

**“If this document contains any restriction based on age, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code by submitting a “Restrictive Covenant Modification” form, together with a copy of the attached document with the unlawful provision redacted to the county recorder’s office. The “Restrictive Covenant Modification” form can be obtained from the county recorder’s office and may be available on its internet website. The form may also be available from the party that provided you with this document. 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.”**

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:  
NAME

MAILING ADDRESS

CITY, STATE and ZIP CODE

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

### RESTRICTIVE COVENANT MODIFICATION

I (We) \_\_\_\_\_ have an ownership interest of record in the property located at \_\_\_\_\_ that is covered by the document described below.

The following referenced document contains a restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income (as defined in subdivision (p) of Section 12955 of the Government Code), or ancestry that violates federal fair housing law and that restriction is void.

Pursuant to Section 12956.2 of the Government Code, this document is being recorded solely for the purpose of eliminating a restrictive covenant as shown on page(s) \_\_\_\_\_ of the document recorded on \_\_\_\_\_ (date) in book \_\_\_\_\_ and page \_\_\_\_\_, or as instrument number \_\_\_\_\_ of the Official Records of the County of Los Angeles. Attached hereto is a complete copy of the original document containing the unlawfully restrictive language with the unlawful language stricken through.

This modification document shall be indexed in the same manner as the original document pursuant to Government Code Section 12956.2(c).

The effective date of the terms and conditions of this modification document shall be the same as the effective date of the original document referenced above.

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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

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

Printed Name:

Printed Name:

[NOTARY ACKNOWLEDGMENT REQUIRED]

Approved:  
Los Angeles County Counsel

\_\_\_\_\_  
By:  
Deputy County Counsel

Date: \_\_\_\_\_

**As of 05/16/2022, Los Angeles County Clerk Recorder does not provide procedures for the Restrictive Covenant Modification process compliant with Government Code 12956.2 with the available Restrictive Covenant Modification form. For further information on the procedures, contact Los Angeles County Clerk Recorder at (800) 201-8999.**

RECORDING REQUESTED BY:

FIDELITY NATIONAL TITLE COMPANY  
SUBDIVISION DEPARTMENT

WHEN RECORDED, MAIL TO:

JACKSON, DeMARCO, TIDUS &  
PECKENPAUGH (SLM)  
2030 Main Street, Suite 1200  
Irvine, CA 92614

Certified to be a true and correct  
copy of CD + R3  
Recorded November 27, 2013  
As Instrument No. 20131671481  
of Official Records of Los Angeles  
County, California  
By [Signature]  
FIDELITY NATIONAL TITLE CO.

(Space Above for Recorder's Use)

DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND RESERVATION OF EASEMENTS  
FOR  
THE TERRACES AT THREE SIXTY AT SOUTH BAY

NOTE: CERTAIN DISPUTES ARISING UNDER THIS DECLARATION, INCLUDING  
DISPUTES CONCERNING THE DESIGN OR CONSTRUCTION OF THE  
COMMUNITY, SHALL BE SUBMITTED TO JUDICIAL REFERENCE, A FORM OF  
ALTERNATIVE DISPUTE RESOLUTION, IN ACCORDANCE WITH ARTICLE 17.

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**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND RESERVATION OF EASEMENTS  
FOR  
THE TERRACES AT THREE SIXTY AT SOUTH BAY**

This Declaration of Covenants, Conditions, Restrictions and Reservation of Easements is made by William Lyon Homes, Inc., a California corporation ("**Declarant**"). The capitalized terms used in the Preamble below are defined in Article 1.

**PREAMBLE**

A. Declarant is the owner of that certain real property ("**Phase 1**") in the City of Hawthorne, County of Los Angeles, State of California, described as follows:

Units 1 to 12, inclusive, Association Property and Common Area as shown and described in that certain Amended and Restated Condominium Plan for The Terraces at Three Sixty at South Bay, Units 1 to 12 inclusive, in a portion of Parcel 1 of Lot Line Adjustment No. 2013-LL02, Recorded as Instrument No. 20131422327 of Official Records ("**Phase 1 Plan**"), which Parcel 1 is set forth upon or constituted by the Certificate of Compliance recorded on October 2, 2013, as Instrument No. 20131422327, in the Office of the Los Angeles County Recorder (the "**Lot Line Adjustment**").

B. Declarant intends to create a "condominium project," as defined in California Civil Code Section 1351(f) [after January 1, 2014, Section 4125], which is also a "common interest development" within the meaning of California Civil Code Section 1351(c) [after January 1, 2014, Section 4100], and a "subdivision" as defined in California Business and Professions Code Section 11000. Declarant intends to impose mutually beneficial restrictions under a general plan for subdividing, maintaining, improving and selling the Condominiums in the Community for the benefit of all the Condominiums pursuant to the CID Act. The general plan of development will include forming an owners association under the California Non-Profit Mutual Benefit Corporations Law to which will be assigned the powers of (1) owning, maintaining and administering the Association Property, (2) administering and enforcing the Governing Documents, and (3) collecting and disbursing the Assessments and charges hereinafter created. Declarant will cause the corporation to be formed to exercise such powers, as required by California Civil Code Section 1363 [after January 1, 2014, Sections 4800, 4805, 4820, 5000(a), 5240(b), 5850(a), 5855, and 5865]. The Members of the Association will be the Owners in the Community, as further provided in Article 4 herein.

D. The Community is to be held, conveyed, encumbered, leased, used and improved subject to covenants, conditions, restrictions and easements in this Declaration, all of which are in furtherance of a plan for subdividing, maintaining, improving and selling the Condominiums

in the Community. All provisions of this Declaration are imposed as equitable servitudes on the Community. All covenants, conditions, restrictions and easements in this Declaration shall run with and burden the Community, and be binding on and for the benefit of all of the Community and all Persons acquiring any interest in the Community.

E. The Community is also subject to that certain Cost Sharing Agreement entered into by and between the Association and the Three Sixty Association. All provisions set forth in the Cost Sharing Agreement are imposed as equitable servitudes on both the Community and the Three Sixty Community. The provisions set forth in the Cost Sharing Agreement shall run with and burden both the Community and the Three Sixty Community, and be binding on and for the benefit of all the Community and the Three Sixty Community, as well as all Persons acquiring any interest in the Community and/or the Three Sixty Community.

## **ARTICLE 1 DEFINITIONS AND INTERPRETATION**

1.1 **DEFINITIONS.** Unless otherwise expressly provided, the following words and phrases when used in this Declaration have the following meanings.

1.1.1 **Annexable Area.** Annexable Area means the real property described in *Exhibit A* which may be made subject to this Declaration pursuant to Article 16. Any references in this Declaration to Annexable Area are references to the Annexable Area as a whole and to portions thereof.

1.1.2 **Annual Assessment.** Annual Assessment means a charge against the Owners and their Condominiums representing their share of the Common Expenses. The Annual Assessment is a regular assessment as described in California Civil Code Section 1366 [after January 1, 2014, Sections 5600(a), 5605(a), 5605(b), 5605(c), 5610, 5615, 5620, 5650(b), and 5650(c)].

1.1.3 **Articles.** Articles means the Articles of Incorporation of the Association currently in effect as of the time of Recordation hereof. A copy of the Articles is attached for informational purposes as *Exhibit B*; provided, however, that the Association may, from time to time, amend the Articles without need to amend this Declaration. In such event, the amended Articles shall control over the version attached hereto.

1.1.4 **Assessment.** Assessment means any Annual Assessment, Capital Improvement Assessment, Reconstruction Assessment and Special Assessment.

1.1.5 **Association.** Association means The Terraces at Three Sixty at South Bay Association, a California nonprofit corporation (formed pursuant to the California Nonprofit Mutual Benefit Corporation Law or successor statutes), and its successors-in-interest. The Association is an "association" as defined in California Civil Code Section 1351(a), [after January 1, 2014, Section 4080].

1.1.6 **Association Maintenance Area.** Association Maintenance Area means those Improvements on Units or other real property which are not owned in fee by the Association but which are designated in the Governing Documents for maintenance by the

Association. The Association has the right to assign or delegate the maintenance responsibility for the Association Maintenance Areas to the Three Sixty Association pursuant to the Cost Sharing Agreement.

(a) **Generally.** The Association Maintenance Areas in a Phase may include one or more of the following as constructed by Declarant or as reconstructed in accordance with the original plans thereof:

(1) The structural components (including pilasters, caissons, footing and cap) of the Community Wall, all wrought iron or tubular steel portions of the Community Wall (if any), and any surface of the Community Wall that faces away from the Unit it encloses or on which it is constructed; and

(2) Landscaping, irrigation equipment and walkways constructed by Declarant in the front yard areas of Units.

(b) **Association Maintenance Areas in Phase 1.** The Association Maintenance Areas in Phase 1 are described or depicted on *Exhibit D* attached hereto.

(c) **Association Maintenance Areas in Future Phases.** Association Maintenance Areas in each future Phase shall include the items listed in subparagraph (a) above as applicable to the Units in such Phase, all as depicted and described in the applicable Notice of Addition or Supplemental Declaration. Declarant or the Board may from time to time designate additional Association Maintenance Areas in a Supplemental Declaration.

1.1.7 **Association Maintenance Funds.** Association Maintenance Funds means the accounts created for Association receipts and disbursements pursuant to Article 7.

1.1.8 **Association Property.** Association Property means real or personal property designated by the Declarant or the Board as Association Property and therefore made subject to the restrictions on Association Property established in the Governing Documents. Any references in this Declaration to Association Property are references to the Association Property as a whole and to portions thereof. The Association Property is "common area" as defined in California Civil Code Section 1351(b) [after January 1, 2014, Section 4095].

(a) **Generally.** Association Property in a Phase consists of fee title to all the real property described as Association Property in the Condominium Plan for the Phase (excluding the Units and Residences in such Phase), together with such additional real property as may be designated Association Property in this Declaration (in the case of Phase 1) or in a Supplemental Declaration or Notice of Addition (in the case of subsequent Phase).

(1) Association Property Improvements. Association Property includes the Improvements attached to the real property, including Private Streets, sidewalks, curbs, street lights, street trees and landscaped areas outside Unit boundaries.

(2) Easements Granted to or Reserved for the Association. In addition, Association Property includes all of the easements described in this Declaration and

granted to the Association, provided, however, the Association shall only have the responsibility for maintenance of such easements where such maintenance responsibility is given to the Association.

(b) **Association Property in Phase 1.** The Association Property in Phase 1 consists of all the real property described as Association Property in the Condominium Plan for Phase 1 (except for the Units, Residences and Common Area shown on that Plan), and the Improvements described in subparagraph (a) above as applicable to the real property in Phase 1.

(c) **Association Property in Future Phases.** The Association Property in future Phases shall consist of the items described in subparagraph (a) above, as applicable to each of those Phases, together with such additional Association Property as Declarant may designate pursuant to Article 16.

1.1.9 **Association Property Parking Spaces.** Association Property Parking Spaces is defined in Section 2.10.4(d).

1.1.10 **BMPs.** BMPs means “Best Management Practices,” which are methods, protocols and procedures for the control, reduction and prevention of storm water and pollutant runoff from the Community into storm drains and waterways. The BMPs applicable to the Community include both “source control” BMPs (which are structural or design requirements), “post-construction” BMPs (which include maintenance requirements for the Association and practices and procedures that must be followed by the Association and by all occupants of the Community). The cost of Association maintenance and performance of BMPs will be a Common Expense.

1.1.11 **Board or Board of Directors.** Board or Board of Directors means the Association’s Board of Directors.

1.1.12 **Budget.** Budget means a written, itemized estimate of the Association’s income and Common Expenses prepared pursuant to the Bylaws.

1.1.13 **Bylaws.** Bylaws means the Bylaws of the Association as currently in effect. A copy of the Bylaws as initially adopted by the Board is attached for informational purposes as *Exhibit C*, provided that the form that is actually adopted by the Board shall control in the event of any conflict with the version attached hereto, without need to amend this Declaration. Moreover, the Association may, from time to time, amend the Bylaws without need to amend this Declaration. In such event, the amended Bylaws shall control over the version attached hereto.

1.1.14 **Capital Improvement Assessment.** Capital Improvement Assessment means a charge against the Owners and their Condominiums representing their share of the Association’s cost for installing or constructing capital Improvements on the Association Property. Capital Improvement Assessments shall be levied in the same proportion as Annual Assessments. Capital Improvement Assessments are special assessments as described in California Civil Code Section 1366 [after January 1, 2014, Sections 5600(a), 5605(a), 5605(b), 5605(c), 5610, 5615, 5620, 5650(b), and 5650(c)].

1.1.15 **CID Act.** CID Act means the Davis-Stirling Common Interest Development Act, which currently is Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the California Civil Code, which is scheduled to be repealed and moved to Part 5 of Division 4 of the Civil Code on January 1, 2014, and any successor statutes.

1.1.16 **City.** City means the City of Hawthorne, California, and its various departments, divisions, employees and representatives.

1.1.17 **Close of Escrow.** Close of Escrow means the date on which a deed is Recorded conveying a Condominium pursuant to a transaction requiring the issuance of a Public Report.

