and evicting the tenant for such default. If the Board takes such eviction action, either in its own name or in the Owner's name, the Owner shall be responsible for all costs thereof, including reasonable attorneys' fees, and shall reimburse the Association upon demand for the entire amount of such costs.

(c) Due Process Requirements for Disciplinary Action. Except for circumstances in which immediate corrective action is necessary to prevent damage or destruction of the Property or to preserve the rights of quiet enjoyment of other Owners, the Association shall have no right to initiate disciplinary action against an Owner (or the Owner's lessee or tenant) on account of the misconduct of the Owner's lessee or tenant unless and until the following conditions have been satisfied: (i) the Owner has received written notice from the Board, the Association's property manager or an authorized committee of the Board detailing the nature of the lessee's/tenant's alleged infraction or misconduct and advising the Owner of his or her right to a hearing on the matter if the Owner feels that remedial or disciplinary action is unwarranted or unnecessary; (ii) the Owner has been given a reasonable opportunity to take corrective action on a voluntary basis or to appear at a hearing if one is requested by the Owner; and (iii) the Owner has failed to prevent or correct the tenant's objectionable actions or misconduct. Any hearing requested hereunder shall be conducted in accordance with article XIV, section 6 hereof.

Section 4. Obligations of Owners. Owners of Condominium Units shall be subject to the following:

(a) Owner's Duty to Notify Association of Tenants and Contract Purchasers. Each Owner shall notify the secretary of the Association or the Association's property manager, if any, of the names of any contract purchaser or lessee residing in the Owner's Condominium. Each Owner, contract purchaser or lessee shall also notify the secretary of the Association of the names of all persons to whom such Owner, contract purchaser or lessee has delegated any rights to use and enjoy the Property and the relationship that each such person bears to the Owner, contract purchaser or lessee.

(b) Contract Purchasers. A contract seller of a Condominium must delegate his or her voting rights as a Member of the Association and his or her right to use or enjoy the Common Area and Common Facilities to any contract purchaser in possession of the Property. Notwithstanding the foregoing, the contract seller shall remain liable for any default in the payment of Assessments by the contract purchaser until title to the Condominium which is the subject of the contract has been transferred to the purchaser.

(c) Notification Regarding Governing Documents.

(i) Delivery of Governing Documents and Financial Information By Owner. As more particularly provided in section 1368 of the California Civil Code, as soon as practicable before transfer of title or the execution of a real property sales contract with respect to any Condominium Unit, the Owner thereof must give the prospective purchaser:

(A) A copy of the Governing Documents;

(B) A copy of the Association's most recent financial statement distributed in accordance with section 1365 of the California Civil Code;

(C) A true statement in writing from an authorized representative of the Association as to: (1) the amount of any delinquent Assessments, penalties, attorneys' fees and other charges due and unpaid with respect to the Condominium as of the date the statement is issued; and (2) the amount of the Association's current Regular and Special Assessments and fees; and

(D) Any change in the Association's current Regular and Special Assessments and fees which have been approved by the Board but have not become due and payable as of the date the information is provided.

(ii) Association's Obligation to Provide Information: Charges. In order to carry out the intent and purpose of this statutory provision, the Association shall, within 10 days of the mailing or delivery of a request therefor, provide the Owner with a copy of the documents specified in subparagraph (c)(i) above. The Association shall be entitled to impose a reasonable fee for this service, which shall not exceed the Association's reasonable cost to prepare and reproduce the requested items.

(d) Payment of Assessments and Compliance with Restrictions and Rules. Each Owner shall pay, when due, each Regular, Special and Special Individual Assessment levied against the Owner and his or her Condominium and shall observe, comply with and abide by any and all rules, regulations and restrictions set forth in, or promulgated pursuant to, any Governing Document for the purpose of protecting the interests of all Owners or protecting the Common Area and Common Facilities.

(e) Discharge of Assessment Liens. Each Owner shall promptly discharge any Assessment lien that may hereafter become a charge against his or her Condominium.

(f) Joint Ownership of Condominiums. In the event of joint ownership of any Condominium, the obligations and liabilities of the multiple Owners shall be joint and several. Without limiting the foregoing, this subparagraph (f) shall apply to all obligations, duties and responsibilities of Owners as set forth in this Declaration, including, without limitation, the payment of all Assessments.

(g) Prohibition on Avoidance of Obligations. No Owner, by non-use of the Common Area or Common Facilities, abandonment of the Owner's Condominium or otherwise, may avoid the burdens and obligations imposed on such Owner by the Governing Documents, including, without limitation, the payment of all Assessments duly levied against the Owner and his or her Condominium Unit pursuant to article IV of this Declaration.

(h) Termination of Obligations. Upon the conveyance, sale, assignment or other transfer of a Condominium to a new Owner, the transferor-Owner shall not be liable for any Assessments levied with respect to such Condominium after the date of recording of the deed evidencing said transfer, and upon such recording all Association membership rights possessed by the transferor by virtue of the ownership of said Condominium shall automatically cease.

Section 5. Unassigned Parking Areas. Each uncovered parking space which is not designated on the Condominium Plan as an Exclusive Use Common Area shall remain unassigned and shall not be designated as an Exclusive Use Common Area for any specific Unit. These uncovered parking spaces shall be subject to regulation by the Association.

ARTICLE III

Homeowners Association

Section 1. Association Membership. Every Owner of a Condominium shall be a Member of the Association. An Owner shall hold one membership in the Association for each Condominium owned and the membership shall be appurtenant to such Condominium. Sole or joint ownership of a Condominium

shall be the sole qualification for membership in the Association. Each Owner shall remain a Member of the Association until the Owner's ownership interest in all Condominiums in the Property ceases, at which time the Owner's membership in the Association shall automatically cease. Persons or entities who hold an interest in a Condominium merely as security for performance of an obligation shall not be regarded as Members until such time as the security holder comes into title to the Condominium through foreclosure or acceptance of a deed in lieu thereof. Where Units are owned by more than one person, the Board shall have the right, pursuant to section 8 of this article, to adopt a rule designating the minimum percentage ownership of a Unit to qualify the Owner as a Member for purposes of using any Common Facility or for determining eligibility to serve as a director. Spouses shall be permitted to aggregate their ownership interests to determine either spouse's percentage ownership of a Unit.

Section 2. One Class of Membership. The Association shall have one class of membership and the rights, duties, obligations and privileges of the Members shall be as set forth in the Governing Documents.

Section 3. Voting Rights of Members. Each Member of the Association shall be entitled to one vote for each Condominium Unit owned by said Member. When more than one person holds an interest in any Unit, all such persons shall be Members, although in no event shall more than one vote be cast with respect to any Unit. An Owner's voting rights may be temporarily suspended under those circumstances described in article XIV, section 6 hereof.

Section 4. Transfer of Memberships. Membership in the Association shall not be transferred, encumbered, pledged or alienated in any way, except upon the sale of the Condominium to which it is appurtenant, and then, only to the purchaser. In the case of a sale, the membership appurtenant to the transferred Unit shall pass automatically to the purchaser upon Recordation of a deed evidencing the transfer of title. A Mortgagee does not have membership rights until he or she becomes an Owner by foreclosure or deed in lieu thereof. Any attempt to make a prohibited transfer of a membership is void. If any Owner fails or refuses to transfer the membership registered in his or her name to the purchaser of the Condominium, the Association shall have the right to record the transfer upon its books and thereupon any other membership outstanding in the name of the seller shall be null and void.

Section 5. Assessments. The Association shall have the power to establish, fix and levy Assessments and to enforce payment of such Assessments as more particularly provided in article IV of this Declaration. Any Assessments levied by the Association against its Members shall be levied in accordance with and pursuant to the provisions of this Declaration.

Section 6. Powers and Authority of the Association.

(a) **General Statement of Association Powers.** The Association shall have all of the powers of a nonprofit mutual benefit corporation organized under the laws of the State of California in operating and managing the Property and the Project and in otherwise discharging its responsibilities for the benefit of its Members, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Governing Documents. The Association and its Board of Directors shall have the power to do any and all lawful things which may be authorized, required or permitted to be done under and by virtue of the Governing Documents and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association for the peace, health, comfort, safety or general welfare of the Members in common. The specific powers of the Association and the limitations thereon shall be as set forth in article IX of the Bylaws. The additional powers and rights

described in subparagraphs (b) through (d) of this section are not intended to limit the general statement of Association authority set forth in this subparagraph (a).

(b) Association's Limited Right of Entry.

(i) Right of Entry Generally. It is expressly agreed that the right of the Association, or its agents, when necessary, shall have the right to enter any Unit in order to:

(A) perform the Association's obligations under this Declaration, including its obligation to enforce the covenants and restrictions set forth herein, to construct, maintain and repair Common Facilities as necessary for the benefit of the Common Areas or the Owners in common;

(B) to remove any Improvement which is erected or constructed by an Owner or tenant contrary to article V hereof; or

(C) to make necessary repairs that an Owner has failed to perform which, if left undone, will pose a threat or nuisance to, or cause an unreasonable interference with the Owners in common or any portions of the Project which the Association is obligated to repair or maintain.

(ii) Limitations on Exercise of Right. The Association's right of entry pursuant to this subparagraph (b) shall be subject to the following:

(A) The right of entry may be exercised immediately and without prior notice to the Owner or resident in case of an emergency originating in or threatening the Unit where entry is required or any adjoining Units or Common Area. The Association's work may be performed under such circumstances whether or not the Owner or his or her lessee is present.

(B) In all non-emergency situations involving routine repair and/or maintenance activities, the Association, or its agents, shall furnish the Owner or his or her lessee with at least 24 hours prior written notice of its intent to enter the Unit, specifying the purpose and scheduled time of such entry, and shall make every reasonable effort to perform its work and schedule its entry in a manner that respects the privacy of the persons residing in the Unit.

(C) In all non-emergency situations involving access by the Association for purposes of enforcing the Governing Documents against an Owner in default, the Association's entry shall be subject to observance of the notice and hearing requirements imposed by article XIV, section 6, below.

(c) Designation of Association as Attorney-in-Fact. The Association is hereby irrevocably appointed as the attorney-in-fact for the Owners of each and every Unit to: (i) manage, control and deal with the interest of such Owners in the Common Area so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder; (ii) institute, defend, settle or intervene in litigation, arbitration, mediation or administrative proceedings on behalf of the Owners pursuant to California Code of Civil Procedure section 374 or successor statute; (iii) deal with the Property upon its destruction or obsolescence as hereinafter provided; and (iv) to deal with and handle insurance and insurance proceeds, as provided in article IX hereof, and condemnation and condemnation awards, as provided in article XI hereof. The acceptance by any person or entity of any interest in any Unit shall constitute an appointment of the Association as the Owner's attorney-in-fact as provided above.

(d) Management Contracts. The Association shall have the authority to contract with a Manager for the performance of bookkeeping, maintenance and repair and for conducting other activities on behalf of the Association as may be determined by the Board.

Section 7. Association Action: Board of Directors and Officers. Except as to matters which under the Governing Documents require the approval of Members, the affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint. Such election or appointment shall be in accordance with this Declaration and the Bylaws.

Section 8. Community Policies.

(a) Rule Making Power. The Board may, from time to time and subject to the provisions of this Declaration, propose, enact and amend policies, rules and regulations of general application to the Owners ("Community Policies"). The Community Policies may concern, but need not be limited to: (i) matters pertaining to use of the Common Area and Common Facilities; (ii) regulation of pet ownership, parking, signs, collection and disposal of refuse, and any other subject or matter that is subject to regulation or restriction under article VII hereof; (iii) collection of delinquent Assessments; (iv) the conduct of disciplinary hearings and enforcement proceedings pursuant to article XIV, section 6 hereof; (v) designating the minimum percentage ownership of a Unit necessary to qualify an Owner as a Member, as more particularly described in section 3(a), above; and (vi) any other matter within the jurisdiction of the Association under the Governing Documents.

Notwithstanding the foregoing grant of authority, the Community Policies shall not be inconsistent with or materially alter any provision of the other Governing Documents or the rights, preferences and privileges of the Owners thereunder. In the event of any material conflict between any Community Policy and any provision of any other Governing Document, the conflicting provision contained in the other Governing Document shall prevail.

(b) Distribution of Rules. A copy of the Community Policies, and any amendments thereto, shall be mailed or otherwise delivered to each Owner upon request. Furthermore, anytime a rule is amended or a new rule is added to the Community Policies, a copy of the rule or rule amendment shall be provided to each Member. Finally, a current copy of the Community Policies shall be available and open for inspection by all Members during normal business hours at the principal office of the Association.

(c) Adoption and Amendment of Rules. Community Policies may be adopted, amended or supplemented by a majority vote of the Board; provided, however, that the Board shall distribute to the Members a copy of the text of any proposed new rule or rule amendment at least 30 days prior to the scheduled date of the Board meeting at which the Board is scheduled to act on the matter. Amendments to the Community Policies and any new rules shall be distributed to each Member either by mail or by personal delivery. Community Policies shall become effective immediately after their adoption by the Board or at such later date as the Board may fix considering the nature of the rule and the circumstances attendant to its adoption.

Section 9. Breach of Rules or Restrictions. Any breach of the Community Policies or of any other Governing Document provision shall give rise to the rights and remedies set forth in article XIV, section 6 hereof.

Section 10. Limitation on Liability of the Association's Directors and Officers.

(a) Claims Regarding Breach of Duty. No director or officer of the Association (collectively and individually referred to as the "Released Party") shall be personally liable to any of the Members or to any other person, for any error or omission in the discharge of his or her duties and responsibilities or for his or her failure to provide any service required under the Governing Documents; provided that such Released Party has, upon the basis of such information as he or she possessed, acted in good faith, in a manner that such person believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Without limiting the generality of the foregoing, this standard of care and limitation of liability shall extend to such matters as the establishment of the Association's annual financial budget, the funding of Association capital replacement and reserve accounts, repair and maintenance of Common Areas and Common Facilities and enforcement of the Governing Documents.