1.1.18 **Common Area.** Common Area means the volumes of airspace described in the Condominium Plans, which shall be owned by Owners in each Phase as tenants-in-common. Any references in this Declaration to Common Area are references to the Common Area as a whole and to portions thereof. Common Area constitutes "Common Area" as defined in the Three Sixty Declaration. Common Area, as defined herein, is a portion of the "Common Area" as defined in Section 1351(b) of the California Civil Code [after January 1, 2014, Section 4095] and is the undivided interest in common in a portion of real property held by the Owners in the Phase, all in accordance with California Civil Code Section 1351(f) [after January 1, 2014, Section 4125]. The Common Area in Phase 1 is shown on the Phase 1 Condominium Plan and each Owner of a Condominium in Phase 1 shall own an undivided one-twelfth (1/12<sup>th</sup>) interest in the Common Area in Phase 1.

1.1.19 **Common Expenses.** Common Expenses means those expenses for which the Association is responsible under this Declaration. Common Expenses include the actual and estimated costs of and reserves for maintaining, insuring, managing and operating the Association Property (including amounts incurred for maintenance this Declaration imposes on the Association), including:

(a) Association Property including landscaping, maintenance and other maintenance services benefiting the Association Property;

(b) The amount due by the Association to the Three Sixty Association in accordance with the terms as specifically outlined in the Cost Sharing Agreement.

(c) The cost of all utilities (including sewer and water) and mechanical and electrical equipment serving the Association Property;

(d) The cost of trash collection and removal from central receptacles;

(e) The cost of compliance with the SUSMP, including maintenance of the Drainage Improvements, street sweeping and performance of BMPs, which are applicable to the Association Property;

(f) The costs and fees attributable to managing and administering the Association, compensating the Manager, accountants, attorneys and employees, all insurance

covering the Community and the Board of Directors, officers and agents of the Association, and bonding the members of the Board;

(g) The cost to repair damage to public utility Improvements if caused by the Association during installation, maintenance or repair of private utility Improvements;

(h) Unpaid Special Assessments, Reconstruction Assessments and Capital Improvement Assessments;

(i) Taxes paid by the Association;

(j) Amounts paid by the Association for discharge of any lien or encumbrance levied against the Community, and

(k) All other expenses incurred by the Association for the Community, for the common benefit of the Owners.

1.1.20 **Common Property.** Common Property means the Association Property and the Association Maintenance Areas, or portions thereof, as such property has been annexed to this Declaration from time to time.

1.1.21 **Community.** Community means (a) Phase 1 and (b) each Phase described in a Notice of Addition. The Community is a "condominium project" as defined in California Civil Code Section 1351(f) [after January 1, 2014, Section 4125], and a "common interest development" as defined in California Civil Code Section 1351(c) [after January 1, 2014, Section 4100]. Any references in this Declaration to the Community are references to the Community as a whole and to portions thereof. If all Phases of the Community are annexed as presently planned, the Community is anticipated to include 93 Units located in The Terraces at Three Sixty at South Bay.

1.1.22 **Community Wall.** Community Wall means any wall, sound wall, retaining wall, or fence in the Community that is maintained entirely or partially by the Association. Party Walls and other fences or walls that are maintained entirely by the Owners are not Community Walls. The Community Walls in Phase 1, if any, are depicted as part of the Association Maintenance Areas on *Exhibit D*; those in later Phases will be depicted in the applicable Supplemental Declaration. The obligation to maintain the Community Walls in a particular Phase will not arise until the commencement of Annual Assessments in that Phase or as otherwise directed in this Declaration, or in a Notice of Addition or Supplemental Declaration. Declarant may designate additional Community Walls in a Notice of Addition or Supplemental Declaration. Community Walls in the Community in general (a) are constructed on or along a Unit boundary; or (b) separate a Unit from Association Property; or (c) are constructed entirely within Association Property; or (d) are designated as a Community Wall by Declarant in this Declaration, or in a Notice of Addition or Supplemental Declaration.

1.1.23 **Condominium.** Condominium means an estate in real property as defined in California Civil Code Section 1351(f) [after January 1, 2014, Section 4125]. A Condominium consists of an undivided fee simple ownership interest in the Common Area in a



Phase, together with a separate ownership interest in fee in a Unit and all easements appurtenant thereto. Subject to the provisions of Article 10, the undivided fee simple interest in the Common Area in a Phase is appurtenant to each Unit in such Phase and is a fraction having one (1) as its numerator and the number of Units in that Phase as its denominator; and shall be held by the Owners of Condominiums in that Phase as tenants-in-common.

**1.1.24 Condominium Plan.** Condominium Plan means the Recorded plan, as currently in effect, for a Phase consisting of (a) a description or survey map of the Phase or portion thereof, which shall refer to or show monumentation on the ground, (b) a three dimensional description of the Phase or portion thereof, one or more dimensions of which may extend for an indefinite distance upwards or downwards in sufficient detail to identify the Association Property, Common Area, as well as each Unit and Residence, and (c) a certificate consenting to the Recordation thereof signed and acknowledged by the record owner of fee title to the Phase or portion thereof, and by either the trustee or the Mortgagee of each Recorded Mortgage encumbering the Phase or portion thereof. The Condominium Plan for each Phase shall also approximately show and describe the Private Streets in the Phase; provided, however, that the Private Streets in a particular Phase may be excepted from the Association Property in the Phase and conveyed to the Association in a later Phase, all in accordance with the development plan and DRE-reviewed Budget of the Association.

**1.1.25 Cost Sharing Agreement.** Cost Sharing Agreement means the agreement entered into between the Association and the Three Sixty at South Bay Association. Under the terms of this Cost Sharing Agreement, Owners are provided access to and use and enjoyment of the Shared Private Streets, private parks and recreation facilities in the Three Sixty Community, and Easements Granted to or Reserved for the Three Sixty Association. In exchange for the access, use and enjoyment of the amenities of the Three Sixty Community, the Association agrees to pay a fee, as specifically outlined in the Cost Sharing Agreement, to the Three Sixty Association to assist with the reasonable costs of maintenance thereof.

**1.1.26 County.** County means Los Angeles County, California, and its various departments, divisions, employees and representatives.

**1.1.27 Declarant.** Declarant means William Lyon Homes, Inc., a California corporation, its successors and any Person to which it shall have assigned any of its rights by an express written assignment. As used in this Section, "successor" means a Person who acquires Declarant or substantially all of Declarant's assets by sale, merger, reverse merger, consolidation, sale of stock or assets, operation of law or otherwise. Declarant shall determine in its sole discretion the time, place and manner in which it discharges its obligations and exercises the rights reserved to it under this Declaration. Declarant is a "builder" as described in California Civil Code Section 1375 [after January 1, 2014, Section 6000].

**1.1.28 Declaration.** Declaration means this instrument as currently in effect.

**1.1.29 Design Guidelines.** Design Guidelines mean the rules or guidelines setting forth procedures and standards for submission of plans for Design Review Committee approval.

1.1.30 **Design Review Committee or Committee.** Design Review Committee or Committee means the Design Review Committee created in accordance with Article 5.

1.1.31 **Drainage Improvements.** Drainage Improvements means, collectively, below-ground drain lines, surface Improvements such as area drains, earthen or concrete drainage swales, bio-retention flow-through planters, Filterra bio-filtration retention catch basins, and appurtenant Improvements constructed in the Community.

1.1.32 **DRE.** DRE means the California Department of Real Estate and any department or agency of the California state government which succeeds to the DRE's functions.

1.1.33 **Family.** Family means natural individuals, related or not, who live as a single household in a Residence.

1.1.34 **Fannie Mae.** Fannie Mae means the Federal National Mortgage Association, a government-sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968 and its successors.

1.1.35 **Federal Agencies.** Federal Agencies means and refers collectively to one (1) or more of FHFA, FHA, VA, Freddie Mac, Fannie Mae and Ginnie Mae and each of their successors.

1.1.36 **FHA.** FHA means the Federal Housing Administration of the United States Department of Housing and Urban Development and its successors.

1.1.37 **FHFA.** FHFA means the Federal Housing Finance Agency, established pursuant to the Housing and Economic Recovery Act of 2008.

1.1.38 **FHA/VA Requirements.** FHA/VA Requirements means the requirements applicable to the Community set forth in (a) HUD Mortgagee Letter 2011-22 (in the case of FHA-insured loans); and (b) Chapter 16 of VA Pamphlet 26-7 (in the case of VA-guaranteed loans, as such requirements may be updated or modified in the future by FHA or VA, respectively).

1.1.39 **First Mortgage.** First Mortgage means a Mortgage with first priority over other Mortgages on a Condominium.

1.1.40 **First Mortgagee.** First Mortgagee means the Mortgagee of a First Mortgage.

1.1.41 **Fiscal Year.** Fiscal Year means the fiscal accounting and reporting period of the Association.

1.1.42 **Freddie Mac.** Freddie Mac means the Federal Home Loan Mortgage Corporation created by Title II of the Emergency Home Finance Act of 1970 and its successors.

1.1.43 **General Operating Fund.** General Operating Fund means that portion of the Common Expenses allocated for the daily operation of the Association.

1.1.44 **General Reserve Fund.** General Reserve Fund means that portion of the Common Expenses allocated (a) for the future repair and replacement of, or additions to, structural elements, mechanical equipment and other major components of Association-maintained Improvements, and (b) amounts necessary to cover the deductibles under all insurance policies maintained by the Association.

1.1.45 **General Assessment Component.** The General Assessment Component means that portion of the Annual Assessment charged to Owners to satisfy the annual Budget requirements of the General Operating Fund and the General Reserve Fund.

1.1.46 **Ginnie Mae.** Ginnie Mae means the Government National Mortgage Association administered by the United States Department of Housing and Urban Development and its successors.

1.1.47 **Governing Documents.** Governing Documents means this Declaration, the Articles, Bylaws, Design Guidelines, Rules and Regulations, Supplemental Declarations, Notices of Addition, and amendments thereto.

1.1.48 **Improvement.** Improvement means any structure and any appurtenance thereto, landscaping, and paint and surface treatments on structures. The Design Review Committee may identify additional items that are Improvements.

1.1.49 **Include, Including.** Whether capitalized or not, include and including means "includes without limitation" and "including without limitation," respectively.

1.1.50 **Local Government Agency.** Local Government Agency means the City, the County, a public school district, a public water district, and any other local or municipal governmental entity or agency, including any special assessment district, maintenance district or Community facilities district.

1.1.51 **Maintain, Maintenance.** Whether capitalized or not, maintain and maintenance mean "maintain, repair and replace" and "maintenance, repair and replacement," respectively; provided, however, that maintain or maintenance shall not include repair and replace(ment) where the context or specific language of this Declaration provides another meaning.

1.1.52 **Maintenance Guidelines.** Maintenance Guidelines means any current written guidelines, setting forth procedures and standards for the maintenance and operation of Association Property or the Units. Maintenance Guidelines may be provided by Declarant, by the Association, or by any governmental agency. Maintenance Guidelines include any maintenance manual initially prepared at Declarant's direction and containing recommended frequency of inspections and maintenance activities for components of the Association Property or pertaining to a Residence or Unit.

1.1.53 **Manager.** Manager means the Person retained by the Association to perform management functions of the Association as limited by the Governing Documents and the terms of the agreement between the Association and the Person.

1.1.54 **Membership.** Membership means the voting and other rights, privileges, and duties established in the Governing Documents for Association members.

1.1.55 **Model Condominium.** Model Condominium means a Condominium that is being used by Declarant as a sales model, office, design center, or for a similar purpose, under a Model Leaseback Agreement.

1.1.56 **Model Condominium Sale.** Model Condominium Sale means the initial sale of a Model Condominium by Declarant to an Owner subject to a Model Leaseback Agreement with the Owner, under which Declarant has the right to use and occupy the Model Condominium as a sales model during the marketing of the Community.

1.1.57 **Model Leaseback Agreement.** Model Leaseback Agreement means a lease or rental agreement pursuant to which the Declarant is permitted to use and occupy a Model Condominium as a sales model, office, design center, or for a similar purpose, after the Close of Escrow for its sale.

1.1.58 **Model Phase.** Model Phase means a Phase that contains one or more Model Condominiums. A Model Phase may include one or more Production Condominiums in addition to the Model Condominiums.

1.1.59 **Mortgage.** Mortgage means any Recorded document, including a deed of trust, by which a Condominium, Condominiums, or Association Property is/are hypothecated to secure performance of an obligation.

1.1.60 **Mortgagee.** Mortgagee means a Person to whom a Mortgage is made, or the assignee of the Mortgagee's rights under the Mortgage by a recorded instrument. For purposes of this Declaration, the term Mortgagee includes a beneficiary under a deed of trust.

1.1.61 **Mortgagee Majority.** Mortgagee Majority means fifty-one percent (51%) or more of the First Mortgagees. For purposes of any provisions of the Governing Documents which requires the vote or approval of a Mortgagee Majority, such vote or approval is determined based on one (1) vote for each Condominium encumbered by a First Mortgage held by a First Mortgagee.

1.1.62 **Mortgagor.** Mortgagor means a person who has mortgaged his property. For purposes of this Declaration, the term Mortgagor shall include a trustor under a deed of trust.

1.1.63 **Notice and Hearing.** Notice and Hearing means written notice and a hearing before the Board as provided in the Bylaws.

1.1.64 **Notice of Addition.** Notice of Addition means an instrument Recorded pursuant to Article 16 to annex additional real property to the Community.

1.1.65 **Official Records.** Official Records means the Official Records of the County.

1.1.66 **Owner.** Owner means the Person or Persons, including Declarant and Hearthstone, holding fee simple interest to a Condominium located in The Terraces at 360 at South Bay. Each Owner has a Membership in the Association. The term "Owner" includes sellers under executory contracts of sale but excludes Mortgagees. The term "Owner" may be expanded in a Supplemental Declaration to include other Persons.

1.1.67 **Party Wall.** Party Wall means any wall or fence that separates adjacent Condominiums. Party Walls are not Community Walls.

1.1.68 **Person.** Person means a natural individual or any legal entity recognized under California law. When the word "person" is not capitalized, the word refers only to natural persons.

1.1.69 **Phase.** Phase means each of the following: (a) Phase 1, (b) all the real property covered by a Notice of Addition for which a Public Report has been issued by the DRE, and (c) real property consisting solely of Association Property as described in a Notice of Addition. Declarant may otherwise define the term "Phase" in a Notice of Addition or Supplemental Declaration.

1.1.70 **Phase 1.** Phase 1 means all of the real property described in Paragraph A of the Preamble of this Declaration.

1.1.71 **Private Street.** Private Street means, collectively, the Private Street Improvements in the Community, including road surface, parkways, unassigned parking spaces (if any), Drainage Improvements, and walkways, all of which will be owned and maintained by the Association as part of the Association Property. The Private Streets are approximately depicted in the Condominium Plan for each Phase of the Community. The Association's obligation to maintain a particular Private Street in the Community will not commence until the Private Street is conveyed in fee to the Association, or as otherwise directed in a Supplemental Declaration, notwithstanding its depiction in a Recorded Condominium Plan.

1.1.72 **Production Condominium.** Production Condominium means a Condominium that is not a Model Condominium.

1.1.73 **Public Report.** Public Report means the Final Subdivision Public Report issued by the DRE for any Phase.

1.1.74 **Reconstruction Assessment.** Reconstruction Assessment means a charge against the Owners and their Condominiums representing their share of the Association's cost to reconstruct any Improvements on the Association Property. Such charge shall be levied among all Owners and their Condominiums in the same proportions as Annual Assessments. Reconstruction Assessments are "special assessments" as described in California Civil Code Section 1366 [after January 1, 2014, Sections 5600(a), 5605(a), 5605(b), 5605(c), 5610, 5615, 5620, 5650(b), and 5650(c)].

1.1.75 **Record or File.** Record or File means, concerning any document, the entry of such document in Official Records.

1.1.76 **Recreational Facilities.** Recreational Facilities means the recreation building, pool, spa, equipment room, paved areas, trellis, parking spaces and related Improvements located within the Three Sixty Community.

1.1.77 **Residence.** Residence means the dwelling unit constructed on a Unit, consisting of a living area and a garage area.

1.1.78 **Right to Repair Law.** Right to Repair Law means Division 2, Part 2, Title 7 (beginning with Section 895) of the California Civil Code.

1.1.79 **Right to Repair Law Claim.** Right to Repair Law Claim means any claim brought by one or more Owners or by the Association against one or more Declarant Parties (as defined in Section 12.4) on any design construction defect matters that are governed by the Right to Repair Law.

1.1.80 **Rules and Regulations.** Rules and Regulations or "Rules" means the current rules and regulations for the Community.

1.1.81 **Shared Private Streets.** Shared Private Streets means, collectively, the Shared Private Street Improvements located within the Community and the Three Sixty Community, including road surface, parkways, unassigned parking spaces (if any), Drainage Improvements, and walkways, all of which will be maintained by the Three Sixty Association under the Cost Sharing Agreement and the Three Sixty Declaration, respectively. The Three Sixty Association's obligation to maintain a particular Shared Private Street in the Three Sixty Community will not commence until the Shared Private Street is conveyed in fee to the Association or the Three Sixty Association, respectively, or as otherwise directed in the Cost Sharing Agreement, notwithstanding its depiction in a Recorded Condominium Plan.

1.1.82 **Special Assessment.** Special Assessment means (a) a reasonable monetary penalty imposed against an Owner and the Owner's Condominium in accordance with California Civil Code Section 1367.1(e) [after January 1, 2014, Section 5725(b)], as a disciplinary measure for the failure of an Owner to comply with the Governing Documents, or (b) a monetary charge imposed against an Owner and the Owner's Condominium in accordance with California Civil Code Section 1367.1(d) [after January 1, 2014, Sections 5675, 5685(a), and 5725(a)] to recover costs incurred by the Association for reimbursement of costs incurred in the repair of damage to Association Property, all as further described in this Declaration.

1.1.83 **Supplemental Declaration.** Supplemental Declaration means an instrument Recorded by Declarant against all or a portion of the Community to supplement, modify, or clarify conditions, covenants, restrictions or easements established under this Declaration. A Supplemental Declaration may affect one or more Condominiums and Association Property, and it may annex additional real property to the coverage of the Declaration as long as it satisfies the requirements of a Notice of Addition in Article 16. Declarant may Record a Supplemental Declaration as long as Declarant owns all of the real property to be encumbered by the Supplemental Declaration. A Supplemental Declaration may

modify this Declaration only as it applies to the property to be encumbered by the Supplemental Declaration.

**1.1.84 Telecommunications Facilities.** Telecommunications Facilities means Improvements constructed in the Community, including cables, conduits, ducts, vaults, connecting hardware, wires, poles, transmitters, towers, antennae and other devices now existing or that may be developed in the future to provide Telecommunication Services to the Community.

**1.1.85 Telecommunications Services.** Telecommunications Services means the reception, distribution or transmission of video, audio, data, telephony, all related vertical services, and any other similar services now existing or that may be developed in the future. Declarant may expand this definition in any Supplemental Declaration.

**1.1.86 Three Sixty Association.** Three Sixty Association means the Three Sixty at South Bay Association, a California nonprofit corporation (formed pursuant to the California Nonprofit Mutual Benefit Corporation Law or successor statutes), and its successors-in-interest. The Three Sixty Association is an "association" as defined in California Civil Code Section 1351(a) [after January 1, 2014, Section 4080].

**1.1.87 Three Sixty Community.** The Three Sixty Community constitutes the "Three Sixty Community" as defined in the Three Sixty Declaration.

**1.1.88 Three Sixty Declaration.** Three Sixty Declaration means the Master Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Three Sixty at South Bay, Recorded on May 31, 2007, as Instrument No. 2007-1313813, that certain First Amendment to Three Sixty Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Three Sixty at South Bay, Recorded on October 20, 2009, as Instrument No. 20091582023, and that certain Second Amendment to Three Sixty Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Three Sixty at South Bay, Recorded on September 20, 2010, as Instrument No. 20101329248 (collectively, together with any further amendments).

**1.1.89 Unit.** Unit means a separate interest in space, in accordance with California Civil Code Section 1351(f) [after January 1, 2014, Section 4125]. Each Unit is a separate freehold estate, as separately shown, numbered and designated in the Condominium Plan. Each Unit includes all earth, air and Improvements now or hereafter constructed within the boundaries of the Unit as described in the Condominium Plan, including buildings, yards, landscaping, fences, walls, and utility installations (subject to easements of record). The vertical and horizontal boundaries of each Unit shall be as described in the Condominium Plan. However, in interpreting deeds, declarations and plans, the following shall apply in the case of Improvements constructed or reconstructed at Unit boundaries in accordance with the Condominium Plan or the original plans for the Unit:

(a) if a Community Wall is coterminous with a Unit boundary described in the Condominium Plan, then the finished surface of the Community Wall that faces the Unit shall be conclusively presumed to be a lateral boundary of the Unit; and

(b) where a Party Wall is coterminous with a Unit boundary described in the Condominium Plan, then the lateral boundaries of the Units separated by such Party Wall shall be deemed to extend to the center of the Party Wall as constructed; and

(c) if the perimeter wall of a Residence is coterminous with a Unit boundary as described in the Condominium Plan, then such wall is not a Party Wall. The lateral boundaries of the Unit on which the Residence is constructed shall be deemed to extend through such perimeter wall to its exterior-facing surface. In such case, the adjoining Unit shall be deemed to extend up to but not include the exterior-facing surface of such Residence perimeter wall, and the Owner of the adjoining Unit shall have no ownership interest in such Residence perimeter wall.

The foregoing shall apply to Improvements constructed or reconstructed in substantial accordance with the original plans for the Unit (if available), and it shall apply notwithstanding (a) any description expressed in the deed, the Condominium Plan or the Declaration, (b) the settling or lateral movement of Improvements, or (c) variances between the Condominium Plan or the deed and the actual location of the Improvement.

1.1.90 **VA.** VA means the Department of Veterans Affairs of the United States of America and any department or agency of the United States government which succeeds to the VA's function of issuing guarantees of notes secured by Mortgages on residential real estate.

## 1.2 **INTERPRETATION.**

1.2.1 **General Rules.** This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for subdividing, maintaining, improving and selling the Community. As used in this Declaration, the singular includes the plural and the plural the singular. The masculine, feminine and neuter each includes the other, unless the context dictates otherwise. Any reference in this Declaration to time of performance of obligations or to elapsed time means consecutive calendar days, months or years, as applicable, unless otherwise expressly provided.

1.2.2 **Articles, Sections and Exhibits.** The Article and Section headings are inserted for convenience only and may not be considered in resolving questions of interpretation or construction. Unless otherwise indicated, any references in this Declaration to articles, sections or exhibits are to Articles, Sections and Exhibits of this Declaration. *Exhibits A, B, C and D* attached to this Declaration are incorporated in this Declaration by this reference. The locations and dimensions of any Improvements shown on the Exhibits attached hereto and to any Notice of Addition are approximate only and the as-built location and dimension of any such Improvements shall control.

1.2.3 **Priorities and Inconsistencies.** If there are conflicts or inconsistencies between this Declaration and the Articles, Bylaws, Rules and Regulations, or a Condominium Plan, then the provisions of this Declaration shall prevail; however, the conflicting documents shall be construed to be consistent with the Declaration to the extent possible. If there are any



conflicts or inconsistencies between this Declaration and any Notice of Addition, the provisions of the Notice of Addition shall prevail.

1.2.4 **Supplemental Declarations.** Declarant may Record one (1) or more Supplemental Declarations over the Community, over one (1) or more Phases, or over portions thereof, which designate the use classifications within the areas affected or which may supplement this Declaration with such additional covenants, conditions, restrictions and land uses as Declarant may deem appropriate for the real property encumbered by the Supplemental Declaration. The provisions of any Supplemental Declaration may impose on the real property it encumbers such additional, different or more restrictive conditions, covenants, restrictions, land uses and limitations as Declarant may deem advisable, taking into account the particular requirements of the property to be encumbered by such Supplemental Declaration. If there is any conflict between any Supplemental Declaration and the Declaration, the Supplemental Declaration shall control concerning the real property encumbered by such Supplemental Declaration.

1.2.5 **Severability.** The provisions of this Declaration are independent and severable. If for any reason, any provision of this Declaration becomes invalid, partially invalid, unenforceable, illegal, null and void, or against public policy, or if for any reason, a court of competent jurisdiction determines that any provision of this Declaration is invalid, partially invalid, unenforceable, illegal, null and void, or against public policy, the validity and enforceability of the remaining provisions of this Declaration shall remain in effect to the fullest extent permitted by law.

1.2.6 **Statutory References.** All references made in this Declaration to statutes are to those statutes as currently in effect or to subsequently enacted replacement statutes.

1.2.7 **FHA/VA Requirements.** The FHA/VA Requirements shall control and prevail over all other provisions of the Declaration to the extent of any inconsistency between them.

## **ARTICLE 2 MAINTENANCE COVENANTS AND USE RESTRICTIONS**

The Community shall be held, used and enjoyed subject to the following restrictions and subject to the exemptions of Declarant set forth in the Governing Documents.

### **2.1 REPAIR AND MAINTENANCE BY OWNERS.**

2.1.1 **The Unit.** Each Owner shall maintain all of the Owner's Unit and the Residence and all other Improvements on the Owner's Unit (except for any Association Maintenance Areas, in a safe and sanitary condition and good repair, and free from graffiti, debris, rubbish, garbage, trash, overgrown vegetation or other similar material, pursuant to all applicable Municipal Codes, and as directed in the Governing Documents and all applicable Maintenance Guidelines. Owner-maintained Improvements shall include the following:

(a) **Landscaping.** All landscaping within the fenced in portion of the Unit shall be properly maintained, evenly cut, evenly edged, free of bare or brown spots, debris and weeds above the level of the lawn. All trees and shrubs shall be trimmed so they do not impede pedestrian traffic and root-pruned to prevent root damage to sidewalks, driveways and structures. Owners shall not interfere with, remove, add to or modify any landscaping in the Association Maintenance Areas without the prior written consent of the Board of Directors and the approval by the Design Review Committee for any proposed modifications. Irrigation water supplied to Association Maintenance Area landscaping on each Unit will be supplied through the Unit's residential meter, and the cost of the irrigation water shall be paid by the Owner of the Unit as part of the Owner's monthly domestic water bill. Owners shall not interfere with irrigation equipment or irrigation water supply to Association Maintenance Areas.