(b) Other Claims Involving Tortious Acts and Property Damage. No person who suffers bodily injury (including, without limitation, emotional distress or wrongful death) as a result of the tortious act or omission of a volunteer member of the Board or volunteer officer of the Association shall recover damages from such Board member or officer if all of the following conditions are satisfied:

- (i) The Board member or officer is an Owner of no more than two Units;
- (ii) The act or omission was performed within the scope of the volunteer Board member's or officer's Association duties;
- (iii) The act or omission was performed in good faith;
- (iv) The act or omission was not willful, wanton, or grossly negligent;
- (v) The Association maintained and had in effect at the time the act or omission occurred and at the time a claim is made general liability insurance with coverage of at least one million dollars (\$1,000,000).

The payment of actual expenses incurred by a Board member or officer in the execution of such person's Association duties shall not affect such person's status as a volunteer Board member or officer for the purposes of this section. The provisions of this subparagraph (b) are intended to reflect the protections accorded to volunteer directors and officers of community associations pursuant to California Civil Code section 1365.7. In the event said Civil Code section is amended or superseded by another, similar provision of the California statutes, this subparagraph (b) shall be deemed amended, without the necessity of further Member approval, to correspond to the amended or successor Civil Code provision.

ARTICLE IV

Assessments

Section 1. Assessments Generally.

(a) **Covenant to Pay Assessments.** Each Owner of one or more Condominium Units, by acceptance of a deed or other conveyance therefor (whether or not it shall be so expressed in such deed or conveyance), covenants and agrees to pay to the Association any: (i) Regular Assessments; (ii) Special Assessments; and (iii) Special Individual Assessments in accordance with this article.

(b) **Extent of Owner's Personal Obligation for Assessments.** All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a debt and a personal obligation of the Person who was the Owner of the Unit at the time the Assessment was levied. Each Owner who acquires title to a Unit (whether at judicial sale, trustee's sale or otherwise) shall be personally liable only for Assessments attributable to the Unit which become due and payable after the date of such sale, and shall not be personally liable for delinquent Assessments of prior Owners of the same Unit unless the new Owner expressly assumes the personal liability of a prior Owner. Any unpaid Assessment of a previous Owner shall remain the debt of such previous Owner against whom assessed. The limitation on personal liability expressed in this subparagraph (b) shall not limit the Association's right to pursue any lien or foreclosure remedies against an Owner's Unit regardless of whether the Association's lien was recorded prior to conveyance of the Unit to the current Owner. As more particularly provided in section 11, below, the Association's lien may be terminated by certain transfers of title.

(c) **Creation of Assessment Lien.** All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a charge on the Unit and may become a lien upon the Unit against which such Assessment is made when a notice of assessment lien is recorded in accordance with section 10, below. Any lien for unpaid Assessments created pursuant to the provisions of this article may be subject to foreclosure as provided in section 10(b) hereof.

(d) **No Avoidance of Assessment Obligations.** No Owner may exempt himself/herself from personal liability for Assessments duly levied by the Association, nor release the Unit or other property owned by him/her from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area or any facilities thereon or by abandonment or non-use of his/her Unit or any other portion of the Property.

Section 2. Regular Assessments.

(a) **Preparation of Annual Budget; Establishment of Regular Assessments.** Not less than 45 days nor more than 60 days prior to the beginning of the Association's fiscal year, the Board shall estimate the total amount required to fund the Association's anticipated Common Expenses for the next succeeding fiscal year (including additions to any reserve fund established to defray the costs of future repairs, replacement or additions to the Common Facilities) by preparing and distributing to all Members a budget satisfying the requirements of article XII, section 5 of the Bylaws. If the Board fails to distribute the budget for any fiscal year within the time period provided for in this section, the Board shall not be permitted to increase Regular Assessments for that fiscal year unless the Board first obtains the Members' prior approval in accordance with section 8, below.

(b) Establishment of Regular Assessment by Board/Membership Approval Requirements. The total annual expenses estimated in the Association's budget (less projected income from sources other than Assessments) shall become the aggregate Regular Assessment for the next succeeding fiscal year; provided, however, that, except as provided in section 5 of this article, the Board of Directors may not impose a Regular Assessment that is more than 20 percent greater than the Regular Assessment for the Association's immediately preceding fiscal year without the Members' prior approval in accordance with section 8, below.

(c) Allocation of Regular Assessment. The total estimated Common Expenses, determined in accordance with subparagraph (a), above, shall be allocated among, assessed against and charged to each Owner according to the ratio of the number of Condominium Units owned by the assessed Owner to the total number of Condominium Units subject to assessment so that each Unit bears an equal share of the total Regular Assessment.

(d) Assessment Roll. That portion of the estimated Common Expenses assessed against and charged to each Owner shall be set forth and recorded in an Assessment roll which shall be maintained and available with the records of the Association and shall be open for inspection at all reasonable times by each Owner or his or her authorized representative for any purpose reasonably related to the Owner's interest as a property Owner or as a Member of the Association. The Assessment roll (which may be maintained in the form of a computer printout) shall show, for each Unit, the name and address of the Owner of Record, all Regular, Special and Special Individual Assessments levied against each Owner and his or her Unit, and the amount of such Assessments which have been paid or remain unpaid. The delinquency statement required by article II, section 4(c)(i) hereof shall be conclusive upon the Association and the Owner of such Unit as to the amount of such indebtedness appearing on the Association's Assessment roll as of the date of such statement, in favor of all persons who rely thereon in good faith.

(e) Mailing Notice of Assessment. Within the time requirements specified in subparagraph (a), above, the Board of Directors shall mail to each Owner, at the street address of the Owner's Unit, or at such other address as the Owner may from time to time designate in writing to the Association, a statement of the amount of the Regular Assessment for the next succeeding fiscal year.

(f) Failure to Make Estimate. If, for any reason, the Board of Directors fails to make an estimate of the Common Expenses for any fiscal year, then the Regular Assessment made for the preceding fiscal year, together with any Special Assessment made pursuant to section 3(a)(i) of this article for that year, shall be assessed against each Owner and his or her Condominium Unit on account of the then current fiscal year, and installment payments (as hereinafter provided) based upon such automatic Assessment shall be payable on the regular payment dates established by the Board.

(g) Installment Payment of Assessments. The Regular Assessment levied against each Owner and his or her Unit shall be due and payable in advance to the Association in equal monthly installments on the first day of each month or on such other date or dates as may be established from time to time by the Association's Board of Directors. Installments of Regular Assessments shall be delinquent if not paid within 15 days of the due date as established by the Board.

Section 3. Special Assessments.

(a) Purposes for Which Special Assessments May Be Levied. Subject to the membership approval requirements set forth in subparagraph (b) below, the Board of Directors shall have the authority to levy Special Assessments against the Owners and their Condominium Units for the following purposes:

(i) Regular Assessment Insufficient in Amount. If, at any time, the Regular Assessment for any fiscal year is insufficient in amount due to extraordinary expenses not contemplated in the budget prepared for said fiscal year, then, except as prohibited by section 2(a) of this article, the Board of Directors shall levy and collect a Special Assessment, applicable to the remainder of such year only, for the purpose of defraying, in whole or in part, any deficit which the Association may incur in the performance of its duties and the discharge of its obligations hereunder.

(ii) New Capital Improvements. The Board may levy Special Assessments for additional capital improvements within the Common Area (i.e., Improvements not in existence on the date of this Declaration that are unrelated to repairs for damage to, or destruction of, the existing Common Facilities). The Special Assessment power conferred hereunder is not intended to diminish the Board's obligation to plan and budget for normal maintenance, and replacement repair of the Common Area or existing Common Facilities through Regular Assessments (including the funding of reasonable reserves) and to maintain adequate insurance on the Common Area and existing Common Facilities in accordance with article IX hereof.

(iii) Major Capital Repair and Reconstruction Projects. As more particularly provided in article X, section 3, below, the Board shall be entitled to levy a Special Assessment to fund uninsured major repairs or reconstruction of Common Areas, subject to the membership approval requirements of said section 3.

(b) Special Assessments Requiring Membership Approval. The following Special Assessments require prior membership approval in accordance with section 8, below: (i) any Special Assessments which, in the aggregate, exceed 5 percent of the Association's budgeted gross expenses for the fiscal year in which the Special Assessment(s) is/are levied; and (ii) any Special Assessments imposed pursuant to subparagraph (a)(i) of this section when the Board has failed to distribute a budget to the Members within the time specified in section 2(a) of this article. The foregoing Member approval requirements shall not apply, however, to any Special Assessment imposed to address any "emergency situation" as defined in section 5 of this article.

(c) Allocation of Special Assessments. When levied by the Board or approved by the Members as provided above, Special Assessments shall be divided among, assessed against and charged to each Owner and his or her Condominium Unit in the same manner prescribed for the allocation of Regular Assessments pursuant to subparagraph 2(c) above.

(d) Payment of Special Assessments. Any Special Assessment duly levied hereunder shall be recorded on the Association's Assessment roll and notice thereof shall be mailed to each Owner. Special Assessments for purposes described in subparagraph (a)(i) of this section shall be due as a separate debt of the Owner and a lien against his or her Condominium Unit, and shall be payable to the Association in equal monthly installments during the remainder of the then current fiscal year. Special Assessments for purposes described in subparagraph (a)(ii) shall be due as a separate debt of the Owner and a lien against his or her Unit, and shall be payable in full to the Association within 30 days after the mailing of such

notice or within such extended period as the Board shall determine to be appropriate under the circumstances giving rise to the Special Assessment. Special Assessments levied pursuant to subparagraph (a)(iii), above, and article X, section 3, shall be due as a separate debt of each Owner and a lien against the Owners' Units at such time as required by the repair or reconstruction project, but in no event sooner than 60 days following receipt of the Association's notice of levy of the Assessment.

Section 4. Special Individual Assessments.

(a) Circumstances Giving Rise to Special Individual Assessments. In addition to the Special Assessments levied against all Owners in accordance with section 3, above, the Board of Directors may impose Special Individual Assessments against an Owner in any of the circumstances described in subparagraphs (i) through (iii) below; provided, however, that no Special Individual Assessments may be imposed against an Owner pursuant to this section until the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to article XIV, section 6 hereof, and, if appropriate, has been given a reasonable opportunity to comply voluntarily with the Governing Documents. Subject to the foregoing, the acts and circumstances giving rise to liability for Special Individual Assessments include the following:

(i) Damage to Common Area or Common Facilities. In the event that any damage to, or destruction of, any portion of the Common Area or the Common Facilities is caused by the willful misconduct or negligent act or omission of any Owner, any member of his or her family, or any of his or her tenants, guests, servants, employees, licensees or invitees, the Board shall cause the same to be repaired or replaced, and all costs and expenses incurred by the Association in connection therewith (to the extent not compensated by insurance proceeds) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

(ii) Expenses Incurred in Gaining Member Compliance. In the event that the Association incurs any costs or expenses to: (A) accomplish the payment of delinquent Assessments; (B) perform any repair, maintenance or replacement to any portion of the Property that the Owner is responsible to maintain under the Governing Documents but has failed to undertake or complete in a timely fashion; or (C) otherwise bring the Owner and/or his or her Condominium Unit into compliance with any provision of the Governing Documents, the amount incurred by the Association (including title company fees, accounting fees, court costs and reasonable attorneys fees) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment. The Association's Special Individual Assessment authority hereunder shall extend to the collection of any reasonable fines or penalties imposed against an Owner pursuant to article XIV hereof.

(iii) Required Maintenance of Condominium Units. If any Unit is maintained so as to become a nuisance, structural, fire or safety hazard for any reason, including without limitation, the accumulation of trash, the Association shall have the right to enter said Unit, correct the condition and recover the cost of such action through imposition of a Special Individual Assessment against the offending Owner. Any entry of a Unit by Association agents shall be undertaken in strict compliance with article III, section 6(b) hereof.

(b) Levy of Special Individual Assessment and Payment. Once a Special Individual Assessment has been levied against an Owner for any reason described, and subject to the conditions imposed in subparagraph (a) of this section, such Special Individual Assessment shall be recorded on the Association's Assessment roll and notice thereof shall be mailed to the affected Owner. The Special

Individual Assessment shall thereafter be due as a separate debt of the Owner payable in full to the Association within 30 days after the mailing of notice of the Assessment.

Section 5. Assessments to Address Emergency Situations. The requirement of a membership vote to approve: (a) Regular Assessment increases in excess of 20 percent of the previous year's Regular Assessment; or (b) Special Assessments which, in the aggregate, exceed 5 percent of the Association's budgeted gross expenses for the fiscal year in which the Special Assessment(s) is/are levied, shall not apply to Assessments which are necessary to address emergency situations. For purposes of this section, an emergency situation is any of the following:

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

(ii) An extraordinary expense necessary to repair or maintain the Common Areas, Common Facilities or any portion of the Units which the Association is obligated to maintain where a threat to personal safety is discovered.

(iii) An extraordinary expense necessary to repair or maintain the Common Areas, Common Facilities or any portion of the Units which the Association is obligated to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the budget pursuant to section 2(a) of this article; provided, however, that prior to the imposition or collection of an assessment under this subparagraph (iii), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The Board's resolution shall be distributed to the Members together with the notice of assessment.

Section 6. Purpose and Reasonableness of Assessments. Each Assessment made in accordance with the provisions of this Declaration is hereby declared and agreed to be for use exclusively: (a) to promote the recreation, health, safety and welfare of individuals residing within the Property; (b) to promote the enjoyment and use of the Property by the Owners and their families, tenants, invitees, licensees, guests and employees; and (c) to provide for the repair, maintenance, replacement and protection of the Common Area and Common Facilities. Each and every Assessment levied hereunder is further declared and agreed to be a reasonable Assessment, and to constitute a separate, distinct and personal obligation (with respect to which a separate lien may be created hereby) of the Owner of the Unit against which the Assessment is imposed that shall be binding on the Owner's heirs, successors and assigns; provided, however, that the personal obligation of each Owner for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

Section 7. Exemption of Certain of the Property From Assessments. The following real property subject to this Declaration shall, unless devoted to the use as a residential dwelling, be exempt from the Assessments and the lien thereof provided herein:

- (a) Any portion of the Property dedicated and accepted by a local public authority;
- (b) The Common Area and Common Facilities; and
- (c) Any Condominium Unit owned by the Association.