(b) **Party Walls.** The Party Walls in the Community are the walls or fences separating adjacent Units. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply.

(1) **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a Party Wall shall be shared equally by the Owners of the Units connected by such Party Wall. However, each Owner shall be solely responsible for repainting the side of any Party Wall facing the Owner's Unit.

(2) **Destruction by Fire or Other Casualty.** Unless covered by a blanket insurance policy maintained by the Association under Section 8.1, if a Party Wall is destroyed or damaged by fire or other casualty, any Owner whose Unit is affected thereby may restore it, and the Owner of the other Unit affected thereby shall contribute equally to the cost of restoration thereof, without prejudice. However, such an Owner may call for a larger contribution from the other under any rule of law regarding liability for negligence or willful acts or omissions.

(3) **Weatherproofing.** Notwithstanding any other provision of this Article, an Owner who by his negligence or willful act causes a Party Wall to be exposed to the elements, to deteriorate, or to require repair or replacement shall bear the whole cost of furnishing the necessary protection against such elements or the necessary repairs or replacement.

(4) **Right to Contribution Runs With Land.** The right of any Owner to contribution from any other Owner under this Article is appurtenant to the land and passes to such Owner's successors in title.

(c) **Community Walls.** The Owner of any Unit that is partially or completely enclosed by a portion of the Community Wall (whether constructed on the Unit or adjacent to the Unit) is responsible for maintaining only the Residence-facing surfaces of the portion of the Community Wall that encloses the Unit. No Owner may modify or remove any tubular steel or wrought iron portions of any Community Wall, wherever located.

(d) ***Fire Sprinklers and Fire Detection/Alarm Systems.*** The Residences are equipped with fire sprinkler systems and may be equipped with fire detection and alarm systems. Each Owner shall regularly inspect the fire sprinklers that are in the interior of the Residence, and arrange for regular pressure testing of the fire sprinkler system. Each Owner shall regularly inspect smoke detectors and test any alarm system as directed in the Maintenance Guidelines. Keep sources of direct heat away from fire sprinklers and fire detection systems. Owners should report any leaking or malfunctioning fire sprinklers, non-functioning fire detection systems and malfunctioning alarm systems to the service provider designated in the Maintenance Guidelines, or if none is designated, the Owner must contact a suitable servicer immediately. No Owner may modify, disconnect or remove any part of the fire sprinkler or fire detection or alarm systems in the Residence except to replace broken or inoperable parts or systems.

(e) **Other Responsibilities.**

(1) Each Owner shall regularly inspect the Improvements on the Unit for wood-destroying pests, and if such pests are found, the Owner shall be responsible for the costs of eradication and future prevention.

(2) Each Owner whose Unit utilizes a sewer system lateral is responsible for the maintenance and repair of the portion of the lateral lying in the boundaries of the Unit.

(3) The exteriors of fences and buildings shall be kept free from graffiti if such exterior is visible from a Private Street, Shared Private Street or public street, pursuant to all applicable Municipal Codes.

(f) ***Residence Wall along Property Line.*** Where the perimeter wall of a Residence is constructed on or adjacent to a property line between adjoining Units, Owner of the Residence shall have the right, at reasonable times, on reasonable prior notice to the Owner of the adjoining Unit, and in a reasonable manner, to enter the yard of the adjoining Unit for the purpose of maintaining the entering Owner's Residence, including any gutter or downspout attached to the Residence. The Owner of the adjoining Unit shall have no right to block any vent nor affix any Improvement, including plants, of any kind, to the Residence constructed on or along the property line.

**2.1.2 Drainage Improvements on the Units.** Declarant may have installed one or more Drainage Improvements on the Unit in order to collect and transport surface waters from each Unit and from elsewhere in the Community to proper points of disposal. No Person may block or interfere with the proper function or maintenance of the Drainage Improvements on the Unit. No modification may be made to any Drainage Improvements on the Unit without the prior written consent of the Design Review Committee. Drainage Improvements which are designated Association Maintenance Areas on ***Exhibit D*** or in a Supplemental Declaration shall be solely maintained by the Association.

**2.1.3 Established Drainage.** There shall be no interference with or obstruction of the established surface drainage pattern(s) over any Unit or Association Property

in the Community, unless an adequate alternative provision is made for proper drainage, consistent with all applicable Local Government Agency requirements. For the purpose hereof, "established" drainage is defined as the drainage which exists at the time of the first Close of Escrow for the sale of the Condominium by Declarant, or as shown on any plan approved by the Design Review Committee. Established drainage includes drainage from Unit to Unit and to and from property lying outside the Community.

**2.1.4 Control of Surface Waters.** Owners must use adequate drainage and irrigation control. The installation or modification of landscaping and the construction or modification of Improvements by Owners must not cause the ponding of water. Owner-installed drainage devices, including, but not limited to, concrete ditches, area drain lines and gutters should be carefully designed and installed with professional assistance and then maintained in an unobstructed condition. All Owner-installed landscape irrigation systems should be designed, constructed, and operated to prevent excessive saturation of soils. All Owner-installed landscaping (if any) must be designed to ensure that water drains away from the Residence footings and other Improvements. Obstructions such as walls should not be constructed across swales unless adequate replacement Drainage Improvements have been installed or created. Planters should be lined with an impervious surface and should contain outlets to drain excess water. Owners shall maintain and keep clear of debris any drainage or facility or device constructed by Declarant.

**2.1.5 Grading.** The grading design in the Community should not be altered to redirect surface water flow toward the Units or onto adjacent property, or to trap water so that it ponds or floods. Grading modifications are subject to law, approval by the Board, and the terms of any Recorded drainage easements.

**2.2 REPAIR AND MAINTENANCE BY ASSOCIATION.** The Association shall maintain everything it is obligated to maintain in a clean, sanitary and attractive condition reasonably consistent with the level and frequency of maintenance reflected in the current adopted Budget; provided, however, that the Association shall at all times at least perform the level and frequency of maintenance specified in the applicable Maintenance Guidelines.

**2.2.1 Association Power to Perform Owner Obligations.** If an Owner fails to maintain any Improvement that the Owner is obligated to maintain, the Association has the power but not the duty to perform the maintenance at the Owner's expense. In an emergency, the Association may perform the maintenance immediately; in all other cases, the Association may perform the maintenance after Notice and Hearing. For purposes hereof, an "emergency" is any situation where the Board determines that there is an imminent threat of injury to persons or damage to property.

**2.2.2 Disputes Regarding Maintenance Obligations.** Disputes between Owners or between any Owner and the Association regarding maintenance shall be resolved in accordance with the enforcement process described in Section 12.1.

**2.2.3 Commencement of Obligations.** The Association's obligation to maintain the Common Property in a Phase composed solely of Association Property shall commence on conveyance of such Association Property to the Association either in fee or by

maintenance easement. The Association's obligation to maintain Common Property in any Phase that includes Units commences on the date on which Annual Assessments commence on the Units in the Phase, unless the terms of the Governing Documents applicable to the real property on which the Common Property is located provide otherwise. Until the Association is responsible for maintaining the Common Property in a particular Phase, Declarant shall maintain such Common Property. Notwithstanding anything in this Declaration to the contrary, the obligation of the Association to maintain Private Streets serving a particular Phase shall not commence until maintenance of Common Property commences in the Phase in which the Private Street is conveyed in fee to the Association.

**2.2.4 Acceptance of Common Property.** The Association must accept ownership of, or easements and maintenance responsibility (as applicable) for, each portion of Common Property when tendered by Declarant, whether in fee simple, by easement or otherwise, without regard to any dispute or negotiations then existing between the Association and any Declarant Party (as defined in Section 12.4).

**2.2.5 Maintenance Requirements for Particular Improvements.** Unless specifically provided in this Declaration or in any Maintenance Guidelines, the Board shall determine, in its sole discretion, the level and frequency of maintenance of the Common Property. The Association shall be responsible for maintaining the Common Property and for all other maintenance not provided by the Owners pursuant to Section 2.1 above or by a Local Government Authority.

(a) **Landscaping, Generally.** All Common Property landscaping shall be properly maintained, evenly cut, evenly edged, free of bare or brown spots, debris and weeds above the level of the lawn. All trees and shrubs shall be trimmed so they do not impede pedestrian traffic along the walkways. All trees shall also be root-pruned to eliminate exposed surface roots and damage to sidewalks, driveways and structures.

(b) **Drainage Improvements.** The Association shall maintain all Drainage Improvements located in the Association Property, and in those designated Association Maintenance Areas depicted or described on *Exhibit D* or in a Supplemental Declaration, in good and functional condition to safeguard the Association Property, the Condominiums and neighboring properties and storm drain system from damage and pollution. The Association shall conduct inspections to ensure that BMPs for control of stormwater runoff are maintained in accordance with applicable requirements of the City, the SUSMP, and Section 2.3.

(c) **Community Wall.** The Association is responsible for maintaining the portions of the Community Walls in each Phase that are designated as Association Maintenance Areas or Association Property, consisting of structural components, pilasters, footings, tubular steel and glass portions, surfaces facing Association Property and public property, any other portions not designated in the Governing Documents for maintenance by Owners, and any other portions designated for Association maintenance in a Notice of Addition or Supplemental Declaration. The Association is also responsible for all portions of the Community Wall that do not enclose a Unit, and those that separate Association Property from real property lying outside the Community.

(d) ***Ingress and Egress Improvements.*** The Association shall maintain all Private Streets, walkways, private driveways and other means of ingress and egress in the Association Property (but not walks or other hardscape on the Units that are not designated Association Maintenance Areas) in accordance with the Governing Documents and applicable Maintenance Guidelines.

(e) ***Graffiti Removal.*** The exteriors of fences and buildings shall be kept free from graffiti if such exterior is visible from a public street or alley, pursuant to all applicable Municipal Codes.

(f) ***Cost Sharing Agreement.*** Notwithstanding anything in this Declaration, a Notice of Addition or a Supplemental Declaration to the contrary, the Association shall not be responsible for maintaining any Improvement on the Common Property that has been designated for maintenance by the Three Sixty Association under the Cost Sharing Agreement unless the Cost Sharing Agreement is terminated or the Three Sixty Association fails to properly maintain such Improvements on the Common Property.

(g) ***Additional Items.*** The Association shall also be responsible for maintaining any Improvements that a majority of the voting power of the Association designates for maintenance by the Association. Such Improvements shall be deemed Common Property and subject to provisions of the Governing Documents that are applicable to the Common Property.

**2.2.6 Inspections.** The Board shall periodically cause a compliance inspection of the Community to be conducted by the Design Review Committee to report any violations thereof. The Board shall also cause condition inspections of the Association Property and all Improvements thereon to be conducted in conformity with the applicable Maintenance Guidelines, and in the absence of inspection frequency recommendations in any applicable Maintenance Guidelines at least once every three (3) years, in conjunction with the inspection required for the reserve study to be conducted pursuant to the requirements of the Bylaws, to (a) determine whether the Association Property is being maintained adequately in accordance with the standards of maintenance established in Section 2.1, (b) identify the condition of the Association Property and any Improvements thereon, including the existence of any hazards or defects, and the need for performing additional maintenance, refurbishment, replacement, or repair, and (c) recommend preventive actions which may be taken to reduce potential maintenance costs to be incurred in the future. The Board shall, during its meetings, regularly determine whether the recommended inspections and maintenance activities set forth in any applicable Maintenance Guidelines have been followed and, if not followed, what corrective steps need to be taken to assure proper inspections and maintenance of the Association Property. The Board shall keep a record of such determinations in the Board's minutes. The Board shall keep Declarant fully informed of the Board's activities under this Section 2.2.6. The Board shall employ, consistent with reasonable cost management, such experts, contractors and consultants as are necessary to perform the inspections and make the reports required by this Section.

**2.2.7 Reporting Requirements.** The Association shall prepare a report of the results of the inspection required by this Section. The report shall be furnished to Owners and Declarant within the time set for furnishing the Budget to the Owners. The report must include at least the following:

(a) a description of the condition of the Association Property, including a list of items inspected, and the status of maintenance, repair and need for replacement of all such items;

(b) a description of all maintenance, repair and replacement planned for the ensuing Fiscal Year and included in the Budget;

(c) if any maintenance, repair or replacement is to be deferred, the reason for such deferral;

(d) a summary of all reports of inspections performed by any expert or consultant employed by the Association to perform inspections;

(e) a report of the status of compliance with the maintenance, replacement and repair needs identified in the inspection report for preceding years; and

(f) such other matters as the Board considers appropriate.

For a period of ten (10) years after the date of the last Close of Escrow in the Community, the Board shall also furnish to Declarant (a) the report of each Condition Inspection performed for the Board, whenever such inspection is performed and for whatever portion of the Association Property that is inspected, within thirty (30) days after the completion of such inspection, and (b) the most recent Condition Inspection report prepared for any portion of the Association Property, no later than the date that is ten (10) days after the Association receives Declarant's written request.