Section 8. Notice and Procedure for Member Approval Pursuant to Sections 2 and 3. If Member approval is required in connection with any increase or imposition of Assessments pursuant to sections 2 and 3 of this article, the affirmative vote required to approve the increase shall be a Majority of a Quorum of the Members. The quorum required for such membership action shall be a majority of the Members.

Section 9. Maintenance of Assessment Funds.

(a) **Bank Accounts.** All sums received or collected by the Association from Assessments, together with any interest or late charges thereon, shall be promptly deposited in one or more insured checking, savings or money market accounts in a bank or savings and loan association selected by the Board of Directors. In addition, the Board shall be entitled to make prudent investments of reserve funds in insured certificates of deposit, money market funds, mutual funds or similar investments consistent with the investment standards normally observed by trustees. The Board and such officers or agents of the Association as the Board shall designate shall have exclusive control of the account(s) and investments and shall be responsible to the Owners for the maintenance at all times of accurate records thereof. The withdrawal of funds from Association accounts shall be subject to the minimum signature requirements imposed by California Civil Code section 1365.5 and article XII, section 2 of the Bylaws.

To preclude a multiplicity of bank accounts, the proceeds of all Assessments may be commingled in one or more accounts maintained in the name of the Association and need not be deposited in separate accounts so long as the separate accounting records described herein are maintained. Any interest received on such deposits shall be credited proportionately to the balances of the various Assessment fund accounts maintained on the books of the Association as provided in subparagraph (b), below.

(b) **Separate Accounts; Commingling of Funds.** Except as provided below, the proceeds of each Assessment shall be used only for the purpose for which such Assessment was made, and such funds shall be received and held in trust by the Association for such purpose. Notwithstanding the foregoing, the Board, in its discretion, may make appropriate adjustments among the various line items in the Board's approved general operating budget if the Board determines that it is prudent and in the best interest of the Association and its Members to make such adjustments. If the proceeds of any Special Assessment exceed the requirement for which such Assessment was levied, such surplus may, in the Board's discretion be: (i) returned proportionately to the contributors thereof; (ii) reallocated among the Association's reserve accounts if any such account is, in the Board's opinion, underfunded; or (iii) credited proportionately on account of the Owners' future Regular Assessment obligations.

For purposes of accounting, but without requiring any physical segregation of assets, the Association shall keep a separate accounting of all funds received by it in payment of each Assessment and of all disbursements made therefrom; provided, however, that receipts and disbursements of Special Assessments made pursuant to section 3(a)(i) of this article shall be accounted for together with the receipts and disbursements of Regular Assessments and a separate accounting shall be maintained for each capital improvement for which reserve funds for replacement are allocated.

Unless the Association is exempt from federal or state taxes, all sums allocated to capital replacement funds shall be accounted for as contributions to the capital of the Association and as trust funds segregated from the regular income of the Association or in any other manner authorized by law or regulations of the Internal Revenue Service and the California Franchise Tax Board that will prevent such funds from being taxed as income of the Association.

Section 10. Collection of Assessments; Enforcement of Liens.

(a) Delinquent Assessments. If any installment payment of a Regular Assessment or lump sum or installment payment of any Special Assessment or Special Individual Assessment assessed to any Owner is not paid within 15 days after the same becomes due, such payment shall be delinquent and the amount thereof may, at the Board's election, bear interest at the maximum rate allowed by law commencing 30 days after the due date until the same is paid. In addition to the accrual of interest, the Board of Directors is authorized and empowered to promulgate a schedule of reasonable late charges for any delinquent Assessments, subject to the limitations imposed by California Civil Code sections 1366(c) and 1366.1 or comparable successor statutes.

(b) Effect of Nonpayment of Assessments.

(i) Creation and Imposition of a Lien for Delinquent Assessments. As more particularly provided in section 1367 of the California Civil Code or comparable successor statute, the amount of any delinquent Regular or Special, or Special Individual Assessment, together with any late charges, interest and costs (including reasonable attorneys' fees) attributable thereto or incurred in the collection thereof, shall become a lien upon the Condominium Unit of the Owner so assessed only when the Association Records a Notice of Delinquent Assessment executed by an authorized representative of the Association. Said notice shall set forth: (A) the amount of the delinquent Assessment(s) and other sums duly imposed pursuant to this article and section 1366 of the California Civil Code; (B) the legal description of the Owner's Unit against which the Assessments and other sums are levied; (C) the name of the Owner of Record of such Condominium Unit; (D) the name and address of the Association; and (E) in order for the lien to be enforced by nonjudicial foreclosure, the name and address of the trustee authorized by the Association to enforce the lien by sale. Upon payment in full of the sums specified in the Notice of Delinquent Assessment, the Association shall cause to be recorded a further notice stating the satisfaction and release of the lien thereof.

(ii) Remedies Available to the Association to Collect Assessments. The Association may bring legal action against the Owner personally obligated to pay the delinquent Assessment, foreclose its lien against the Owner's Condominium Unit or accept a deed in lieu of foreclosure. Foreclosure by the Association of its lien may be by judicial foreclosure or by nonjudicial foreclosure by the trustee designated in the Notice of Delinquent Assessment or by a trustee substituted pursuant to California Civil Code section 2934a. Any sale of a Unit by a trustee acting pursuant to this section shall be conducted in accordance with sections 2924, 2924b and 2924c of the California Civil Code applicable to the exercise of powers of sale in mortgages or deeds of trust.

(iii) Nonjudicial Foreclosure. The Association may initiate nonjudicial foreclosure by recording in the Office of the County Recorder a Notice of Default, which notice shall state: (A) all amounts which have become delinquent with respect to the Owner's Unit and the costs (including attorneys' fees), penalties and interest that have accrued thereon; (B) the amount of any Assessment which is due and payable although not delinquent; (C) a legal description of the property with respect to which the delinquent Assessment is owed; and (D) the name of the Owner of Record or reputed Owner thereof. The Notice of Default shall also state the election of the Association to sell the Unit or other property to which the amounts relate and shall otherwise conform with the requirements for a notice of default under section 2924c of the California Civil Code, or comparable successor statute.

The Association shall have the rights conferred by section 2934a of the California Civil Code to assign its rights and obligations as trustee in any nonjudicial foreclosure proceedings to the same extent as a trustee designated under a deed of trust. For purposes of section 2934a, the Association shall be deemed to be the sole beneficiary of the delinquent Assessment obligation. Furthermore, in lieu of an assignment of trusteeship, the Association shall be entitled to employ the services of a title insurance company or other responsible person authorized to serve as a trustee in nonjudicial foreclosure proceedings to act as an agent on behalf of the Association in commencing and prosecuting any nonjudicial foreclosure hereunder.

(iv) Actions for Money Judgment. In the event of a default in payment of any Assessment, the Association, in its name but acting for and on behalf of all other Owners, may initiate legal action, in addition to any other remedy provided herein or by law, to recover a money judgment or judgments for unpaid Assessments, costs and attorneys' fees without foreclosure or waiver of the lien securing same.

Section 11. Transfer of Condominium Unit by Sale or Foreclosure. The following rules shall govern the status of the Association's rights to enforce its Assessment collection remedies following the sale or foreclosure of a Condominium Unit:

(a) Except as provided in subparagraph (b), below, the sale or transfer of any Condominium Unit shall not affect any Assessment lien duly Recorded with respect to such Unit prior to the sale or transfer, and the Association can continue to foreclose its lien in spite of the change in ownership.

(b) The Association's Assessment lien shall be extinguished as to all delinquent sums, late charges, interest and costs of collection incurred prior to the sale or transfer of a Condominium Unit pursuant to a foreclosure or exercise of a power of sale by the holder of a prior encumbrance (but not pursuant to a deed-in-lieu of foreclosure). A "prior encumbrance" means any first Mortgage or other Mortgage or lien recorded prior to the Association's Assessment lien.

(c) No sale or transfer of a Unit as the result of foreclosure, exercise of a power of sale, or otherwise, shall relieve the new Owner of such Unit (whether it be the former beneficiary of the first Mortgage or other prior encumbrance or a third party acquiring an interest in the Unit) from liability for any Assessments thereafter becoming due or from the lien thereof.

(d) Any Assessments, late charges, interest and associated costs of collection which are lost as a result of a sale or transfer covered by subparagraph (b), above, shall be deemed to be a Common Expense collectible from the Owners of all of the Units, including the person who acquires the Unit and his or her successors and assigns.

(e) No sale or transfer of a Unit as the result of foreclosure, exercise of a power of sale, or otherwise, shall affect the Association's right to maintain an action against the foreclosed previous Owner personally to collect the delinquent Assessments, late charges, interest and associated costs of collection incurred prior to and/or in connection with the sale or transfer.

Section 12. Priorities. When a Notice of Delinquent Assessment has been recorded, such notice shall constitute a lien on the Unit prior and superior to all other liens or encumbrances recorded subsequent thereto except: (a) all taxes, bonds, assessments and other levies which, by law, would be superior thereto; and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first

priority over other Mortgages) made in good faith and for value; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to the transfer of such property pursuant to the exercise of a power of sale or a judicial foreclosure involving a default under such first Mortgage or other prior encumbrance.

Section 13. Unallocated Taxes. In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than being assessed to the individual Units, such taxes shall be included in the Regular Assessment imposed pursuant to section 2 of this article and, if necessary, a Special Assessment may be levied against the Units in an amount equal to such taxes to be paid in two installments, thirty days prior to the due date of each tax installment.

Section 14. Assignment of Rents. Each Owner does hereby presently assign to the Association, absolutely and regardless of possession of the property, all rents and other monies now due or hereafter to become due under any lease or agreement or otherwise for the use or occupancy of any or all parts of any Unit owned by the Owner, now existing or hereafter made for the purpose of collecting all Assessments due the Association pursuant to this Declaration which are in default. The Association hereby confers on each Owner the authority to collect and retain the rents and other monies derived from any such lease or agreement as they become due and payable; provided, however, that the Association at its sole discretion, may revoke such authority at any time, upon written notice to the Owner of a default in the payment of any Assessment due hereunder. Upon revocation of such authority the Association may, pursuant to court order or by court appointed receiver, collect and retain such monies, whether past due and unpaid or current.

Section 15. Waiver of Exemptions. Each Owner, to the extent permitted by law, waives, to the extent of any liens created pursuant to this article, the benefit of any homestead or exemption law of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed.

ARTICLE V

Architectural Approval of Improvements

Section 1. Approval of Improvements in General. No "Improvement" (as defined in section 2 below) of any kind shall be commenced, erected or maintained on the Property, nor shall any exterior addition to or change or alteration be made in or to any Unit or Common Facility until the plans and specifications showing the nature, color, kind, shape, height (including front, side and rear elevations), materials, and location of the same shall have been submitted to and approved in writing by the Association's Board of Directors or its duly appointed Architectural Committee as to quality of workmanship and materials, harmony of external design and location in relation to surrounding structures, setback lines and topography and finish grade elevation.

Section 2. Definition of Improvements Requiring Approval/Exclusion for Interior Projects. As used herein, the term "Improvement" shall include, without limitation, any building, outbuilding, structural improvement, exterior landscaping, fence, wall, exterior modification of existing structures, internal modification of any Unit involving any roof, bearing wall or other structural component thereof, any change in exterior color of any building Improvement or landscape structure, any change in air conditioning or heating components, or the installation of spas, awnings, antennas, television satellite reception dishes or patio covers.

The term "Improvement" shall not include any work or improvement located exclusively within the interior airspace comprising an Owner's Unit so long as the project does not involve any load bearing wall or breach or entry into the roof of the Unit. Accordingly, each Owner shall have the exclusive right to paint, plaster, panel, tile, wallpaper or otherwise finish, refinish or decorate the inner surfaces of the walls, ceiling, floors, windows or doors of the Owner's Unit. Such projects shall not be subject to this article.

Section 3. Appointment of Architectural Committee. The Board of Directors may, but shall not be obligated to, appoint an Architectural Committee in accordance with article X of the Association Bylaws. If such a Committee is appointed, it shall be composed of not less than three nor more than five members. Committee members appointed shall be from the membership of the Association. Members of the Committee shall serve for a term of one year. In the event of the death or resignation of any member of the Architectural Committee, a successor shall be appointed by the Board. Neither the members of the Committee nor its designated representatives shall be entitled to any compensation for services performed pursuant hereto. If an Architectural Committee is appointed, any references in this article to the Board shall be deemed to be a reference to the Committee unless the context clearly indicates a contrary intent.

Section 4. Submission of Plans. Plans and specifications shall be submitted to the Board by personal delivery or first-class mail to the secretary of the Association or the chairman of the Architectural Committee. In the event the Board fails to approve or disapprove such design and location within 45 days after said plans and specifications have been submitted to it, the request shall be deemed to have been approved. Approval by the Board may contain conditions or requests for modification of particular aspects of the Owner's plans and specifications. If a Committee is appointed pursuant to section 3, approval by the Committee shall be deemed to be a recommendation to the Board of Directors which must be confirmed or rejected by the Board at its next regularly scheduled meeting, but in no event later than 30 days following action by the Committee. The 45-day time limitation for action shall apply only to the initial action by the Board or its Committee and shall not include the 30 days prescribed herein for Board review of Committee actions.

Section 5. Architectural Rules. The Board of Directors, may from time to time adopt, amend and repeal rules and regulations to be known as "Architectural Rules." The Architectural Rules shall interpret and implement the provisions of this Declaration by setting forth the standards and procedures for review of plans and specifications and guidelines for architectural design, placement of any work of improvement or color schemes, exterior finishes and materials and similar features which are recommended or required for use in connection with particular improvement projects within the Property; provided, however, that said rules shall not be in derogation of the minimum standards required by this Declaration. In the event of any conflict between the Architectural Rules and this Declaration, the provisions of the Declaration shall prevail. If an Architectural Committee is appointed, the Committee may recommend Architectural Rules for adoption by the Board.