**2.2.8 Damage by Owners.** Each Owner is liable to the Association for all damage to the Association Property that is sustained due to the negligence or willful act of the Owner, the Owner's Family, tenants or invitees, and any other Persons who derive their use of the Association Property from the Owner or from the Owner's Family, tenants or invitees. The Association may, after Notice and Hearing, levy a Special Assessment against the Owner representing a monetary charge imposed as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Association Property and facilities for which the Owner or the Owner's Family, tenants or invitees were responsible. The amount of the Special Assessment may include (a) the amount of any deductible payable on the insured portion of the loss (if the Association elects to make a claim under its insurance policy), (b) all costs and expenses actually incurred by the Association to correct damage that is not covered by the Association's insurance or for which no claim has been made, and (c) the amount of the increase in premiums payable by the Association, to the extent the increase is directly caused by damage that was attributed to the Owner or the Owner's Family, tenants or invitees. In accordance with California Civil Code Section 1367.1(d) [after January 1, 2014, Sections 5675, 5685(a), and 5725(a)], the Association shall have the power to impose a lien for the foregoing Special Assessment. If a Condominium is jointly owned, the liability of its Owners for damage to Association Property is joint and several, except to the extent that the Association and the joint Owners have otherwise agreed in writing.

**2.2.9 Stormwater Pollutant Control.** The Community is subject to all federal, state and local requirements of the National Pollutant Discharge Elimination System

("NPDES"), adopted in accordance with the Federal Clean Water Act. In 1999, the California State Water Resources Control Board ("SWRCB") enacted a new statewide General Permit for Storm Water Discharges Associated with Construction Activity (the "General Permit"). The General Permit imposes a comprehensive series of requirements on developers and builders to file a Storm Water Pollution Prevention Plan ("SWPPP") with the Regional Water Quality Control Board that sets forth Best Management Practices ("BMPS") that are intended to mitigate runoff of silt and pollutants from the Community into storm drains. Some BMPs apply to activities undertaken by the Association and Owners, and the Association and the Owners are required to comply with the applicable BMPS. The SWPPP includes specific maintenance schedules for post-construction operation of the BMPs that may impose long term maintenance obligations on the Association and each Owner in the Community. The BMPs are in addition to any local ordinances established by the City or County and any rules and regulations imposed by the Association concerning discharge of non-storm water into storm drains. The Association shall provide educational materials to the Owners (other than initial Owners, who will receive these materials from Declarant) concerning general good housekeeping practices that contribute to the protection of storm water quality.

The following specific restrictions shall be enforced by the Association against the Owners: (i) no car engine cleaning is permitted in the Community; (ii) no car washing is permitted in the Community; (iii) only low pressure hose bibs are permitted in the front of the Residence; and (iv) no car maintenance is permitted within the Community.

In addition, the Association shall have all Private Streets vacuum swept every other week (at minimum) to ensure that all trash, litter and debris that may obstruct or enter the storm drain system are removed. This procedure may be intensified around October 1<sup>st</sup> of each year prior to the beginning of the rainy season. Visual inspections shall be conducted prior to predicted storm events, and if required, additional sweeping performed. The Association shall maintain stenciling of all storm drain inlets and catch basins with "No Dumping – Drains to Ocean" and shall ensure that all trash enclosure lids are kept closed and any litter in the enclosure vicinity is picked up and disposed of properly. The primary structural treatment BMPs for the Community as the proposed Filterra units, Abtech units and the BMP treatment train consisting of DrainPac units (pre-treatment) and below grade infiltration facilities. Finally, the Association shall be bound by that certain Maintenance Covenant for Standard Urban Stormwater Mitigation ("SUSMP") Requirements recorded on February 23, 2007, as Instrument No. 20070397338, in Official Records and the Best Management Practices Responsibility/Frequency Matrix attached as Exhibit V to the Standard Urban Stormwater Mitigation Plan (SUSMP) for "Three Sixty" Tentative Tract No. 54156, as revised or updated.

**2.3 BEST MANAGEMENT PRACTICES.** Portions of the Community may be subject to one or more BMPs designated in the SUSMP. BMPs designated in the SUSMP as an Association responsibility are the sole responsibility of the Association. BMPs designated in the SUSMP as an Owner responsibility are the sole responsibility of the Owner of the affected Unit, provided that if the Owner of the Unit fails or refuses to perform the required BMP, then the Association may after prior written notice to the Owner, perform or maintain the Owner BMP at the Owner's cost. No Owner whose Unit contains any Association Maintenance Area Drainage Improvements shall permit interference with or damage to same, and neither the Association nor any Owner shall do any act which shall contribute to the introduction of pollutants into the



Drainage Improvements, including, but not limited to, soil, sand, sediment, oil, gasoline or other hydrocarbons, paint, fertilizers, pool chemicals, and other household chemicals. The Association and Owners must place sandbags around soil and sod when installing landscaping, and take measures to prevent over-watering the landscaping, in order to prevent soil, fertilizer and lawn chemicals from running into the storm drains. Additional detail concerning stormwater management is set out in the SUSMP.

**2.4 SINGLE FAMILY RESIDENCE.** The Residence shall be used as a dwelling for a single Family and for no other purpose.

**2.5 FURTHER SUBDIVISION.** Except as otherwise provided in this Declaration, no Owner may physically or legally subdivide the Owner's Condominium in any manner, including dividing such Owner's Condominium into time-share estates or time-share uses. This provision does not limit the right of an Owner to (a) rent or lease the Owner's entire Condominium by a written lease or rental agreement subject to this Declaration, (b) sell such Owner's Condominium, or (c) transfer or sell any Condominium to more than one (1) Person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or as Community property. Any failure by the tenant of the Condominium to comply with the Governing Documents constitutes a default under the lease or rental agreement.

**2.6 RESALE AND RENTAL.** Nothing in this Declaration shall be deemed to (a) prevent an Owner from selling the Condominium (subject to any Owner occupancy or anti-speculation requirements that may be separately imposed by Declarant) or (b) prevent an Owner from entering a written lease or rental agreement for occupancy of the Residence by a single Family, provided that the lease or rental agreement is made expressly subject to this Declaration. Owners may also rent Condominiums to Declarant for use as sales offices, model homes and parking areas. All lessees, tenants, and their Families, agents and invitees are bound by the Governing Documents when present in the Community, and any violation of the Governing Documents constitutes a default under the lease or rental agreement. Declarant may not lease any portion of the Association Property to the Owners or the Association.

**2.7 BUSINESS AND COMMERCIAL ACTIVITIES.**

**2.7.1 Generally.** No Owner or other occupant of the Community may undertake any activity in any Condominium or on any portion of the Association Property for business, commercial or non-residential purposes nor for any other purpose that is inconsistent with the Governing Documents, including manufacturing, storage, vending, auctions, vehicle or equipment repair, any lease or rental agreement under which the Residence would be occupied by numbers of persons in excess of the maximum occupancy permitted under applicable law, and transient occupancy purposes (such as vacation rental, hotel, motel, inn, or similar temporary lodging). Any lease or rental agreement for a term of fewer than thirty (30) days or pursuant to which the lessor provides any services normally associated with transient occupancy shall be deemed to be for transient purposes and prohibited under this Declaration. All of the foregoing activities are prohibited whether they are engaged in full-time or part-time, whether they are for-profit or non-profit, and whether they are licensed or unlicensed.

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

(a) The hiring of employees or contractors to provide maintenance, construction or repair services that are consistent with the Governing Documents;

(b) Rental or leasing of a Residence to Declarant for use as a sales office, model homes or parking area for any period of time;

(c) Exercise by Declarant of any rights reserved to it under Article 15;

(d) The provision of in-home health care or assisted-living services to any resident of the Community;

(e) The provision of family home child care services as defined in California Health and Safety Code Section 1597.40, *et seq.*, so long as such services comply with all applicable state and local laws, including licensing, inspection and zoning requirements. Provided, however, that the Association has the power to limit or prohibit use of parks, recreational facilities and other common amenities in the Association Property by clientele of the business;

(f) The operation of small home-based service businesses that comply with all of the following:

(1) The operator of the business lives in the Residence on a permanent, full-time basis;

(2) When conducted in the Community, business activities take place solely inside the Residence;

(3) The activity does not generate in-person visits by suppliers or clientele;

(4) The activity complies with all laws, regulations and ordinances applicable to the Community, including zoning, health and licensing requirements;

(5) The activity otherwise complies with the Declaration and is consistent with the residential character of the Community;

(6) The operator of the business posts no signage anywhere in the Community;

(7) There is no visible evidence in the Community of the activity;

(8) The activity does not generate noise or odors that are apparent outside the Residence; and

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

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

**2.8 NUISANCES.** Noxious or offensive activities are prohibited in the Community and on any public street abutting or visible from the Community or Three Sixty Community. The Board is entitled to determine if any device, noise, odor, or activity constitutes a nuisance.

**2.8.1 Nuisance Devices.** Nuisance devices may not be kept or operated in the Community or on any public street abutting the Community, or exposed to the view of other Condominiums or Association Property. Nuisance devices include the following:

(a) All horns, whistles, bells or other sound devices (except security devices used exclusively for fire protection and/or to protect the security of a Residence or a vehicle and its contents);

(b) Noisy or smoky vehicles, power equipment (excluding lawn mowers and other equipment used in connection with ordinary landscape maintenance), and Restricted Vehicles (defined below);

(c) Devices that create or emit loud noises or noxious odors;

(d) Construction or demolition waste containers (except as permitted in writing by the Committee);

(e) Devices that unreasonably interfere with television or radio reception to a Condominium;

(f) Plants or seeds infected with noxious insects or plant diseases;  
or

(g) The presence of any other thing in the Community which may (1) increase the rate of insurance in the Community, (2) result in cancellation of the insurance, (3) obstruct or interfere with the rights of other Owners or the Association, (4) violate any law or provisions of this Declaration or the Rules and Regulations, or (5) constitute a nuisance or other threat to health or safety under applicable law or ordinance.

**2.8.2 Nuisance Activities.** Nuisance activities may not be undertaken in the Community or on any public street abutting the Community, or exposed to the view of other Condominiums or Association Property without the Board's prior written approval. Nuisance activities include the following:

(a) Hanging, drying or airing clothing, fabrics or unsightly articles in any place that is visible from other Condominiums, Association Property, or the Shared Private Streets;

(b) The creation of unreasonable levels of noise from parties, recorded music, radios, television or related devices, or live music performance;

(c) The creation of unreasonable levels of noise from a barking dog or other animal kept in the Community (for example, chronic daily nuisance barking by a dog over extended periods of time);

(d) Repair or maintenance of vehicles or mechanical equipment, except in a closed garage;

(e) Outdoor fires, except in barbecue grills and fire pits designed and used in such a manner that they do not create a fire hazard; or

(f) Outdoor storage of bulk materials or waste materials except in temporary storage areas designated by the Committee.

(g) Any activity which may (1) increase the rate of insurance in the Community, (2) result in cancellation of the insurance, (3) obstruct or interfere with the rights of other Owners, (4) violate any law or provisions of this Declaration or the Rules and Regulations, or (5) constitute a nuisance or other threat to health or safety under applicable law or ordinance.

2.9 **SIGNS.** Subject to California Civil Code Sections 712, 713 and 1353.6 [after January 1, 2014, Section 4710], no sign, advertising device or other display of any kind shall be displayed in the Community or on any public street in or abutting the Community except for the following signs:

2.9.1 entry monuments, Community identification signs, and traffic or parking control signs maintained by the Association;

2.9.2 for each Condominium, one (1) nameplate or address identification sign which complies with Design Review Committee rules;

2.9.3 for each Condominium, one (1) sign advising of the existence of security services protecting a Condominium which complies with Design Review Committee rules;

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

(a) the sign has reasonable design and dimensions (which shall not exceed eighteen (18) inches by thirty (30) inches in size), provided the sign is promptly removed at the close of the resale escrow or the lease, or upon the Owner's withdrawal of the Condominium from the resale or lease market;

(b) the sign is of a color, style and location authorized by the Design Review Committee;

2.9.5 for each Condominium, a noncommercial sign, poster, flag or banner must comply with the following requirements:

(a) a noncommercial sign or poster must not be more than nine (9) square feet in size and a noncommercial flag or banner must not be more than fifteen (15) square feet in size; and

(b) a noncommercial sign, poster, flag or banner may not be made of lights, roofing, siding, paving materials, flora, or balloons, or any other similar building, landscaping, or decorative component, or include the painting of architectural surfaces.

2.9.6 other signs or displays authorized by the Design Review Committee.

## 2.10 PARKING AND VEHICULAR RESTRICTIONS.

2.10.1 **Definitions.** The following definitions shall apply to parking and vehicular restrictions set forth in this Declaration:

2.10.2 **Authorized Vehicle.** An "Authorized Vehicle" is an automobile, a passenger van designed to accommodate ten (10) or fewer people, a motorcycle, or a pickup truck having a manufacturer's rating or payload capacity of one (1) ton or less. The Association has the power to identify additional vehicles as Authorized Vehicles in the Rules and Regulations in order to adapt this restriction to other types of vehicles that are not listed above.