Section 6. Variances. The Board of Directors or its Architectural Committee, if duly authorized, shall be entitled to allow reasonable variances with respect to this article or any restrictions specified in article VII in order to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardships, provided the following conditions are met:

(a) All requests for variances shall be submitted to the Association in writing. If the Board reserves authority to grant variances, requests shall be submitted to the Association secretary. If variance authority is delegated to the Architectural Committee, submissions shall be made to the Committee Chair.

(b) If the requested variance will necessitate deviation from, or modification of, a property use restriction that would otherwise apply under this Declaration, the Board or the Architectural Committee must conduct a hearing on the proposed variance after giving at least 10 days' prior written notice to the Board and to all Owners of Units located in the same building structure as the Unit affected by the variance or located within 100 feet of the Unit for which the variance applies. The Owners receiving notice of the proposed variance shall have 30 days in which to submit to the Board or Committee written comments or objections with respect to the variance. No decision shall be made with respect to the proposed variance until the 30-day comment period has expired.

(c) The Board or Committee must make a good faith determination that: (i) the requested variance, if granted, will not constitute a material deviation from the overall plan and scheme of development within the Property or from any restriction contained herein or that the proposal allows the objectives of the violated requirement(s) to be substantially achieved despite noncompliance; or (ii) the variance relates to a requirement hereunder that it is unnecessary or burdensome under the circumstances; or (iii) the variance, if granted, will not result in a material detriment, or create an unreasonable nuisance, with respect to any other Unit, Common Area or Owner within the Property.

Section 7. Estoppel Certificate. Within 30 days after written demand is delivered to the Board by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Board), the Board shall execute an estoppel certificate, executed by any two of its members, certifying (with respect to any Unit owned by the applicant Owner) that as of the date thereof, either: (i) all improvements made and other work completed by said Owner with respect to the Unit(s) comply with this Declaration; or (ii) that such improvements or work do not so comply, in which event the certificate shall also identify the noncomplying improvements or work and set forth with particularity the bases of such noncompliance. Any purchaser from the Owner, or anyone deriving any interest in said Unit through the Owner, shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, all Owners and any persons deriving any interest through them.

Section 8. Compliance With Regulatory Agreement. Whenever the Board's consent is required for any alteration, repair or other matter referred to in this Article, the Board's decision shall be subject to the requirements of the Regulatory Agreement which provides that there shall be no remodeling, reconstruction, demolition or subtraction from the condominium development without prior approval of the Federal Housing Commissioner.

ARTICLE VI

Association and Owner Maintenance Responsibilities

Section 1. Maintenance and Repair of Open Space and Recreational Common Areas. No improvement, excavation or work which in any way alters any portion of the Common Area devoted to open space, recreation uses, parking or landscaping from its condition or appearance as constructed or improved by Declarant or installed by the Association shall be made or done except upon strict compliance with, and within the restrictions and limitations of, the following provisions of this section:

(a) No person other than the Association or its duly authorized agents shall construct, reconstruct, refinish, alter or maintain any improvement upon, or shall make or create any excavation or

fill upon, or shall change the natural or existing drainage of, or shall destroy or remove any tree, shrub or other vegetation from, or plant any tree, shrub, or other vegetation upon the Common Area.

(b) The Association shall at any time, and from time to time:

(i) Install, construct, reconstruct, replace or refinish any Common Facility or other Improvement or portion thereof within the Common Area in accordance with the original design, finish or standard of construction of such Improvement or similar Improvements within the Common Area. Without limiting the foregoing it is noted that the on-site sanitary sewer and on-site storm drainage within the Property are private and connect with the public systems in the adjacent streets and the Association shall maintain, repair and replace such sewer and drainage facilities as well as all underground utilities within the Common Area to the point where such facilities and utilities enter the perimeter bearing walls of a Unit.

(ii) Construct, reconstruct, replace, refinish any road Improvement or asphalt surface upon any portion of the Common Area designated on a subdivision map as a private road or parking area.

(iii) Replace destroyed trees or other vegetation and plant or remove trees, shrubs and ground cover upon any portion of Common Area.

(iv) Place and maintain upon the Common Area and Common Facilities such signs as the Association may deem necessary for the identification of the development of roads, the regulation of traffic, including parking, the regulation and use of Common Area and Common Facilities.

Section 2. Maintenance and Repair of Unit Building Structures. In addition to its responsibilities to maintain, repair and replace all components of the open space Common Areas, parking areas and other general Common Facilities within the Project, the Association shall also maintain, repair and replace all Common Facility building structures housing Units, including, without limitation, the roofs and exterior walls of said structures and the water and utility lines servicing the individual Units to the point where such lines enter the Units. The Association's obligation to respond to major damage or destruction of building structures shall be further subject to article X hereof.

Section 3. Association Maintenance and Repair Obligations With Respect to Exclusive Use Common Areas. The Association shall maintain, repair and replace the following Exclusive Use Common Areas: Carports and both sides of patio, balcony and any stairway fences or railings shall be painted by the Associations. In addition, the Association shall maintain, repair and replace the front door and storage door to each Unit, and shall be entitled to recover the cost of such work from the Unit Owner, collectible as a Special Individual Assessment. Except as provided in the preceding sentences, the Association shall not be responsible for the maintenance, repair or replacement of any other Exclusive Use Common Areas.

Section 4. Owners' Maintenance and Repair Responsibilities. Each Owner of a Condominium shall be responsible for maintaining, repairing and replacing all components of the Owner's Unit, including, without limitation, the following:

(a) Maintain the Owner's Unit in a clean, attractive and sanitary condition and promptly exterminate insects, ants, roaches, etc., inside the Unit.

(b) Maintain, repair, replace and restore the interior plumbing, air conditioning compressor, electrical lines, cable television service, water heaters and other internal installations and utilities and any

other equipment that is installed for the exclusive use and enjoyment in the Owner's Unit and which are located within the inside perimeter of the exterior bearing walls of said Unit, and all appliances and equipment located in said Unit. The Owner shall also maintain, repair and replace the windows and other glass surfaces of the Owner's Unit. Reference is made to section 5, below, regarding additional rules concerning shared utilities.

(c) Maintain, repair, replace and restore all portions of the Owner's Unit, including, without limitation, the interior walls, ceilings, floors and doors; provided, however, that no work shall be undertaken which involves entry into the roof or any exterior wall of a unit (including a wall which divides the Unit from an adjoining Unit) without prior notice to, and approval of the Board in accordance with article V.

(d) Maintain, repair and replace any Exclusive Use Common Areas adjacent to his or her Unit other than the Exclusive Use Common Areas described in section 3, above, (which shall be repaired, maintained and replaced by the Association).

Every Owner shall be responsible for the prompt performance of all maintenance, repair and restoration work within his or her Unit or Exclusive Use Common Area which, if omitted or unreasonably delayed, would adversely affect the Project in its entirety or any portion of the Project inhabited by other Owners or residents.

Section 5. Owners' Rights and Duties Regarding Utilities. The rights and duties of the Owners of Condominiums within the Project with respect to sanitary sewer, water, electricity, gas and telephone lines and facilities shall be as follows:

(a) Whenever sanitary sewer, water, electricity, gas, television receiving, telephone lines or connections, are installed within the Property, which connections or any portion thereof lie in or upon Condominiums owned by other than the Owner of a Condominium served by such connections, the Owners of any Condominium served by such connections shall have the right, and are hereby granted an easement to the full extent necessary therefore, to enter upon the Condominiums or to have the utility company enter upon the Condominiums in or upon which such connections or any portion thereof lie, to repair, replace and generally maintain such connections, as and when necessary.

(b) Whenever sanitary sewer, water, electricity, gas or telephone lines or connections, are installed within the Property which connections serve more than one Condominium, the Owner of each Condominium served by such connection shall be entitled to the full use and enjoyment of such portions of such connections as service his or her Condominium.

(c) In the event of a dispute between Owners with respect to the repair or rebuilding of such connections, or with respect to the sharing of the cost thereof, then, upon written request of one or such Owners addressed to the Association, the matter shall be submitted to the Board of Directors who shall decide the dispute and the decision of the Board shall be final and conclusive on the parties.

Section 6. Association's Right to Recover Certain Maintenance and Repair Costs.

(a) **Association Maintenance Necessitated by Owner Negligence.** If the need for maintenance or repair which would otherwise be the Association's responsibility hereunder is caused through the willful or negligent act(s) of an Owner, or the Owner's family, guests or invitees, and is not covered or paid for

by the Association insurance policies maintained by the Association or any personal liability insurance held by the responsible Owner, the cost of such maintenance or repairs shall be subject to recovery by the Association through the imposition of a Special Individual Assessment against the offending Owner in accordance with article IV, section 4 hereof.

(b) Owner Defaults in Maintenance Responsibilities. If an Owner fails to undertake any maintenance, repair, replacement or restoration project enumerated herein in a timely fashion, the Association, its agents, contractors or delegates shall have the right to enter the Unit, at reasonable times, to effect such maintenance, repair, replacement or restoration and the cost thereof shall be charged to the Owner of the Unit and, if not paid in a timely fashion, shall be collected as a Special Individual Assessment. Any Association action hereunder shall be undertaken in strict compliance with the requirements and procedures regarding the Association's right to enter Units set forth in article III, section 6(b) of this Declaration.

ARTICLE VII

Use of Property and Restrictions

In addition to such restrictions as may be established by law or made a part of the Community Policies (consistent with this Declaration), the following restrictions are hereby imposed upon the use and enjoyment of the Property (including, without limitation, the individual Units):

Section 1. Single Family Residential Use. The use of any Condominium within the Property is hereby restricted to Single Family Residential Use; provided, however, that nothing in this Declaration shall prevent an Owner from leasing or renting his or her Condominium, subject to article II, section 3 hereof. The maximum number of persons who can occupy Units within the Project shall be as follows: two persons to a bedroom plus one so that, for example, five persons could occupy a two bedroom Unit.

Section 2. Prohibition of Noxious Activities.

(a) No noxious or offensive activities shall be conducted within or upon any portion of the Property nor shall anything be done or permitted within any Unit which is or could become an unreasonable annoyance or nuisance to the neighborhood.

(b) Without limiting any of the foregoing, no Owner shall permit noise of any sort (including, but not limited to, barking dogs, stereo amplifier systems, television sets, unmuffled motor vehicles or power tools) to emanate from an Owner's Unit or any portion of the Common Area which would unreasonably disturb other Owners' enjoyment of their Units or the Common Area. Excessive noise levels may be determined in the sole discretion of the Board which may, but shall not be obligated to, rely on the County Code or other applicable governmental regulations dealing with such matters.

(c) The Board may, in its sole discretion, prohibit maintenance within the Property of any animal that constitutes a nuisance (whether due to its size, viciousness, unreasonable noise or otherwise) with respect to any other residents.

Section 3. Household Pets. The following restrictions regarding the care and maintenance of pets within the Project shall be observed by each Owner and resident:

(a) Owners and residents may keep fish in an aquarium, pet birds in a bird cage or two pet cats, or one small dog and one cat, which are accustomed to living indoors, within a Unit. No other animals, or poultry of any kind shall be kept, bred or raised in any Unit. Any dogs maintained or kept within the Project shall not exceed 35 pounds in weight.

(b) Dogs and cats shall only be allowed on the Common Area when they are leashed and otherwise under the supervision and restraint of their Owners.

(c) No household pet shall be left chained or otherwise tethered in the Common Area. Pet owners shall be responsible for the prompt removal and disposal of pet wastes deposited by their pets within the Project.

(d) Each person bringing or keeping a pet on the Property shall be solely responsible for the conduct of such pets.

(e) The Association, its Board, officers, employees and agents shall have no liability (whether by virtue of this Declaration or otherwise) to any Owners, their family members, guests, invitees, tenants and contract purchasers for any damage or injury to persons or property caused by any pet.

(f) The Board of Directors shall have the right to establish and enforce additional regulations imposing standards for the reasonable control and keeping of household pets in, upon and around the Property to ensure that the same do not interfere with the quiet and peaceful enjoyment of the Property by the other Owners. The regulations adopted by the Board may, in the Board's sole discretion, limit the right to maintain dogs, cats and other pets that are likely to be within the Common Areas from time to time, to Owners; provided, however, that any such rule shall not affect the rights of any lessee under a lease agreement in effect at the time the rule is adopted.

Section 4. Signs. No signs of any kind shall be displayed to the public view on any Unit or posted within or upon any portion of the Common Area except signs required by legal proceedings and a single sign of reasonable dimensions placed in the window of a Unit advertising: (a) that the property is for sale, lease or exchange by the Owner or the Owner's agent; (b) the Owner's or agent's name; and (c) the Owner's or agent's address and telephone number unless the prior written consent of the Board is first obtained. Signs permitted hereunder shall not be nailed to the exterior of any Unit and directional signs advertising Units for sale or lease shall only be permitted within the Common Areas in accordance with the Community Policies.

Section 5. Business Activities. No business activities of any kind whatsoever shall be conducted within any building or in any portion of any Unit; provided, however, that the foregoing restriction shall not apply to the activities, signs or maintenance of buildings by the Association in furtherance of its powers and purposes as set forth herein or be construed in such a manner as to prohibit any Owner from engaging in any of the following activities within the Owner's Unit: (a) maintaining the Owner's personal library; (b) keeping personal business records or accounts; (c) handling personal or professional telephone calls or correspondence therefrom; (d) leasing or renting the Unit in accordance with article II, section 3, hereof; or (e) conducting any other activities in the Owner's Unit otherwise compatible with residential use and the provisions of this Declaration which are permitted under applicable zoning laws or governmental regulations without the necessity of first obtaining a special use permit or similar specific governmental authorization so long as any such activity does not involve exterior signage or create customer traffic within

the Project. Such uses are expressly declared to be customarily incident to the Unit's principal residential use and not in violation of any provision of this section.

Section 6. Garbage and Storage. No rubbish, trash or garbage shall be allowed to accumulate on the Property and any trash created by an Owner's use of the Owner's Unit shall be stored entirely within appropriate covered disposal containers located within said Unit. Owners shall deposit their accumulated trash only within the Project's community disposal containers maintained by the Association. No disposal containers will be allowed in the Common Area except as maintained by the Association. Any extraordinary accumulation of rubbish, trash, garbage or debris shall be removed promptly from the Property to a public dump or trash collection area by the Owner or tenant at the Owner's or tenant's expense. Storage of personal property shall be maintained within each Unit. The Association shall be entitled to impose reasonable fines and penalties for collection of garbage and refuse which is disposed of in any manner inconsistent with this section.