2.10.3 **Restricted Vehicles.** The following vehicles are "Restricted Vehicles:" (a) large commercial-type vehicles (for example, stake bed trucks, tank trucks, dump trucks, step vans, and concrete trucks), (b) buses, limousines or vans designed to accommodate more than ten (10) people, (c) inoperable vehicles or parts of vehicles, (d) aircraft, (e) boats, jet skis and other water craft, (f) trailers (for example, trailers designed for horses, boats, motorcycles or other equipment or materials), (g) motor homes and recreational vehicles (for example, fifth-wheels, folding camping trailers, travel trailers, but not including van conversions and truck campers), (g) any vehicle or vehicular equipment deemed a nuisance by the Association, and (h) any other vehicle that is not classified as an Authorized Vehicle. If a vehicle qualifies as both an Authorized Vehicle and a Restricted Vehicle, then the vehicle is presumed to be a Restricted Vehicle, unless the vehicle is expressly authorized in writing by the Association. The Association has the power to identify additional vehicles as Restricted Vehicles in the Rules and Regulations to adapt this restriction to other types of vehicles that are not listed above.

### 2.10.4 **Parking Restrictions.**

(a) **Private Streets and Alleys.** No vehicle of any kind may be parked on any Private Street, except in designated parking areas, or in any alley, except for brief periods during loading or unloading. During loading or unloading, vehicles must be parked or

moved so that they do not interfere with normal use of the Private Street or alley by other Owners or visitors.

(b) ***Restricted Vehicles.*** No Restricted Vehicle may be parked, stored or kept in the Community except for periods of two (2) hours or less in any twenty-four (24) hour period during loading, unloading, or emergency repairs. However, an Owner may park a Restricted Vehicle in the garage as long as the garage is kept closed and the presence of the Restricted Vehicle does not prevent Owner's other Authorized Vehicles from being parked in the garage at the same time.

(c) ***Driveway Parking.*** Certain Condominiums in the Community have driveways or driveway aprons. Owners are only permitted to park vehicles in driveways that are large enough to fit the entire vehicle within said driveway without any part of the vehicle encroaching onto a sidewalk or Private Street. Only the Owner of such driveway, or such Owner's renters, guests and invitees may park in their driveway and all other vehicles may be towed without notice.

(d) ***Garage Parking.*** Each Owner shall at all times ensure that the garage accommodates at least the number of Authorized Vehicles for which it was originally constructed by Declarant. The garages shall be used for parking of vehicles and storage of personal property only. No garage may be used for any dwelling, commercial, recreational, or other purpose. Garage doors must be kept closed except as necessary for entry or exit of vehicles or Persons, for cleaning or organizing of the garage and when decorating the Condominium for the holidays, or for such other purposes as described in the Rules and Regulations.

(e) ***Association Property Parking Spaces.*** Street parking spaces (collectively, "***Association Property Parking Spaces***") are for temporary, short-term use by residents and invitees of residents only. Association Property Parking Spaces are unreserved and unassigned, and they are available on a strict first-come-first-served basis. However, the spaces shall not be used for long-term parking or permanent storage of any vehicle or other personal property. The Board may, but is not required to, impose additional restrictions on Association Property Parking Spaces.

2.10.5 ***Repair, Maintenance and Restoration.*** No Person may repair, maintain or restore any vehicle in the Community, unless the work is conducted in the garage with the garage door closed. However, no Person may carry on in any portion of the Community any vehicle repair, maintenance or restoration business.

2.10.6 ***Enforcement.*** The Board has the right and power to enforce all parking and vehicle use regulations applicable to the Community, including the removal of violating vehicles from alleys, streets and other portions of the Community in accordance with California Vehicle Code Section 22658 or other applicable laws. The City may, but is not required to, enforce such restrictions, rules and regulations, in addition to applicable laws and ordinances.

2.10.7 ***Regulation and Restriction by Board.*** The Board has the power to:  
(a) establish additional rules and regulations concerning parking in the Association Property,

including designating "parking," "guest parking," and "no parking" areas, (b) prohibit any vehicle parking, operation, repair, maintenance or restoration activity in the Community if it determines in its sole discretion that the activity is a nuisance, and (c) promulgate rules and regulations concerning vehicles and parking in the Community as it deems necessary and desirable.

## **2.11 ANIMAL REGULATIONS.**

**2.11.1 Restrictions on Numbers and Types of Animals.** No commercial or farm livestock, including poultry, may be kept in the Community. However, up to two (2) dogs or two (2) cats, or one (1) dog and one (1) cat may be kept in each Unit, subject to applicable law, the Governing Documents, and such rules and regulations as may be adopted by the Board. In addition to dogs and cats, but subject to local ordinances and such Rules and Regulations as may be adopted by the Board, residents may keep in the Unit reasonable numbers of small household pets that live in containers or cages, including fish and birds, so long as there is no external evidence of their presence in the Community. The Board has the power and discretion to determine whether the types or numbers of any animals kept in a Unit are a nuisance, and the Board shall have the power to abate the nuisance through any legal procedure that is available to the Association.

**2.11.2 Animal Keeping Areas.** Animals belonging to Owners, tenants, residents or guests in the Community must be kept in the Residence or in fenced areas of the Unit. Whenever outside the enclosed area of the Unit, animals must be kept under the control of a Person capable of controlling the animal either on a leash or other appropriate restraint or carrier.

**2.11.3 Owner Responsibility.** The Owner of the Condominium shall be solely responsible for ensuring that there is no unreasonable noise or noticeable odor or other external evidence of the presence of any animals kept by the Owner or by the other residents of the Condominium. Furthermore, each Owner shall be absolutely liable to each and all other Owners, their Families, tenants, residents and guests for damages or injuries caused by any animals brought or kept in the Community by an Owner, by members of the Owner's Family, or by the Owner's guests, tenants or invitees. Each Owner shall immediately remove any excrement or clean other unsanitary conditions caused by such Owner's animals on any portion of the Community.

**2.12 ANTENNA RESTRICTIONS.** No Person may install on their Condominium any antenna or over-the-air receiving device except for an "Authorized Antenna."

**2.12.1 Definition.** An Authorized Antenna is (a) an antenna designed to receive direct broadcast satellite service, including direct-to-home satellite service, that is one (1) meter or less in diameter, (b) an antenna designed to receive video programming service, including multi-channel multipoint distribution service, instructional television fixed service, and local multipoint distribution service, and is one (1) meter or less in diameter or diagonal measurement, (c) an antenna designed to receive television broadcast signals, or (d) an antenna used to receive and transmit fixed wireless signals. The foregoing definition is not intended to prohibit cordless or wireless telephones, PDAs, computers, wireless home data networking

equipment or other portable wireless data or telephony devices that do not otherwise constitute a nuisance device under the Governing Documents.

**2.12.2 Masts.** An Authorized Antenna may be mounted on a mast to reach the height needed to receive an acceptable quality signal, subject to Local Government Agency permitting requirements for safety purposes. No mast shall be installed in such a way that it overhangs a neighboring Unit or Association Property, or poses a threat of damage to property or injury to persons.

**2.12.3 Preferred Installation Locations and Restrictions on Installation.** The Committee may adopt other reasonable restrictions on installation and use of an Authorized Antenna as part of its Design Guidelines in order to minimize visibility of the Authorized Antenna from other Condominiums. Such restrictions may designate one (1) or more preferred installation locations, or require camouflage such as paint (subject to the antenna manufacturer's recommendations) or screening vegetation or other Improvements. However, no restriction imposed by the Committee may (a) unreasonably delay or prevent the installation, maintenance or use of an Authorized Antenna, (b) unreasonably increase the cost of the installation, maintenance or use of an Authorized Antenna, or (c) preclude acceptable quality reception.

**2.12.4 Prohibitions on Installation.** The Committee may prohibit the installation of an Authorized Antenna in a particular location if, in the Committee's opinion, the installation, location or maintenance of such Authorized Antenna unreasonably affects the safety of the Owners or any other Person, or for any other safety-related reason established by the Committee. The Committee may also prohibit an Owner from installing an Authorized Antenna on any real property which such Owner does not own or is not entitled to exclusively use or control under the Governing Documents, including the Community Wall, Party Walls, and the Common Property or any other property outside the Owner's Unit. The Committee also has the power to prohibit or restrict the installation of any antenna or other over-the-air receiving device that does not meet the definition of an Authorized Antenna as set forth above.

**2.12.5 Review after Installation.** The Committee may review the location and installation of an Authorized Antenna after it is installed. After its review, the Committee may require that the Authorized Antenna be moved to a preferred location (if one has been designated) for safety reasons or to comply with reasonable restrictions subject to this Section and applicable law.

**2.12.6 Restatement of Applicable Law.** This Section is intended to be a restatement of the authority granted to the Committee under the law. All amendments, modifications, restatements and interpretations of the law applicable to the installation, use or maintenance of an antenna or over-the-air receiving device shall be interpreted to amend, modify, restate or interpret this Section.

**2.13 TRASH.** Trash must be stored in sanitary trash containers or trash bins, as applicable. No trash, trash containers or recyclable materials may be stored in view of other Condominiums or Association Property, except that closed trash containers may be set out on driveway aprons for a reasonable period of time on trash collection days (not to exceed twelve (12) hours before and after scheduled trash collection hours). At all other times, Owners must



store closed trash containers in the garage or a fenced yard area, out of sight of other Units and Association Property, until scheduled collection times.

## **2.14 OWNER-INSTALLED IMPROVEMENTS.**

**2.14.1 Outdoors.** No Person shall install any permanent outdoor Improvements on a Unit if the Improvements are visible from other Units, or from the Private Drives, or other Association Property without the prior written approval of the Design Review Committee obtained in accordance with Article 5 and the Rules and Regulations. Examples of outdoor Improvements that require prior Committee approval include the following:

- (a) Modifications to the Residence exteriors including cosmetic or structural changes in the architectural elements (subject to Section 2.14.2 below);
- (b) Subject to Section 2.14.2 below, Sunshades, awnings or patio covers, if visible from other Units, Private Drives or other Association Property;
- (c) Accessory structures such as sheds, barns and casitas;
- (d) Paint or other surface finishes (unless the paint or finish used is the same as originally used by Declarant on the Improvement or the same as previously approved in writing by the Committee);
- (e) Landscaping and hardscape, including flatwork, fences or walls, or statuary, if visible from other Units, Private Drives, or other Association Property; and
- (f) Patio area landscaping and hardscape, including flatwork and fences or walls.

The foregoing list is provided for guidance, but it is not intended to be an exhaustive list. The Committee has the power to require prior review and approval of other Improvements that are not listed above. Outdoor patio or lounge furniture, potted plants and portable barbecue equipment may be kept pursuant to the Rules and Regulations.

Persons who intend to install or construct outdoor Improvements on their Units must consult the Design Review Committee prior to installation to determine if prior review and approval are required. This Section shall not apply to any Improvements installed by Declarant or by the Association, nor shall it apply to maintenance, repair, replacement or reconstruction of existing Improvements by Declarant or by the Association.

Outdoor display of the flag of the United States is permitted without the prior consent of the Design Review Committee pursuant to California Civil Code Section 1353.5, as long as the flag and flag pole are located solely within, on and over the Owner's Condominium.

**2.14.2 Prohibited Improvements.** There shall be no installation of roof-mounted equipment, including heating, ventilation and air conditioning equipment, vents or ducts on any Residence, nor shall any person install any permanent basketball backboard or similar sports equipment (whether freestanding or attached) to the Residence or other permanent

Improvement. Because space is limited in the outdoor areas of the Units and in the Private Drives, no Person shall use in the Community any portable athletic equipment such as movable basketball standards, soccer goals, hockey goals, skate ramps and the like.

**2.14.3 Indoors.** No Owner or other resident of the Community may apply paint, foil, film, or other reflective material to the glass portion of any window in the Residence. This Section shall not be interpreted to prohibit the installation of blinds, shutters, curtains and other similar window coverings.

**2.14.4 No Liability.** Neither the Declarant nor the Association shall be liable or responsible for any damage that results from Improvements installed, constructed or modified by or at the direction of an Owner. Owners are advised to consult and use qualified consultants and contractors when installing, constructing or modifying Improvements on the Owner's Residence and Unit.

**2.15 MECHANICS' LIENS.** No Owner may cause or permit any mechanic's lien to be filed against the Association Property or another Owner's Condominium for labor or materials alleged to have been furnished or delivered to such Owner. Any Owner who permits a mechanics' lien to be so filed shall cause the lien to be discharged no later than five (5) days after receipt of written notice to discharge the lien is received from the Board. If the Owner fails to remove a mechanic's lien after written notice from the Board, the Board may discharge the lien and levy a Special Assessment against the violating Owner's Condominium to recover the cost of discharge.

**2.16 WATER SUPPLY SYSTEM.** No individual water supply, sewage disposal or water softener system is permitted on any Condominium unless such system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of any water district having jurisdiction, the City, the Design Review Committee and all other applicable governmental authorities with jurisdiction.

**2.17 VIEW OBSTRUCTIONS.** Each Owner acknowledges that (a) there are no protected views in the Community, and no Unit is assured the existence or unobstructed continuation of any particular view, and (b) any construction, landscaping (including the growth of landscaping) or other installation of Improvements by Declarant or other Owners may impair the view from any Unit, and each Owner hereby consents to such view impairment. The City's Conditions of Approval for the Community require trees to be placed along along the southerly boundary of the Community next to the Community Wall which will be located within the yard area of certain Plan 2 Condominiums. The growth of such trees may obstruct any view that an Owner may have had from that Owner's Condominium at the Close of Escrow for the purchase of the Condominium.

**2.18 SOLAR ENERGY SYSTEMS.** In accordance with Civil Code Sections 714 and 714.1, each Owner may install a solar energy system (as defined in California Civil Code Section 801.5), on the Owner's Unit to serve the Owner's domestic needs, so long as (a) the design and location of the solar energy system meet the requirements of all applicable governmental ordinances, and (b) the design and location receive the prior written approval of the Design Review Committee.

**2.19 RIGHTS OF DISABLED.** Subject to Article 5, each Owner may modify such Owner's Residence and the route over the Association Property leading to the front door of the Owner's Residence, at the Owner's sole expense to facilitate access to the Residence by persons who are blind, visually impaired, deaf or physically disabled, or to alter conditions which could be hazardous to such persons, in accordance with California Civil Code Section 1360 [after January 1, 2014, Section 4760] or any other applicable law.

**2.20 TEMPORARY BUILDINGS/DWELLINGS.** No tent, shack, shed, trailer, mobile home, modular building, storage building, shipping or storage container or similar movable building or shelter may be placed on any portion of the Community either temporarily or permanently. No automobile, trailer, mobile home, camper, motor home, recreational vehicle or other vehicle may be used as a dwelling in the Community, either temporarily or permanently.

**2.21 ASSOCIATION PROPERTY.** The Association Property may not be altered without the Board's prior written consent.

**2.22 MINERAL EXPLORATION AND EXTRACTION.** No oil drilling, oil, gas or mineral development operations, oil refining, geothermal exploration or development, quarrying or mining operations of any kind may be conducted on the Community, nor are oil wells, tanks, tunnels or mineral excavations or shafts permitted upon the surface of any Condominium or within five hundred (500) feet of the surface of the Community.

**2.23 POST-TENSION CONCRETE SLABS.** Concrete slabs for Residences constructed in the Community are reinforced with a grid of steel cable installed in the concrete slab and then tightened to create extremely high tension. This type of slab is commonly known as a "Post-Tension Slab." Cutting into a Post-Tension Slab for any reason (for example, to install a floor safe, to remodel plumbing, etc.) is very hazardous and may result in serious damage to the Residence, personal injury, or both. Each Owner agrees: (a) Owner shall not cut into or otherwise tamper with the Post-Tension Slab; (b) Owner shall not permit or allow any other Person to cut into or tamper with the Post-Tension Slab so long as Owner owns any interest in the Residence; (c) Owner shall disclose the existence of the Post-Tension Slab to any Person who rents, leases or purchases the Residence from Owner; and (d) Owner shall indemnify and hold Declarant and Declarant's agents, free and harmless from and against any and all claims, damages, losses or other liability (including attorneys' fees and costs of court) arising from any breach of this covenant by Owner.

**2.24 EASEMENTS.** The ownership interests in the Condominiums are subject to the easements granted and reserved in this Declaration. Each of the easements reserved or granted herein shall be deemed to be established upon the recordation of this Declaration and shall henceforth be deemed to be covenants running with the land for the use and benefit of the Owners and their Condominiums, the Association, the Association Property, the Declarant, and the Owner thereof, and each of their respective properties, superior to all other encumbrances applied against or in favor of any portion of the Community. Individual grant deeds to Condominiums and Association Property may, but shall not be required to, set forth the easements specified in this Article or elsewhere in this Declaration.

**2.25 UNINTENDED USE OF ROOF.** No Owner shall convert any portion of the roof of such Owner's Residence into a walkable roof deck (or Terrace Deck) after purchasing your Condominium. This includes a prohibition on constructing a new Terrace Deck where none previously existed and a prohibition on extending the scope of any Terrace Deck that was constructed by Declarant prior to the Close of Escrow on your Condominium. By the acceptance of a deed to a Condominium, each Owner acknowledges, understands and agrees that the roofing material on the roof of the Residence is not intended to be frequently walked on. Declarant is not responsible for damage to a roof or other portions of the Residence resulting from an Owner or Owner's family, guests, invitees, contractors or subcontractors walking on the roof of the Residence for any reason other than normal scheduled maintenance, repairs or replacement of the roof as necessary.

**2.26 ROOF TOP TERRACE DECK.** Certain Condominiums were constructed with a "Terrace Deck" located at roof level. The Terrace Deck is not intended to support significant weight, including Improvements like pools, hot tubs, other weighty Improvements or large numbers of people. Therefore, Owners are prohibited from placing any pool, spa, hot-tubs and other Improvements with significant weight on the Terrace Deck. In addition, Owners are Seller does not accept responsibility for damage resulting from your failure to comply with the limitations described herein.

### **ARTICLE 3 DISCLOSURES**

This Article discloses information obtained from third-party sources such as consultants, government and public records. No Person should rely on the ongoing accuracy or completeness of the information discussed in this Article because many of the matters discussed below are outside the control of Declarant and the Association. Accordingly, Declarant does not make any guarantee as to the accuracy or completeness of the matters disclosed below. Furthermore, Declarant is under no obligation to update or revise any matter disclosed in this Article. This Article is intended to provide Owners with information known or provided to Declarant as of the date this Declaration was Recorded, to be used as a starting point for further independent investigation.

**3.1 NO REPRESENTATIONS OR WARRANTIES.** No representations or warranties, express or implied, have been given by Declarant, the Association or their agents, in connection with the Community, its physical condition, zoning, compliance with law, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation of the Community as a condominium project, except as expressly provided in this Declaration, as submitted by Declarant to the DRE, provided by Declarant to the first Owner of each Condominium, or provided in the standard warranty required by the VA and FHA, if applicable.

**3.2 ACCESS FACILITIES.** Vehicular and pedestrian access into the Community may be controlled by entry gates located at the Shared Private Street entrances into the Three Sixty Community. There may also be controlled access pedestrian gates in the Three Sixty Community. It is currently intended that the entry gates will not be staffed; however, Declarant reserves the right to provide temporary staffing during the marketing period for the Community

and the Three Sixty Community. Until the last Close of Escrow occurs in both the Community and the Three Sixty Community (a) the access gate may be open to the general public, (b) Declarant may change the hours of access gate operation in its sole discretion without notice to accommodate construction and marketing activities, (c) interim access gate staffing may be provided or eliminated, and (d) operation of the access gate may be limited.

**3.3 SECURITY AND PRIVACY DISCLAIMER.** Access gates and any staffing are not intended to provide security or privacy for persons, personal property or Condominiums in the Community. Neither Declarant nor the Association undertakes to provide security or privacy for the Community or Owners, nor do they make any representations or warranties concerning the security or privacy of the Community or Owners.

**3.4 ROVING PATROLS.** Roving patrols or security personnel may be retained by Declarant or the Association. They are not intended to provide security for persons, personal property or Condominiums within the Community. The Declarant and the Association do not undertake to provide security for the Community nor do they make any representations or warranties whatsoever concerning the privacy and safety of the Community. If roving patrols or security personnel are retained by Declarant or the Association, their sole purpose is to protect Association Property and Improvements, whether annexed or not, which are owned in fee simple by the Association or for which the Association has rights or obligations by easement, lease, encroachment permit, license or other agreement.

**3.5 RECREATION AREAS AND MULTIPURPOSE BUILDINGS.** The Three Sixty Community includes a large recreation area with multipurpose buildings as well as several smaller recreation areas, which include or are planned to include parks and greenbelts, a tot lot, a multipurpose sport court, a fitness facility, multipurpose buildings and lounge rooms, BBQ area, swimming pools and spas. Declarant has provided improvements on the exterior of the multipurpose buildings and pre-wired the interior of the multipurpose buildings to allow the Three Sixty Association to purchase and install digital video recorders if the Three Sixty Association decides to do so. All Persons using the pools and spas are required to use caution and to watch their children at all times to prevent drowning and other injuries. Owners and other residents living in the area of any recreation area will most likely experience and otherwise be subject to or otherwise inconvenienced by pedestrian and vehicular traffic in the areas surrounding these recreation areas or facilities, light overflow and noise levels caused by people enjoying the active uses of these recreation areas or facilities. By acceptance of a deed to a Condominium, each Owner acknowledges that Declarant is not responsible for the safety of Owner, Owner's family, guests, invitees, tenants, agents, employees or pets when using these recreation areas or facilities.

**3.6 SPECIAL DISTRICTS.** The Community lies within the boundaries of the following special districts:

**3.6.1 Community Facilities District No. 2006-1.** Community Facilities District No. 2006-1 is a Mello-Roos Community Facilities District formed to provide school and infrastructure improvements. Mello-Roos Community Facilities Districts are created by local government agencies to finance public improvements and services when no other source of funds is available. Once formed and approved, the district will levy a special tax lien against each

Condominium in the district's boundaries. District charges will appear on each Owner's property tax bill. Such districts also have the power to sell municipal bonds to raise additional funds if they are necessary to build the public improvements or fund the services. Such districts have rights to accelerated foreclosure if assessments are delinquent for more than a specified amount of time. The amount of the special tax and any other information pertaining to any such district can be obtained from the County Assessor's office.

**3.6.2 Other Districts.** This Section is not intended to be an exhaustive list of districts that presently affect the Community. The Community may at present lie within other special tax districts, or they may be annexed to other special tax districts from time to time in the future. Owners are advised to consult the County Assessor's office for further information.

**3.7 ELECTRIC POWER LINES.** Underground or overhead electric transmission and distribution lines and transformers are located within or in the vicinity of all Units and around the Community. The lines and transformers are owned, operated and maintained by Southern California Edison Company. Power lines and transformers produce extremely low-frequency electromagnetic fields ("**ELF-EMF**") when operating. For some time, there has been speculation in the scientific Community about health risks associated with living near ELF-EMF sources. In 1992, the United States Congress authorized the Electric and Magnetic Fields Research and Public Information Dissemination Program to perform research on these issues and to analyze the existing scientific evidence in order to clarify the potential for health risks from exposure to ELF-EMF. In May of 1999, the National Institute of Environmental Health Sciences ("**NIEHS**") issued a report to Congress summarizing its review of scientific data from over three hundred (300) studies on ELF-EMF health risks. The ELF-EMF studies consist of both epidemiological studies (studies of exposure in human populations) and controlled laboratory experiments on animal and cell models. While some epidemiological studies suggested some link between certain health effects and exposure to ELF-EMF, the laboratory experiments did not support such a link. According to the NIEHS report, the scientific evidence shows no clear pattern of health hazards from ELF-EMF exposure, and the NIEHS report did not find evidence of any link sufficient to recommend widespread changes in the design or use of electrical transmission equipment. However, because the evidence does not clearly rule out any effect, NIEHS advocated continuing inexpensive and safe reductions in exposure to ELF-EMF and endorsed current utility practices regarding design and siting of new transmission and distribution lines. Further information on this subject is available from the Regional EMF Manager, Southern California Edison, 1721 22nd Street, Santa Monica, California 90404). Additional information on ELF-EMF and copies of the NIEHS report are available from the EMF-RAPID website at <http://www.niehs.nih.gov/emfrapid/home.htm>.

**3.8 URBAN ENVIRONMENT.** Owners can expect to hear noise from adjacent residential and commercial areas, major streets, railways and freeways. Owners may also experience light entering the Units from street lights located in close proximity to the windows and doors of the Units. In addition, while the Community's location places it within the heart of jobs, entertainment, recreation and shopping, it is also located in close proximity to areas of Los Angeles County that tend to have higher incidents of crime. By acceptance of a deed to a Condominium, each Owner acknowledges, understands and accepts that Declarant and the Association have no control over criminal elements and make no representations, warranties or guarantees regarding the safety of any person within or outside of the Community. For more

information regarding crime near the Community, please contact the Hawthorne Police Department.

**3.9 CITY STORM DRAIN EASEMENT AND INDEMNITY.** The City has required Hearthstone and Declarant to enter into a Storm Drain Easement and Indemnity Agreement ("**Agreement**") that also obligates the Association upon the transfer of the covered property or portion thereof. Under the Agreement, the City was granted an easement for accessing, inspecting, constructing or removing a storm drain that runs under a portion of the Community. In addition, the Agreement requires the current owner of the land in the Community (either Declarant or the Association) to maintain the public storm drain that runs through the Community in a safe and clean condition, in good order and repair and to be responsible for maintaining and repairing any streets that are affected by the maintenance and repair of the public storm drain. No building or other structure may be constructed over the easement area. In addition, the Agreement requires the current owner (either Declarant or the Association) to indemnify and defend the City if the City is ever sued for damages arising out of the improper maintenance of the storm drain. The Association shall be required to obtain public liability insurance of at least two (2) million dollars that includes the easement area in the Agreement.