Section 7. Clotheslines. No exterior clothesline shall be erected or maintained and there shall be no drying or laundering of clothes on the balconies, fences, patios, porches or other areas in any manner which is visible from any neighboring Unit or from the Common Area.

Section 8. No Exterior Maintenance by Owners. No planting or gardening shall be done on any Condominium, and there shall be no exterior painting or maintenance of building structures housing Units by or on behalf of the Owners thereof, or any person holding thereunder, nor repair or replacement of original roofs or utility laterals by said persons, it being the intention hereunder that such items be maintained and replaced by the Association in conjunction with latter's maintenance of the Common Areas in order to preserve the external harmony and uniform appearance of the Property. Nothing herein shall be construed as preventing an Owner from maintaining common household plants located entirely within the Owner's Unit.

Section 9. Interior Improvements. No Owner shall undertake any action or work interior that will impair the structural soundness or integrity of the Owner's Unit or an adjoining Unit or impair any easement or hereditament, or do any act or allow any condition to exist which will adversely affect the other Condominiums or their Owners.

Section 10. Restriction on Alteration of Common Areas or Building Exteriors. In order to insure adequate aesthetic controls and to maintain the general attractive appearance of the Property, no Owner, resident or lessee shall construct fences, walls, or make any alterations, additions or modifications to or on any part or portion of the Common Area or exterior surfaces of residential Units, except as authorized by the Association pursuant to article V, hereof. No construction or alteration of structural Improvements may be undertaken on or within any Condominium Unit without approval of the Architectural Committee. Without limiting the foregoing, no Owner shall alter or modify the central radio or television antenna system or cable television system developed by the Declarant or construct, install or use any external radio or television antenna system (including, without limitation, any television satellite reception dish) without prior Board approval.

Section 11. Barbecues. There shall be no exterior fires whatsoever except barbecue fires located on balconies, patio areas or decks adjacent to Units and contained within receptacles designed for such purpose.

Section 12. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Unit by any Owner, except such machinery or equipment as is usual or customary in connection with the use and maintenance of a Condominium Unit or appurtenant structures within the Property.

Section 13. Diseases and Insects. No Owner shall permit any thing or condition to exist upon or within his or her Unit which shall induce, breed, or harbor infectious plant diseases, rodents, or noxious insects.

Section 14. Parking: Trailers, Boats and Motor Vehicles. Parking and the use, storage and operation of vehicles within the Property shall be subject to the following restrictions:

(a) Each Unit shall have the use of at least one carport space as an Exclusive Use Common Area. Each Owner and all person residing with an Owner shall use the carport space so assigned to that Owner for vehicle parking. Streets and open parking areas within the Project shall be available for additional parking of passenger vehicles by Owners and their guests. The following parking restrictions shall be strictly enforced:

(b) No carport shall be used as a storage space, hobby facility or for any other use or facility which would interfere with its use for the accommodate of vehicles.

(c) No vans displaying commercial advertising, 4-wheel drive vehicles which are specifically designed or primarily used for off-road activities, boats, motorcycles, trucks greater than 3/4 ton, campers, trailers, or other recreational vehicles of any type (all of which are referred to herein as "a recreational vehicle") shall be kept or parked in any carport, driveway, sidewalk, or other Common Area, and carports, assigned or unassigned, may not be used for storing or parking any recreational vehicle.

(d) All driveways and carports shall be maintained in a neat and orderly condition.

(e) No motor vehicle shall be constructed, reconstructed or repaired within the Property and no dilapidated, unregistered or inoperable vehicle, including vehicles without wheel(s) or an engine, shall be stored on the Property.

(f) In order to prevent or eliminate parking problems within the development or to further define and enforce the restrictions of this section, the Board shall have the authority to establish additional rules, restrictions and penalties, including the imposition of fines or towing procedures for recurring violations of the parking regulations established by the Board. If towing policies are instituted, proper signage shall be installed at the entrances to the Project as required by law.

Section 15. Children. Each resident shall be accountable to the other Owners, their families, lessees, visitors, guests and invitees, for the conduct and behavior of their children and that of children temporarily residing in or visiting the Owner's Unit and for any property damage caused by such children.

Section 16. Activities Affecting Insurance. Nothing shall be done or kept in any Unit or within the Common Area which will increase the rate of insurance relating thereto without the prior written consent of the Board of Directors and no Owner shall permit anything to be done or kept in his or her Condominium or within the Common Area which would result in the cancellation of insurance on any Condominium or any part of the Common Area or which would be in violation of any law.

Section 17. Window Coverings. In order to maintain external harmony of the Property, each Owner shall maintain drapes, curtains or shutters for all windows, which drapes or curtains shall be white, have white liners or be of a color which matches the exterior building color. The requirement for such drapes, curtains or other window coverings may be relaxed or changed with the prior approval of the Board. In no event shall bed sheets, paper or foil be used as a window covering.

Section 18. Variances. The Board of Directors may allow reasonable variances and adjustments of the property use restrictions contained in this article in order to overcome practical difficulties and prevent unnecessary hardships in the application of the provisions contained herein; provided however, that any variance must be authorized in accordance with the procedures described in article V, section 6, hereof.

ARTICLE VIII

Easements

Section 1. Encroachment Easements. Each Unit is hereby declared to have an easement over adjoining Units and Common Area and the Common Areas and Improvements thereon are declared to have an easement over all Units for the purpose of accommodating any encroachment due to roof overhang and fences or walls which are built in accordance with the original design, plans and specifications of Declarant, and are encroachments due to engineering errors, errors in original construction, reconstruction repair, settlement or shifting of any portion of the Project, or similar causes. There shall be valid easements for the maintenance of these encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by the 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 the encroachment occurs due to the willful misconduct of the Owner or Owners. In the event a structure is partially or totally destroyed, and is repaired or rebuilt, the Owners of each adjoining Unit agree that minor encroachments over adjoining Units or Common Area shall be permitted and that there shall be valid easements for the maintenance of the encroachments so long as they shall exist.

Furthermore, if any portion of the Recreational Common Area encroaches upon the Common Area, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. If any structure on the Recreational Common Area is partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachments of parts of the construction onto the Common Area shall be permitted and that valid easements for such encroachment and maintenance thereof shall exist. The Recreational Common Area is and shall always be subject to easements for minor encroachments thereon of the Common Area, and a nonexclusive easement for ingress, egress and support through the Recreational Common Area is appurtenant to each Condominium and the Recreational Common Area is subject to such easements.

Section 2. Annexation Easements. The Hurley Place Condominium Project was developed in phases pursuant to annexation provisions contained in section 2.04 of the Original Declaration. Pursuant to section 2.05 of the Original Declaration, the following easements were reserved and granted to the Owners of Units in each annexed phase and to the Owners of Units in Phase One:

"Declarant hereby reserves to itself, its successors and assigns, the right to, and agrees that it will, grant to the Owners of Condominium Units in an annexed phase, nonexclusive easements for ingress and egress over the Common Area of Phase One and any previously

annexed phase that is not a part of a Condominium Building. Declarant further agrees that it will reserve to itself, its successors and assigns, the right to grant and covenants and agrees that it will grant, to the Owners of Condominium Units in Phase One nonexclusive easements for ingress and egress over the Common Area of each annexed phase that is not a part of a condominium Building upon annexation of the annexed phase and pursuant to section 2.04 [of the Original Declaration]."

Said reciprocal easements are incorporated herein by reference.

Section 3. Street Easements. Each Owner and the Association shall have and are hereby granted a nonexclusive easement for street, roadway and vehicular traffic purposes over and along the paved parking areas and private streets within the Property.

Section 4. Utility Easements Granted by Association. The Association shall have the power to grant and convey to any third party easements and rights-of-way in, on, over or under the streets and Common Area for the purpose of constructing, erecting, operating or maintaining lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities, subject to prior written approval thereof by the County. Each Owner, in accepting a deed to a Condominium, expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact of such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. An easement is hereby created and reserved for installation, maintenance and use of horizontal and vertical utility lines, ducts and appurtenances thereto in areas adjoining ceilings, walls, columns and interior spaces between columns, within the Units. No removal, repair or modification of these lines is permitted without specific written authorization from the Association.

Section 5. Other Easements. Each Unit, its Owner and the Association, as the case may be, is hereby declared to be subject to all the easements, dedications and rights-of-way granted or reserved in, on, over and under the Property and each Condominium as shown on the Condominium Plan.

Section 6. Priority of Easements. Wherever easements granted to the County are, in whole or in part, coterminous with any other easements, the easements in favor of the County shall have and are hereby granted priority over said other easements in all respects.

ARTICLE IX

Insurance

Section 1. Insurance Coverage. The Association shall purchase, obtain and maintain the following types of insurance, if and to the extent they are available:

(a) **Public Liability and Property Damage Insurance.** A policy of comprehensive public liability insurance insuring the Association, each member of the Association Board of Directors, any Manager and the Owners and occupants of Units against any liability incident to the ownership or use of the Common Areas and including, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than \$1 million covering all claims for death, personal injury and property damage arising out of a single

occurrence. Such insurance shall include coverage against water damage liability, liability for non-owned and hired automobiles, liability for property of others and any other liability or risk customarily covered with respect to projects similar in construction, location and use.

(b) **Fire and Casualty Insurance.** The Association shall obtain and maintain a master or blanket policy of fire and casualty insurance, written on all risk, replacement cost basis, on all Common Facilities within the Property, including the buildings containing Units. The insurance shall be kept in full force and effect at all times. Depending on the nature of the insured property and the requirements, if any imposed by institutional Mortgagees having an interest in such property, the policies maintained by the Association pursuant to this section shall contain an agreed amount endorsement or a contingent liability from operation of building laws endorsement or the equivalent, an extended coverage endorsement, vandalism, malicious mischief coverage, a special form endorsement and a clause to permit cash settlements for full insurable value in case of partial destruction. The policies required hereunder shall name as insured the Association, all Owners and all Mortgagees as their respective interests may appear. The policies may contain a loss payable endorsement in favor of the trustee described in section 5 below.

(c) **Other Insurance.** The Board may and, if required by any institutional Mortgagee, shall purchase and maintain demolition insurance in adequate amounts to cover demolition in case of total or partial destruction and a decision not to rebuild, and a blanket policy of flood insurance. The Board also shall purchase and maintain workers' compensation insurance, to the extent that it is required by law, for all employees or uninsured contractors of the Association. The Board also shall purchase and maintain fidelity bonds or insurance (which shall be in an amount equal to three months' operating expenses including contributions to reserves and shall contain an endorsement of coverage of any person who may serve without compensation) sufficient to meet the requirements of any Mortgagee. The Board shall purchase and maintain such insurance on personal property owned by the Association, and any other insurance, including directors and officers liability insurance, and bonds that it deems necessary or that is required by any institutional Mortgagee.

Section 2. Coverage Not Available. In the event any insurance policy, or any endorsement thereof, required by section 1 is for any reason unavailable, then the Association shall obtain such other or substitute policy or endorsement as may be available which, at the discretion of the Board, provides, as nearly as possible, the coverage hereinabove described.

Section 3. Copies of Policies. Copies of all insurance policies (or certificates thereof showing the premiums thereon to have been paid) shall be retained by the Association and shall be available for inspection by Owners at any reasonable time.

Section 4. Individual Fire Insurance Limited. Except as provided in this section, no Owner can separately insure the Owner's Unit or any part of it against loss by fire or other casualty covered by an insurance carried under section 1 of this article. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable pursuant to the provisions of section 1 that results from the existence of such other insurance will be chargeable to the Owner who acquired other insurance and the Owner will be liable to the Association to the extent of any such diminution. An Owner can insure the Owner's personal property against loss. In addition, any Improvements made by an Owner within the Owner's Unit may be separately insured by the Owner, but any such insurance shall be limited to the type and nature of coverage commonly known as "tenant's Improvements." All such insurance that is individually carried must contain a waiver of subrogation rights by the carrier as to other Owners, the Association and Institutional first Mortgagees of such Condominium.

Section 5. Trustee. All insurance proceeds payable under sections 1 and 2 of this article may, in the discretion of the Board of Directors, be paid to a trustee, to be held and expended for the benefit of the Owners, Mortgagees and others, as their respective interests shall appear. Said trustee shall be a commercial bank within the County that agrees in writing to accept such trust. If repair or reconstruction is authorized, the Board shall have the duty to contract for such work as provided in this Declaration.

Section 6. Owner's Insurance. An Owner may carry whatever personal liability and property damage liability insurance with respect to the Owner's Unit that the Owner desires. However, any such policy shall include a waiver of subrogation clause acceptable to the Board and to any first Mortgagee.

Section 7. Adjustment of Losses. The Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried pursuant to sections 1 and 2 of this article. The Board is granted full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

Section 8. Annual Insurance Review. The Board shall review the insurance carried by or on behalf of the Association at least annually, for the purpose of determining if such insurance is adequate. Such responsibility may be performed and shall be deemed reasonably performed by the Board requesting the Association's insurance agent to verify that the insurance policies in existence meet the needs of the Association.

Section 9. Insurance Deductibles. The amount of the deductible portion of any insurance coverage maintained by the Association shall be established in the reasonable discretion of the Board. In the event that a loss is not the result of the negligent or willful misconduct of a particular Owner or a particular guest, tenant or invitee of an Owner, or if responsibility cannot clearly be established, the cost of the deductible shall be defrayed by the Association and, if necessary the deductible shall be recovered from the Owners through levy of a Special Assessment pursuant to article IV, section 3(c)(ii) hereof. However, if a loss is established to be the result of the negligent or willful misconduct of a particular Owner or his or her guest, tenant or invitee, that Owner shall be charged with the deductible amount as a Special Individual Assessment pursuant to article IV, section 4(a)(i) hereof. Before such a Special Individual Assessment may be imposed the Owner who is alleged to be responsible for the loss shall be entitled to notice and a hearing in accordance with article XIV, below.

ARTICLE X

Damage or Destruction

Section 1. Destruction: Proceeds Equal or Exceed 85 Percent of the Reconstruction Costs. If there is a total or partial destruction of any Unit or Common Facility Improvements within the Property, and if the available proceeds of the insurance maintained pursuant to article IX are sufficient to cover not less than 85 percent of the costs of repair and reconstruction, the Improvements shall be promptly rebuilt unless, within 90 days from the date of destruction, 75 percent of the total voting power of "eligible Members" (as defined in section 4, below), determine that such repair and reconstruction shall not take place. If repair and reconstruction is to take place, the Board shall be required to Record, not later than 120 days from the date of such destruction, a certificate declaring the intention of the Members to rebuild.

Section 2. Destruction: Proceeds Less Than 85 Percent of Reconstruction Costs. If the proceeds of insurance are less than 85 percent of the cost of repair and reconstruction, repair and reconstruction of

the damaged or destroyed Improvements may nevertheless take place, if, within 90 days from the date of destruction, eligible Members then holding at least 51 percent of the total voting power, determine that such repair and reconstruction shall take place. If a meeting or written ballot is called to vote on the matter, the Association shall solicit and obtain bids from at least two reputable contractors to repair and reconstruct the Improvements in accordance with the original plans and shall present this information to the Owners at the meeting. If repair and reconstruction are to take place, the Association shall Record, not later than 120 days from the date of destruction, a certificate declaring the intention of the Owners to rebuild.

Section 3. Rebuilding Procedures. If the eligible Members determine to rebuild, pursuant to section 1 or 2, above, the Owners of all Units within the Property shall be obligated to contribute their proportionate share of that portion of the cost of reconstruction or restoration, damaged or destroyed structures which is over and above the available insurance proceeds. The Owners' proportionate share of the cost of reconstruction or restoration shall be levied as a Special Assessment pursuant to article IV, section 3(c)(ii) hereof.

If any Owner disputes the amount of his or her proportionate liability under this section, such Owner may contest the amount by submitting to the Board within 10 days after notice to the Owner of his or her share of the liability, written objections supported by cost estimates or other information that the Owner deems to be material. The Owner may also request a hearing before the Board at which the Owner may be represented by counsel. Following such hearing, the Board shall give written notice of its decision to all Owners, including any recommendation that adjustments be made with respect to the liability of any Owners. If such adjustments are recommended, the notice shall schedule a special meeting of Members for the purpose of acting on the Board's recommendation, including making further adjustments, if deemed by the Members to be necessary or appropriate. All adjustments shall be affirmed or modified by 51 percent of the total voting power of the eligible Members. If no adjustments are recommended by the Board, the decision of the Board shall be final and binding on all Owners, including any Owner filing objections.

Section 4. Definition of "Eligible Members" Entitled to Vote. For purposes of any vote pursuant to this article, the Members eligible to vote shall be: (a) the requisite percentage of the total voting power of the membership in the case of any damage to or destruction of Common Facilities other than buildings containing Units; and (b) in the case of any damage to, or destruction of, buildings containing Units, the requisite percentage shall be of the voting power of those Members whose Units are located in the damaged or destroyed structure(s). Any membership vote required hereunder shall be conducted either at a duly convened meeting at which a quorum is present or by written ballot conducted in accordance with article IV, section 6 of the Bylaws.

Section 5. Rebuilding Contract. If the Eligible Members determine to rebuild, the Board shall reconstruct the damaged or destroyed portions of the Property substantially in accordance with the original plan. The Board or its authorized representative shall obtain bids from at least three reputable contractors and shall award the repair and reconstruction work to the bidder the Association Board determines to be the most qualified (which need not be the lowest bidder). The Board shall have the authority to enter into a written contract with the contractor for such repair and reconstruction on terms deemed reasonable by the Board. The insurance proceeds held by the trustee shall be disbursed to the contractor according to the terms and conditions of the agreement. It shall be the obligation of the Board to take all steps which are necessary or appropriate to assure the commencement and completion of authorized repair and reconstruction at the earliest possible date.

Section 6. Rebuilding Not Authorized. If the Eligible Members determine not to rebuild, then any insurance proceeds then available for rebuilding shall be used or distributed as follows:

(a) If, prior to the expiration of 120 days from the date of destruction, 75 percent of all Owners and institutional first Mortgagees with Mortgages encumbering the affected Units within the Property consent by vote or in writing, the Board acting on behalf of the Association shall have the right to purchase the Units which were rendered uninhabitable by such damage or destruction at the fair market value thereof immediately prior to the damage or destruction (as determined by an appraiser in accordance with section 8, below), using the available proceeds of insurance for such purpose. Any shortage of insurance proceeds shall be made up by a Special Assessment levied against all remaining Owners (but without the consent or approval of Owners, despite any contrary provisions of this Declaration). The Board's decision as to whether or not a Unit is uninhabitable shall be final and binding on all parties. Any payment of the purchase price shall be made jointly to the selling Owner and all Mortgagees of his or her Unit and each Owner by accepting a deed to a Condominium agrees to be bound by these provisions and to sell his or her Condominium by grant deed to the Association as provided herein.

(b) Concurrently with such purchase, the Board or individuals authorized by the Board, acting as attorney-in-fact of all Owners shall amend the Subdivision Map and this Declaration to eliminate from the Property the Condominiums so purchased and to adjust the undivided ownership interest of the remaining Owners to reflect the reduced number of Condominiums in the Project. Immediately thereafter the Association shall convey to each remaining Owner a proportionate share of the undivided interests in the Common Area represented by the Condominiums purchased. This proportion shall be in the ratio that each remaining Owner's undivided interest in the Common Area bears to all remaining Owner's undivided interests in the Common Area.

(c) Notwithstanding the determination of eligible Members not to rebuild pursuant to section 1 or 2 of this article, any Units which are not rendered uninhabitable shall be repaired and restored to a condition as near as possible to their condition immediately before such damage or destruction. Such repair and restoration shall be paid first, from the insurance proceeds remaining after the purchase of Condominiums pursuant to subparagraph (a) of this section, if any, and second, from a Special Assessment levied against all remaining Owners in the manner described in section 4 of this article (but without the consent or approval of Owners, despite any contrary provisions of this Declaration).

(d) If the required 75 percent of all Owners and institutional first Mortgagees do not consent to purchase the Condominiums which were rendered uninhabitable, an appraiser shall determine the relative fair market values of all Condominiums in the Property, as of a date prior to any damage or destruction and the proceeds of insurance shall be apportioned among all Owners, and their respective Mortgagees, in proportion to such relative values. The Board shall have the duty, within 120 days from the date of destruction, to Record a certificate declaring the intention of the Members not to rebuild. On recordation of the Association's certificate, the right of any Owner to partition through legal action as described in article XII shall revive immediately.

Section 7. Minor Repair and Reconstruction. In any case, the Board shall have the duty to repair and reconstruct Improvements owned by the Association or Improvements it is obligated to repair and maintain, without the consent of Members and irrespective of the amount of available insurance proceeds, in all cases of partial destruction when the estimated cost of repair and reconstruction does not exceed \$20,000. Any amounts paid by the Board up to and including \$20,000 which are not covered by insurance shall be assessed to all Owners in accordance with article IV, section 3(c)(ii) hereof.

Section 8. Appraiser. Wherever in this article or article XI (condemnation) reference is made to a determination of the value or fair market value of one or more Condominiums by an appraiser, this shall mean an appraisal by an independent appraiser selected by the Board, who shall be a member of the Society of Real Estate Appraisers (SREA) or other nationally recognized appraiser organization and who shall apply its or such other organization's standards in determining the value or fair market value of each Condominium. The costs of such appraisals shall be paid from the sale or insurance proceeds, as the case may be.

ARTICLE XI Condemnation

Section 1. Sale by Unanimous Consent or Taking. If an action for condemnation of all or a portion of the Property is proposed or threatened by any governmental agency having the right of eminent domain, then, on unanimous written consent of all of the Owners and all institutional Mortgagees, the Property, or a portion thereof may be sold and conveyed to the condemning authority by the Board or its designees acting as the attorney-in-fact of all Owners under an irrevocable power of attorney, which each Owner by accepting a deed to a Unit hereby grants and which shall be coupled with the interest of all other Owners, for a price deemed fair and equitable by the Board. If the requisite number of Owners or institutional Mortgagees do not consent to a sale of all or a portion of the Property, and the condemning authority institutes condemnation proceedings, the court shall fix and determine the condemnation award.

Section 2. Distribution and Sale Proceeds of Condemnation Award.

(a) **Total Sale or Taking.** A total sale or taking of the Property means a sale or taking: (i) that renders more than 50 percent of the Condominiums uninhabitable (such determination to be made by the Board in the case of a sale and by the court in the case of a taking); or (ii) that renders the Property as a whole uneconomical as determined by the vote or written consent of 66-2/3 percent of those Owners and their respective institutional Mortgagees whose Condominiums will remain habitable after the taking. However, any determination that a sale or taking is total must be made before the proceeds from any sale or award are distributed. The proceeds of any such total sale or taking of the Property, after payment of all expenses relating to the sale or taking, shall be paid to all Owners and to their respective Mortgagees in the proportion that the fair market value of each Condominium bears to the fair market value of all Condominiums on the Property. The fair market value of Units shall be determined in the condemnation action, if such be instituted, or by a state certified appraiser.

(b) **Partial Sale or Taking.** In the event of a partial sale or taking of the Property, meaning a sale or taking that is not a total taking as determined in section 2(a), above, the proceeds from the sale or taking shall be paid or applied in the following order of priority and any judgment of condemnation shall include the following provisions as part of its terms:

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

(ii) To Owners and to their respective Mortgagees, as their interests may appear, of Condominiums on the Property whose Condominiums have been sold or taken, an amount up to the fair market value of such Condominiums as determined by the court in the condemnation proceeding or by an

appraiser, less such Owners' share of expenses paid pursuant to section 2(b)(i) (which share shall be in proportion to the ratio that the fair market value of each Owner's Condominium bears to the fair market value of all Condominiums). After such payment, the recipient shall no longer be deemed an Owner and the Board or individuals authorized by the Board, acting as attorney-in-fact of all Owners shall amend the Subdivision Map and this Declaration to eliminate from the Property the Units so sold or taken; then

(iii) To any remaining Owner(s) and to his or her Mortgagees, as their interests may appear, whose Condominium has been diminished in value as a result of the sale or taking disproportionate to any diminution in value of all Condominiums, as determined by the Court in the condemnation proceeding or by an appraiser, an amount up to the total diminution in value; then

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

ARTICLE XII

Partition of Common Area

Section 1. Suspension or Right of Partition. Except as expressly provided in this article, an Owner shall have no right to partition or divide his or her ownership of the Common Area. Partition of the Common Area can be had on a showing that the conditions to such partition as stated in article X, section 6, (relating to damage or destruction) or in article XI (relating to condemnation) or in California Civil Code section 1359 have been met. Nothing in this Declaration shall prevent partition of a cotenancy in a Condominium.

Section 2. Distribution of Proceeds Upon Partition. Proceeds of the sale of property resulting from a partition shall be distributed to and among the respective Owners and their Mortgagees as their interests appear in proportion to the ratio that the fair market value of each Owner's Condominium bears to the fair market value of all Owners' Condominiums determined by appraisal as provided in article X, section 8, but as of a date immediately prior to the event giving rise to the right of Owners to partition the Common Area.

Section 3. Power of Attorney. Pursuant to California Civil Code section 1355(b)(9) each of the Owners irrevocably appoints the Association as attorney-in-fact and irrevocably grants to the Association full power in the name and stead of such Owner to sell the entire Project, and to execute deeds and conveyances to it, in one or more transactions, for the benefit of all Owners when partition of the Project may be had under California Civil Code section 1359 and under the circumstances authorizing partition under this Declaration. The power of attorney shall: (i) be binding on all Owners, whether they assume the obligations under this Declaration or not; (ii) be exercisable by a majority of the Board acting on behalf of the Association, subject to obtaining the prior approval by vote or written consent of 75 percent of the Owners and 75 percent of all institutional first Mortgagees; and (iii) be exercisable only after recordation with the County Recorder of a certificate executed by those who have power to exercise the power of attorney that the power of attorney is properly exercisable under section 1359 of the California Civil Code. This certificate shall be conclusive evidence of proper exercise in favor of any person relying on it in good faith.

ARTICLE XIII
Nonseverability or Component Interests

Section 1. Severance Prohibited. An Owner shall not be entitled to sever his or her Unit in any Condominium from his or her membership in the Association, and shall not be entitled to sever his or her Unit and his or her membership from the Owner's undivided interest in the Common Area for any purpose. None of the component interests in a Condominium can be severally sold, conveyed, encumbered, hypothecated, or otherwise dealt with; and any violation or attempted violation of this provision shall be void. Similarly, no Owner can sever any exclusive easement appurtenant to his or her Unit over the Common Area from the Owner's condominium, and any attempt to do so shall be void. The suspension of such right of severability will not extend beyond the period set forth in article XII respecting the suspension of partition.

Section 2. Limitation On Interests Conveyed. After the initial sales of the Condominiums, unless otherwise expressly stated, any conveyance of a Unit or any portion of it by an Owner shall be presumed to convey the entire Condominium. However, nothing contained in this section shall preclude the Owner of any Condominium estate, such as by creating an estate for life or an estate for years, or from creating a cotenancy or joint tenancy in the ownership of the Condominium with any other person or persons.

ARTICLE XIV
Breach or Default

Section 1. Remedy at Law Inadequate. Except for the nonpayment of any Assessment, it is hereby expressly declared and agreed that the remedy at law to recover damages for the breach, default or violation of any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration is inadequate and that the failure of any Owner, tenant, occupant or user of any Condominium Unit or any portion of the Common Area or Common Facilities, to comply with any provision of any of the Governing Documents, as amended from time to time, may be enjoined by appropriate legal proceedings instituted by any Owner, the Association, its officers or Board of Directors, or by their respective successors in interest.

Section 2. Nuisances. Without limiting the generality of the foregoing section 1, the result of every act or omission whereby any of the land use regulations contained in article VII of this Declaration is violated in whole or in part is hereby declared to be a nuisance, and every remedy against nuisance, either public or private, shall be applicable against every such act or omission.

Section 3. Costs and Attorneys' Fees. In any action initiated on account of any alleged breach or default of any Owner or other party hereto under this Declaration, the court may award to the prevailing party in any such action such attorneys' fees and other costs of suit as the court may deem just and reasonable.

Section 4. Cumulative Remedies. The respective rights and remedies provided by this Declaration or by law shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude or affect the exercise, at the same or at different times, of any other such rights or remedies for the same or any different default or breach or for the same or any different failure of any Owner or others to perform or observe any provision of this Declaration.

Section 5. Failure Not a Waiver. The failure of any Owner or of the Association or its Board of Directors, officers or agents to enforce any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter, nor shall such failure result in or impose any liability upon the Association or the Board, or any of its officers or agents.

Section 6. Enforcement Rights and Remedies of the Association: Limitations Thereon.

(a) **Rights Generally.** In the event of a breach or violation of any Association Rule or of any of the restrictions contained in any Governing Document by an Owner, the Owner's Family, guests, employees, invitees, licensees or tenants, the Board, for and on behalf of all other Owners, shall enforce the obligations of each Owner to obey such Rules or restrictions through the use of such remedies as are deemed appropriate by the Board and available in law or in equity, including but not limited to appropriate hiring of legal counsel, the imposition of fines and monetary penalties in accordance with subparagraph (b) below, the pursuit of legal action, the suspension of the Owner's right to use recreational Common Facilities or the suspension of the Owner's voting rights as a Member of the Association; provided, however, the Association's right to undertake disciplinary action against its Members shall be subject to the conditions set forth in this section.

The decision of whether it is appropriate or necessary for the Association to initiate enforcement or disciplinary action in any particular instance shall be within the sole discretion of the Association's Board or its duly authorized enforcement committee. If the Association declines to take action in any instance, any Owner shall have such rights of enforcement as exist by virtue of section 1354 of the California Civil Code or otherwise by law.

(b) **Schedule of Fines.** The Board may implement schedules of reasonable fines and penalties for particular offenses that are common or recurring in nature and for which a uniform fine schedule is appropriate (such as fines for late payment of assessments or illegally parked vehicles). Once imposed, a fine or penalty may be collected as a Special Individual Assessment.

(c) **Definition of "Violation".** A violation of the Governing Documents shall be defined as a single act or omission occurring on a single day. If the detrimental effect of a violation continues for additional days, discipline imposed by the Board may include one component for the violation and, according to the Board's discretion, a per diem component for so long as the detrimental effect continues. Similar violations on different days shall justify cumulative imposition of discipline. The Association shall take reasonable and prompt action to repair or avoid the continuing damaging effects of a violation or nuisance occurring within the Common Area at the cost of the responsible Owner.

(d) **Limitations on Disciplinary Rights.**

(i) **Loss of Rights, Forfeitures.** The Association shall have no power to cause a forfeiture or abridgment of an Owner's right to the full use and enjoyment of the Owner's Condominium on account of a failure by the Owner (or the Owner's Family members, tenants or invitees) to comply with any provision of the Governing Document or of any duly enacted Association Rule except: (A) where the loss or forfeiture is the result of the judgment of a court of competent jurisdiction as 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 levied by the Association; or (B) where the loss or forfeiture is limited to a temporary suspension of an Owner's rights as a Member of the Association (including, without limitation, the

imposition of monetary penalties) for failure to comply with any Governing Document so long as the Association's actions satisfy the requirements of subparagraph (ii) below.

(ii) Hearings and Appeals. No penalty or temporary suspension of rights shall be imposed pursuant to this article unless the Owner in violation is given at least 15 days' prior notice of the proposed penalty or temporary suspension and an opportunity to be heard before the Board or an authorized committee thereof with respect to the alleged violation(s) at a hearing conducted at least 5 days before the effective date of the proposed disciplinary action.

Notwithstanding the foregoing, under circumstances involving conduct that constitutes: (A) an immediate and unreasonable infringement of, or threat to, the safety or quiet enjoyment of neighboring Owners; (B) a traffic or fire hazard; (C) a threat of material damage to, or destruction of, the Common Area or Common Facilities; or (D) a violation of the Governing Documents that is of such nature that there is no material question regarding the identity of the violator or whether a violation has, in fact, occurred (such as late payment of Assessments or parking violations), the Board of Directors or its duly authorized agents may undertake immediate corrective or disciplinary action and, upon request of the offending Owner (which request must be received by the Association, in writing, within five days following receipt of notice of the Association's disciplinary action), conduct a noticed hearing as soon thereafter as reasonably possible.

If the Association acts on its own initiative to schedule a hearing, notice of the date, time and location of the hearing shall accompany the notice of disciplinary action. If the accused Owner desires a hearing, a written request therefor shall be delivered to the Association no later than five days following the date when the fine is levied. The hearing shall be held no more than 15 days following the date of the disciplinary action or 15 days following receipt of the accused Owner's request for a hearing, whichever is later. Under such circumstances, any fine or other disciplinary action shall be held in abeyance and shall only be due and payable if affirmed at the hearing.

At the hearing the accused shall be given the opportunity to be heard, including the right to present evidence and to present or question witnesses. The Board shall notify the accused Owner, in writing, of the Board's decision within three business days following conclusion of the hearing. In no event shall the effective date of any disciplinary action commence sooner than five days following conclusion of the hearing unless: (i) the hearing merely affirms summary disciplinary action initiated pursuant to the immediately preceding paragraph; or (ii) earlier commencement is necessary to preserve the quiet enjoyment of other residents or to prevent further damage to, or destruction of, the Project or any portion thereof.

(e) Notices. Any notice required by this article shall, at a minimum, set forth the date and time for the hearing, a brief description of the action or inaction constituting the alleged violation and a reference to the specific Governing Document provision alleged to have been violated. The notice shall be in writing and may be given by any method reasonably calculated to give actual notice; provided that if notice is given by mail it shall be sent by first-class or registered mail sent to the last address of the Member shown on the records of the Association.

(f) Rules Regarding Disciplinary Proceedings. The Board or an appropriate Committee appointed by the Board, shall be entitled to adopt rules to elaborate further on the procedures and forms to be utilized in the disciplinary hearing process. Such rules shall form a part of the Community Policies

and shall comply with the alternative dispute resolution procedures and requirements imposed by California Civil Code section 1354.

Section 7. Court Actions. Court actions to enforce the Governing Documents may only be initiated on behalf of the Association by resolution of the Board. Prior to the filing of any court action seeking declaratory or injunctive relief to interpret or enforce the Governing Documents (including either such action coupled with a claim for monetary damages not in excess of \$5,000), the Association shall first comply with the provisions of Civil Code section 1354 relating to alternative dispute resolution.

Section 8. Covenants Committee.

(a) **Appointment of Committee.** Acting pursuant to article X, section 1 of the Bylaws, the Board of Directors may establish a Covenants Committee to hear and decide cases involving alleged violations of the Governing Documents. If no committee is established, the Board shall perform this function.

(b) **Jurisdiction and Hearing Procedures of the Committee.** The Covenants Committee shall review written complaints from Owners or the Association's property manager, of alleged violations of the Governing Documents or Community Policies, and, when determined appropriate, conduct hearings and make findings regarding the alleged violation(s). The Covenants Committee may levy penalties and/or fines (pursuant to a Board-approved fine schedule) in the event the allegations regarding such violations are found to be true. To perform the foregoing, the Covenants Committee shall adopt rules of procedure for enforcement hearings and shall conduct its hearings in accordance with such rules after they have been approved by the Board.

(c) **Appeals.** The decisions of the Covenants Committee, if established, shall be appealable to the Board of Directors within 10 calendar days following receipt of the committee's decision. The Board shall have the discretion to hear any appealed matter or decline to take the appeal and thus affirm the decision of the Covenants Committee. Any decision to decline an appeal shall be based on a reasonable determination from the record that the appeal lacks merit. Decisions of the Board shall be final. Procedures for appeal and the hearing of appeals shall be set forth in the Community Policies.

(d) **Court Actions.** Court actions to enforce the Governing Documents may only be initiated on behalf of the Association by resolution of the Board.

ARTICLE XV
Protection of Mortgages

Section 1. Mortgages Permitted. Any Owner may encumber his or her Condominium with a Mortgage.

Section 2. Priority of Mortgages. Any line created or claimed under the provisions of this Declaration is expressly made subject and subordinate to the rights of any first Mortgage (meaning a mortgage with first priority over any other mortgage) that encumbers all or a portion of the development, or any Condominium, made in good faith and for value, and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of such mortgage unless the mortgagee expressly subordinates his or its interests, in writing, to such lien. No breach of the covenants, conditions or

restrictions contained in this Declaration shall affect, impair, defeat or render invalid the lien or charge of any Mortgage made in good faith and for value encumbering any Condominium. But all covenants, conditions and restrictions of this Declaration shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise, with respect to a Condominium.

Section 3. Curing Defaults. A mortgagee who acquires title to a Unit by judicial foreclosure or trustee's sale shall not be obligated to cure any breach of the provisions of this Declaration which is noncurable or of a type which is not practical or feasible to cure. The determination of the Board, made in good faith as to whether a breach is noncurable or not feasible to cure shall be final and binding on all mortgagees.

Section 4. Resale. It is intended that any loan to facilitate the resale of any Condominium after judicial foreclosure, deed in lieu of foreclosure or trustee's sale is a loan made in good faith and for value and entitled to all of the rights and protections afforded to other Mortgages.

Section 5. Relationship With Assessment Liens.

(a) The liens created under Article IV hereof shall be subordinate to the lien of any first Mortgage which was recorded prior to the date any such assessment become due.

(b) If any Condominium subject to a monetary lien created by any provision hereof shall be subject to the lien of a first Mortgage (i) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such first Mortgage; and (ii) the foreclosure of the lien of said first Mortgage or sale under a power of sale included in such Mortgage (such events being hereinafter referred to as "events of foreclosure") shall not operate to affect or impair the lien hereof, except that any persons who obtain an interest through any of the events of foreclosure of such first Mortgage shall take title free of the lien hereof for all such charges as shall have accrued up to the time of any of the events of foreclosure, but subject to the lien hereof for all of said charges that shall accrue subsequent to the events of foreclosure.

(c) Nothing in this section shall be construed to release any Owner from his or her obligation to pay for any assessment levied pursuant to the Declaration.

Section 6. Changes Requiring Institutional Mortgagee Approval. Except upon the prior written approval of at least seventy-five percent (75%) of all institutional mortgagees, based on one (1) vote for first Mortgage owned, neither the Association nor the Members shall be entitled to do any of the following:

(a) Dissolve the Association;

(b) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas; provided, however, the granting of easements for public utilities or for other public purposes consistent with the intended use of such common property by the Project shall not be deemed a transfer within the meaning of this clause.

(c) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner.

(d) Terminate maintenance of the Common Area or the Recreational Common Area.

(e) Abandon or terminate the status of the development as a Condominium Project, except for abandonment or termination provided by law in case of substantial destruction by casualty or taking by eminent domain.

(f) Use casualty insurance proceeds for losses to any part of the development for other than the repair, replacement and reconstruction of such improvements except as provided by statute in case of substantial destruction.

Section 7. Right of First Refusal. In the event this Declaration is amended to provide for any right of first refusal in the Association, a mortgagee who comes into possession of a Condominium pursuant to a judicial foreclosure or a trustee's sale shall be exempt therefrom.

Section 8. Conflicts. In the event of any conflict between any of the provisions of this article and any of the other provisions of this Declaration, the provisions of this article shall control.

Section 9. Mortgagees' Right To Cure Defaults. First mortgagees of Condominiums may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against all or a portion of the development and may pay overdue premiums on hazard insurance policies, for such property, and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

Section 10. Distribution Rights. No provisions of the Governing Documents shall be deemed to give an Owner, or any other party, priority over any rights of first mortgagees of a Condominium pursuant to their Mortgages in the case of a distribution to Owners of insurance proceeds on condemnation awards for losses to or a taking of Condominiums.

Section 11. Notices of Action. A holder or insurer of a first Mortgage, upon written request to the Association, (such request to state the name and address of such holder or insurer and the Unit number) will be entitled to timely written notice of:

(a) Any proposed amendment of the Governing Documents effecting a change in (1) the boundaries of any Unit, (2) the undivided interest in the common elements appurtenant to any Unit or the liability for Common Expenses appertaining thereto, (3) the number of votes in the Association appertaining to any Unit or (4) the purposes to which any unit or the common elements are restricted;

(b) Any proposed termination of the Condominium regime;

(c) Any condemnation or eminent domain proceeding affecting the Condominium regime or any portion thereof;

(d) Any significant damage or destruction to the Common Areas; and

(e) Any default under the Declaration or Bylaws which gives rise to a cause of action against the Owner of a Unit subject to the Mortgage of such holder or insurer, where the default has not been cured in 60 days.

Section 12. Inspection of Books. The holder and insurer of the First Mortgage on a Unit shall be entitled, upon request, to:

(a) Inspect the books and records of the Association during normal business hours, and to

(b) Require the preparation of and, if preparation is required, receive an annual audited financial statement of the Association for the immediately preceding fiscal year, except that such statement need not be furnished earlier than 90 days following the end of such fiscal year.

ARTICLE XVI

Notices

Section 1. Mailing Addresses. Any communication or notice of any kind permitted or required herein shall be in writing and may be served, as an alternative to personal service, by mailing the same as follows:

If to any Owner: To the street address of his or her Condominium or to such other address as the Owner may from time to time designate in writing to the Association as the Owner's mailing address.

If to the Association: Hurley Place Owners Association, at the principal office of the Association or to such other address as the Association may from time to time designate in writing to the Owner.

Section 2. Personal Service Upon Co-Owners and Others. Personal service of a notice or demand to one of the co-Owners of any Condominium, to any general partner of a partnership which is the Owner of Record of any Condominium, or to any officer or agent for service of process of a corporation which is the Owner of Record of any Condominium, shall be deemed delivered to all such co-Owners, to such partnership, or to such corporation, as the case may be.

Section 3. Deposit in United States Mails. All notices and demands served by mail shall be by first-class or certified mail, with postage prepaid, and shall be deemed delivered 72 hours after deposit in the United States mail in the County.

ARTICLE XVII

No Public Rights in the Property

Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any portion of the Property to the general public or for any public use or purpose whatsoever.

ARTICLE XVIII

Amendment of Declaration

Section 1. Amendment by Members. An amendment to this Declaration may be made at any time upon the vote or written assent, or any combination thereof, of 51 percent of the total voting power of the Members.

Section 2. Mortgage Approval. Mortgage approval of any proposed material amendment shall be required in accordance with article XV, section 6 of this Declaration.

Section 3. Effective Date of Amendment. The amendment shall be effective upon the Recordation of an instrument setting forth the terms thereof duly certified and executed by the president and secretary of the Association. If the consent or approval of any governmental authority, Mortgagee, or other person, firm, agency or entity is required under this Declaration with respect to any amendment or the revocation of any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained.

Section 4. Reliance on Amendments. Any amendments made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith.

ARTICLE XIX

General Provisions

Section 1. Term. The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges and equitable servitudes contained in this Declaration shall run with, and shall benefit and burden the Condominiums and the Common Area as herein provided, and shall inure to the benefit of and be binding upon the Owners, the Association, its Board of Directors, officers and agents, and their respective successors in interest, for the term of 40 years from the date of recordation of this Declaration. After the expiration of the initial term, the term of this Declaration shall be automatically extended for successive periods of 10 years each unless, within 6 months prior to the expiration of the initial 40-year term or any such 10-year extension period, a written instrument, approved by Owners entitled to vote and holding at least a majority of the voting power of the Association, terminating the effectiveness of this Declaration, is Recorded.

Section 2. Construction.

(a) **Restrictions Construed Together.** All of the covenants, conditions and restrictions of this Declaration shall be liberally construed together to promote and effectuate the fundamental concepts of the development of the Property as set forth in the recitals of this Declaration. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce that provision in a subsequent application or any other provision hereof.

(b) **Restrictions Severable.** Notwithstanding the provisions of subparagraph (a) above, the covenants, conditions and restrictions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

(c) **Gender and Number.** As used in this Declaration, the singular shall include the plural and the plural the singular, unless the context requires the contrary, and the masculine, feminine or neuter gender shall each be deemed to include the others whenever the context so indicates.

(d) **Captions.** All captions or titles used in this Declaration are intended solely for convenience of reference and shall not affect the interpretation or application of that which is set forth in any of the terms or provisions of the Declaration.

(e) Exhibits. All exhibits attached hereto and the Condominium Plan recorded together with the Original Declaration shall be deemed to be incorporated herein by reference.

DATED: Oct. 31, 1994.

HURLEY PLACE OWNERS ASSOCIATION, a
California nonprofit mutual benefit corporation

By 
Shirley Deasy, President

By 
Marilyn Peterson, Secretary

1

1

personally appeared *****SHIRLEY DEASY*****

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.



Signature

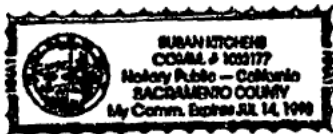
Jana B. F. Jurel

State of California
County of Sacramento

On October 31, 1994 before me, Susan Kitchens, Notary Public
DATE NAME TITLE OF OFFICER - F.G. "JANE DOE, NOTARY PUBLIC"

personally appeared Marilee Peterson
NAME(S) OF SIGNER(S)

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



WITNESS my hand and official seal.

Susan Kitchens
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL
☐ CORPORATE OFFICER

TITLE(S)

- ☐ PARTNER(S) ☒ LIMITED
☐ GENERAL

- ☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER:

DESCRIPTION OF ATTACHED DOCUMENT

Joint Revocable Declaration
Establishing a Plan for Condemnation
for the City of Sacramento
TITLE OR TYPE OF DOCUMENT

47
NUMBER OF PAGES

October 31, 1994
DATE OF DOCUMENT

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(ES)

SIGNER(S) OTHER THAN NAMED ABOVE

AFTER RECORDING RETURN TO:

SAFECO Title Insurance Company
2201 K Street
Sacramento, California 95816
Attention: Subdivision Department

101507

OFFICIAL RECORDS
SACRAMENTO COUNTY
RECORDED AT REQUEST OF
Safeco Title Insurance Company

B810701P 188

JUL 1 1981 800 AM

J. A. Simpson
COUNTY CLERK - RECORDER

DECLARATION OF ANNEXATION
HURLEY PLACE OWNERS ASSOCIATION

THIS DECLARATION OF ANNEXATION is made as of the 29th day of June, 1981, by The Hurley Company, a general partnership, hereinafter called "Declarant," with reference to the following facts:

\$8.00

A. Declarant executed a condominium declaration entitled "Enabling Declaration Establishing a Plan for Condominium Ownership in Hurley Place Condominiums," which was recorded on February 3, 1981, in Book 810203 Pages 366 through 432, inclusive, in the Official Records of Sacramento County, California, and which covered all that real property located in the County of Sacramento, State of California, described in Exhibit "1" attached hereto (hereinafter referred to as "phase 1 property").

B. Article 2 of the Declaration provides that Declarant may annex to the development known as Hurley Place Condominiums, all or a portion of the property described in Exhibit "4" to the Declaration, thereby making the property annexed subject to the Declaration and to the jurisdiction of the Owner's Association provided for in the Declaration.

C. Declarant is the owner of the real property located in the County of Sacramento, State of California described in Exhibit "2" attached hereto, which property is a part of the property described in Exhibit "4" to the Declaration. Declarant now desires to annex the property described in such Exhibit "2" to the development known and described as Hurley Place Condominiums, and thereby make it subject to the terms, conditions and restrictions of the Declaration.

04970/005
230680 SKE

NOW, THEREFORE, Declarant declares the following:

1. Pursuant to the terms of the Declaration, Declarant as owner, hereby declares that all of the property described in Exhibit "2" attached hereto is hereby annexed to and made a part of the development known as Hurley Place Condominiums. The property described in Exhibit "2" attached hereto shall be held, sold, leased, transferred, occupied and conveyed subject to the terms, provisions, covenants, conditions, restrictions and easements of the Declaration, as amended, or as hereafter amended. (The property in Exhibit "2" is hereinafter referred to as the "second phase property.")
2. Declarant incorporates by reference that certain second phase condominium plan recorded concurrently herewith.
3. The second phase property shall include units with the remainder of the second phase property being Common Area, as shown in said second phase condominium plan, all as defined in the Declaration.
4. The annual assessments provided for in the Declaration shall commence as to all condominium units within the second phase property on the first day of the calendar month following the date on which the first conveyance to a purchaser by Declarant of a condominium unit within the second phase property is recorded.
5. As provided in Section 2.05 of the Declaration, the owners of units 29 through 56 in the second phase property will be granted nonexclusive easements over the common area of the phase 1 property, except for those portions which are restricted common area or any structure containing residence units.

IN WITNESS WHEREOF, the Declarant has executed this Declaration of Annexation on the day and year first above written.

THE HURLEY COMPANY,
a general partnership

By: _____

Hank Fisher, general partner

RYDER HOMES, a California corporation,
general partner

By: _____

Ned K. Ryder, President

By: _____

Ned K. Ryder, Secretary

STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

On June 29, 1981

before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____

Hank Fisher

_____ known to me
to be one _____ of the partners of the partnership
that executed the within instrument, and acknowledged to me that
such partnership executed the same.

Signature _____

Mary Matheny



FOR NOTARY SEAL OR STAMP



EXHIBIT 1

Lots 1 & 2, as shown on the official plat of "HURLEY PLACE
CONDOMINIUMS", filed in the office of the County Recorder
of Sacramento County on November 5, 1980, in Book
143 of Maps, Map No. 1.

STATE OF CALIFORNIA

COUNTY OF CONTRA COSTA

SS.

On June 29, 1981, before me, the undersigned,
a Notary Public in and for said County and State, personally
appeared Ned K. Ryder, known to me to
be the President, and Ned K. Ryder, known
to me to be the Secretary of Ryder Homes

the corporation that
executed the within instrument and known to me to be the persons
who executed the within instrument on behalf of said corporation,
said corporation being known to me to be one of the partners of
The Hurley Company

the
partnership that executed the within instrument, and acknowledged
to me that such corporation executed the same as such partner
and that such partnership executed the same.

Mary Matheny



FOR NOTARY SEAL OR STAMP



EXHIBIT 2

Description of Property to be Annexed

Lot 3, as shown on the official plat of "HURLEY PLACE
CONDOMINIUMS", filed in the office of the County Recorder
of Sacramento County on November 5, 1980, in Book
143 of Maps, Map No. 1.

When Recorded Return To:
 HANK FISHER PROPERTIES, INC.
 3500 American River Dr., #100
 Sacramento, CA 95825

BOOK PAGE
 02 10 19 0137

155245
 OFFICIAL RECORDS
 SACRAMENTO COUNTY
 RECORDED AT REQUEST OF
 Safeco Title Insurance Company

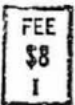
OCT 19 1982 800 AM

J.A. Simpson
 COUNTY CLERK - RECORDER

DECLARATION OF ANNEXATION

HURLEY PLACE OWNERS ASSOCIATION

THIS DECLARATION OF ANNEXATION is made as of the 5th day of October, 1982, by The Hurley Company, a general partnership, hereinafter called "Declarant", with reference to the following facts:



A. Declarant executed a condominium declaration entitled "ENABLING DECLARATION ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP IN HURLEY PLACE CONDOMINIUMS", which was recorded on February 3, 1981, in Book 81-02-03 Pages 366 through 432, inclusive, in the Official Records of Sacramento County, California, and which covered all that real property located in the County of Sacramento, State of California, described in Exhibit "1" attached hereto (hereinafter referred to as "phase 1 property").

B. Article 2 of the Declaration provides that Declarant may annex to the development known as Hurley Place Condominiums, all or a portion of the property described in Exhibit "4" to the Declaration thereby making the property annexed subject to the Declaration and to the jurisdiction of the Owner's Association provided for in the Declaration.

C. Declarant is the owner of the real property located in the County of Sacramento, State of California described in Exhibit "2" attached hereto, which property is a part of the property described in Exhibit "4" to the Declaration. Declarant now desires to annex the property described in such Exhibit "2" to the development known and des-

BOOK PAGE
82 10 19 0138

cribed as Hurley Place Condominiums, and thereby make it subject to the terms, conditions and restrictions of the Declaration.

NOW, THEREFORE, Declarant declares the following:

1. Pursuant to the terms of the Declaration, Declarant as owner, hereby declares that all of the property described in Exhibit "2" attached hereto is hereby annexed to and made a part of the development known as Hurley Place Condominiums. The property described in Exhibit "2" attached hereto shall be held, sold, leased, transferred, occupied and conveyed subject to the terms, provisions, covenants, conditions, restrictions and easements of the Declaration, as amended, or as hereafter amended. (The property in Exhibit "2" is hereinafter referred to as the "second phase property".)

2. Declarant incorporates by reference that certain second phase condominium plan recorded July 1st, 1981 in Book 81-07-01 page 193, of the Official Records of the County of Sacramento, State of California.

3. The second phase property shall include units with the remainder of the second phase property being Common Area, as shown in said second phase condominium plan, all as defined in the Declaration.

4. The annual assessments provided for in the Declaration shall commence as to all condominium units within the second phase property on the first day of the calendar month following the date on which the first conveyance to a purchaser by Declarant of a condominium unit within the second phase property is recorded.

5. As provided in Section 2.05 of the Declaration, the owners of units 29 thru 56 in the second phase property will be granted nonexclusive easements over the common area of the phase 1 property, except for those portions which are restricted common area or any structure containing residence units.

BOOK PAGE
82 10 19 0139

IN WITNESS WHEREOF, the Declarant has executed this Declaration of Annexation on the day and year first above written.

THE HURLEY COMPANY,
a general partnership

By: [Signature]
Mark Fisher, general partner

RYDER HOMES, a California corporation,
general partner

By: [Signature]
Red K. Ryder, President

By: [Signature]
Red K. Ryder, Secretary

STATE OF CALIFORNIA
COUNTY OF SACRAMENTO } SS.

On October 5th, 1982

before me, the undersigned, a Notary Public in and for said County and State, personally appeared

Mark Fisher

known to me
to be one of the partners of the partnership
that executed the within instrument, and acknowledged to me that
such partnership executed the same.

Signature

[Signature]



FOR NOTARY SEAL OR STAMP



NANCY L. FRENCH
NOTARY PUBLIC
SACRAMENTO COUNTY, CALIFORNIA
My Commission Expires November 19, 1982

BOOK PAGE
82 70 19 0140

EXHIBIT 1

Lots 1 & 2, as shown on the official plat of "HURLEY PLACE
CONDOMINIUMS", filed in the office of the County Recorder
of Sacramento County on November 5, 1980, in Book
143 of Maps, Map No. 1.

STATE OF CALIFORNIA

COUNTY OF CONTRA COSTA } ss.

On October 5th, 1982 before me, the undersigned,
a Notary Public in and for said County and State, personally
appeared Ned K. Ryder known to me to
be the President, and Ned K. Ryder known
to me to be the Secretary of
Ryder Homes

the corporation that
executed the within instrument and known to me to be the persons
who executed the within instrument on behalf of said corporation,
said corporation being known to me to be one of the partners of
The Burley Company the
partnership that executed the within instrument, and acknowledged
to me that such corporation executed the same as such partner
and that such partnership executed the same.

Nancy L. French

FOR NOTARY SEAL OR STAMP



NANCY L. FRENCH
NOTARY PUBLIC
SACRAMENTO COUNTY, CALIFORNIA
My Commission Expires November 19, 1982

BOOK PAGE

37 10 13 0141

EXHIBIT 2

Description of Property to be Annexed

Lot 3, as shown on the official plat of "HURLEY PLACE CONDOMINIUMS",
filed in the office of the County Recorder of Sacramento County,
California, on November 5, 1989, in Book 143 of Maps, Map No. 1.