**3.10 SURROUNDING USES.** The Community is located in an area that is experiencing rapid growth. This disclosure is intended to provide Owners with information on surrounding uses as of the date of Recordation. Uses and Improvements in the immediate vicinity of the Community include the items listed below:

**North of the Community:** El Segundo Boulevard; Existing Commercial; Existing Residential.

**South of the Community:** Existing Single Family Residential; Union Pacific Railroad.

**East of the Community:** 405 Freeway; Freeway on-ramp; Existing Commercial.

**West of the Community:** Aviation Boulevard; Existing Commercial; Atchison Topeka Railroad.

Existing and proposed uses in surrounding areas may change without notice. Neither Declarant nor the Association have any control over uses outside the Community. Owners are advised to contact applicable local governmental agencies for updated information concerning the development plan for the surrounding Community.

**3.11 AIRPORT PROXIMITY DISCLOSURE.** Declarant has been informed that the following airports and heliports lie within the approximate distances stated below:

Los Angeles International Airport	3.9 Miles
Jack Northrop Field – Hawthorne Municipal Airport	2.8 Miles
Compton – Woodley Airport	9.2 Miles
Zamperini Field Airport	9.7 Miles
Santa Monica Municipal Airport	11.4 Miles
Carson Sheriff Station – Heliport	12.0 Miles
Wilshire Area – Heliport	10.9 Miles
Long Beach – Daugherty Field Airport	19.4 Miles

Residents of the Community may notice noise and vibration from overflying aircraft departing from or approaching these airports.

**3.12 LOCAL FREEWAY AND MAJOR STREETS.** Several major streets and a freeway are located in close proximity to the Community, which include, among others, the San Diego Freeway (I-405), El Segundo Boulevard, Aviation Boulevard and Rosecrans Boulevard. Declarant and the Association have no control over the use, maintenance or care of these highways and thoroughfares. Owners and other residents can expect to experience noise, dust and traffic within and in the vicinity of the Community based on the public's use of some of these major streets and freeway.

**3.13 METROLINK STATION.** A metro station is located approximately one-half (1/2) mile from the Community on El Segundo Boulevard. Owners may experience increased noise, street traffic, and pedestrian traffic from the proximity of this metrolink station. For additional information concerning Metrolink, Owners should visit the website at [www.metrolinktrains.com](http://www.metrolinktrains.com).

**3.14 UNION PACIFIC RAILROAD AND ELEVATED FREIGHT RAILWAY.** Existing rail lines are located on the south side of the Community. These rail lines are owned and operated by the Union Pacific Railroad. In addition, the Atchison Topeka Railroad is located to the west of the Community. Owners and other residents of the Community may experience noise, dust, odors, light, vibrations and other environmental impacts associated with these rail lines. Owners and other residents of the Community must always be extremely cautious to ensure that children, guests, and others never wander into or play within the railroad right-of-way. Service on these rail lines may be expanded to include more trains, such as passenger service and other types of freight, and higher operating speeds. Declarant has no control over the operations, maintenance or future use of these rail lines



**3.15 NEARBY COMMERCIAL AND LIGHT INDUSTRIAL USES.** The Community is located adjacent to and nearby property zoned for commercial or industrial uses. The commercial property adjacent to the Community currently includes the Ramada Hotel, Big 5 Sporting Goods and Denny's and may be developed in the future to include retail, grocery and other commercial businesses and the industrial property may be developed to include warehouses and other industrial businesses. Potential impacts on Owners and other residents living near these commercial or industrial properties include noise, vibration and traffic from delivery trucks and the public's use of these businesses and light spillage from parking lot lights, lighted signs and other sources. This noise may include noises associated with delivery truck operations and noise generated from parking lot activities, such as car door slamming, brake squealing, alarm activation sounds, engine start-up and other noises typically made by vehicles. These commercial and industrial properties may also generate more traffic and other effects, both during the day and at night, which are not expected to be experienced in a residential community. Declarant and the Association have no control over the existing or potential uses of these properties.

**3.16 HISTORICAL ENVIRONMENTAL INFORMATION.** The United States Air Force previously owned the Community, which was known as Los Angeles Air Force Base Area A.

**3.16.1 Historical Use of the Community and Environmental Impacts.** The Community was predominantly used for agricultural purposes until the 1950s when buildings were constructed on the site. By the mid-1960s, seven large buildings (designated as Buildings 100, 105, 110, 115, 120, 125 and 130) (Buildings) were located on the Community, which was occupied by the United States Air Force and was primarily used for administrative support for the Air Force and aerospace industry.

Each of the seven Buildings had an underground storage tank (UST) which held heating oil or diesel fuel. These USTs, along with two others on the Community, were removed between 1995 and 1996 under the direction of the Regional Water Quality Control Board for the Los Angeles Region (RWQCB).

A small laboratory and testing facility was located in Building 130 for use in research and development, and small quantities of hazardous materials were used at this facility. In addition, there was a plating neutralization basin for wastewater generated from metal electroplating and photographic processing in Building 130. This basin was removed in June and July 1993, and in 1994, both the RWQCB and the Department of Toxic Substances Control (DTSC) determined that no further cleanup actions were required.

Numerous investigations have been conducted on the Community to examine potential environmental impacts from this historical use. These investigations reveal that there was minor soil contamination in some areas of the Community due to leakage from the USTs. Also, pesticides, polychlorinated biphenyls (PCBs), polyaromatic hydrocarbons (PAHs) and metals were detected in soil at concentrations above screening levels in certain portions of the Community. These soils, and those contaminated by UST leakage, were removed to cleanup levels specified by the RWQCB/DTSC and/or the United States Environmental Protection Agency (EPA), and were disposed of off-site. In addition, soils found to have elevated levels of

lead and benzo(a)pyrene, a finding made during demolition of Building 130 in 2006, have been removed.

Tests also confirmed the presence of volatile organic compounds (VOCs), primarily trichloroethylene (TCE), in the soil and groundwater. VOCs found in shallow soils were at low concentrations which will not impact human health. VOCs also impact deep soils and groundwater, but are present in relatively low concentrations and are generated from off-site sources west of the Community. The RWQCB is currently investigating these off-site sources. There previously were groundwater monitoring wells located on the Community to track VOC concentrations, but these wells were removed with the approval of the RWQCB. Current and future owners must permit necessary access for the investigation and cleanup of the contaminated areas west of the Community.

In 2005, the RWQCB certified that the Community was properly remediated and issued a site-wide closure letter, stating that no further action was required regarding environmental cleanup. In its closure letter, the RWQCB also noted that a conservative health risk assessment conducted for the Community confirmed that the calculated human health risk for the site fell within or below the risk management range for a residential community.

The most recent environmental assessments of the Community, completed in September 2006, included analysis of soils, soil gas and groundwater. These assessments confirm that the Community is suitable for residential development. One assessment did recommend evaluation and/or mitigation for methane, based on the presence of abandoned and plugged oil and gas wells, located off-site, that are no longer in use. A portion of the Community is located within the El Segundo Oil Field, but there were never any oil or gas wells on the Community. There are, however, plugged and abandoned oil wells present within 500 feet of the southern, northern, and eastern boundaries of the Community, and plugged and abandoned oil wells present to the west of the Community at a distance greater than 1,000 feet.

Because there are plugged and abandoned oil wells nearby, an additional investigation was completed to determine whether there is a potential for methane to collect in the subsurface at the Community. While methane was detected in the subsurface, the investigation concluded that the amount found does not appear to present a significant risk to future residents. However, as a precaution, WLH has installed methane mitigation measures for all homes built on the Site.

Level "A" methane mitigation measures have been installed for homes where methane was measured at greater than 12,500 parts per million. For such homes, a methane barrier was placed directly beneath home foundations, and a sub-slab venting system--a series of perforated vent lines--was installed beneath the floor slabs of the homes. On each of these homes, a plastic pipe extends from the sub-slab venting system to a point above the roofline where the methane is safely discharged. The methane barrier also provides a seal around the pipes and utility wires that penetrate the homes' foundations. In addition, WLH has fitted all conduits, such as electrical, cable T.V. and utility wires, with gas-tight seals, so that methane cannot enter homes through these potential pathways. Finally, WLH also dammed utility trenches that run under the homes to prevent methane from migrating to the surface. All other homes on the Community (those where methane measured at 12,500 parts per million or less) were fitted with enhanced sub-slab methane barriers placed below the homes' foundations.

Owners are advised that piercing the structure of their home, including adding any improvements to the exterior of their home, may damage the methane barrier and/or the sub-slab venting system and utility trench dams which will reduce or eliminate the protection provided thereby. Owners acknowledge, understand and agree that they are solely responsible for repairing any damage they cause to the structure of their home and the sub-slab venting, methane barrier, utility trench dams or conduit seals.

**3.16.2 Covenants and Reservations.** When the United States government and Air Force sold the Community, they reserved the right to access the Community, and to use utilities at a reasonable cost, to conduct any additional remedial or cleanup actions related to historical contamination from the Air Force's use of the Community. Specifically, the United States and Air Force reserved the right to:

(a) Conduct investigations and surveys, including drilling, soil and water sampling, testpitting, testing soil boring, and other activities related to cleanup, where necessary;

(b) Inspect cleanup activities;

(c) Conduct tests or surveys required by the EPA or State of California, or to verify data submitted to the EPA or State by the Air Force relating to the cleanup, and;

(d) Conduct, operate, maintain or undertake any other response or remedial actions related to cleanup from the Air Force's past operations on the Community, including the installation of monitoring wells, pumping wells and treatment facilities.

The U.S. government and Air Force will provide at least 30 days written notice before accessing the Community, and will take all reasonable measures to minimize impacts on the Community if additional remedial measures are required. Owners will also have the opportunity to recommend ways to minimize impacts from any cleanup or research activities.

**3.16.3 Land Use and Zoning on Surrounding Properties.** The sites surrounding the Community are chiefly devoted to residential and commercial uses. Union Pacific Railroad tracks border the Community immediately to the south, beyond which are single-family homes. This area has been zoned as low-density residential. Aviation Blvd., which borders the Community to the west, is followed by railroad tracks and the corporate headquarters for a company called Aerospace Corporation. Aerospace Corp. is a federally-funded research and development center that supports national-security, civil and commercial space programs. This area is zoned as light industrial. El Segundo Blvd. borders the Community to the north, beyond which are additional Aerospace Corporation buildings, a Denny's restaurant, and a residential neighborhood. This area, north of the Community, is zoned for corporate offices, and for general commercial and residential purposes. Finally, entrance and exit ramps to the I-405 border the Community to the east. This area is zoned for general commercial purposes.

In addition, the Community is located around 3 miles southeast of the Los Angeles International Airport (LAX). LAX is the third busiest airport in the United States. Residents of the

Community may experience some noise from aircraft and LAX operations. Owners are advised to investigate this matter to their satisfaction before purchasing a home on the Community.

**3.16.4 Documents Available for Review.** The following documents will be made available for review by potential Owners. These documents will be initially located at the sales office for the Community and after completion of the Community will be available at the offices of the Association, and must be reviewed on-site. They include:

(a) The Phase I Environmental Site Assessment Report of September 2006, and appendices thereto, which include soil, soil vapor and groundwater reports, Property photographs, a human health risk assessment review, and closure documents;

(b) The RWCQB letter, dated September 22, 2005, approving closure of the Community; and

(c) The Quitclaim Deed and CERCLA 120(h) Covenant transferring ownership from the Air Force.

**3.17 MILITARY ORDNANCE.** Former federal or state ordnance locations are located near or within the vicinity of the Community. These areas were once used for military training purposes, which may contain potentially explosive munitions. You are advised not to touch or otherwise handle ordnance if you find any while exploring property known to be a military ordnance location. Declarant and the Association have no control over the existing or potential uses, operations or maintenance of these military ordnance locations. Please refer to the Natural Hazard Disclosure Statement for further information on the military ordnance locations within the County.

**3.18 PROPERTY LINES.** The boundaries of each Unit in the Community and the Association Property are delineated on subdivision (tract) maps, lot line adjustments, parcel maps or Condominium Plans that are public records and are available at the County Recorder's office.

**3.19 UTILITY IMPROVEMENTS.** There may be above-ground and subterranean utility Improvements such as transformers, lift stations, water or sewer facilities, telecommunications vaults and other visible Improvements necessary for the delivery of utilities or other services either on or adjacent to each Unit. The placement of such Improvements is dictated by the needs of the applicable utility or service provider, and the presence of such Improvements in the Community is in accordance with easements created prior to or during the development of the Community. Each Unit and portions of the Association Property are subject to one or more such easements for placement of utility Improvements. No Owner may modify, remove or otherwise interfere with utility Improvements on any Unit or other portion of the Community.

**3.20 MOLD.** Molds are simple, microscopic organisms, present virtually everywhere, indoors and outdoors. Mold can be any color, but is usually green, gray, brown or black. Mold requires a food source (such as paper, wood, leaves or dirt), a source of moisture and a suitable temperature (generally 40-100 degrees Fahrenheit) to grow.

Individuals are exposed to molds on a daily basis, and in most instances there are no harmful effects. However, the buildup of molds in the indoor environment may contribute to serious health problems for some individuals. Due to a variety of factors, including the fact that sensitivities to various types of molds and other potential contaminants vary from person to person, there are currently no state or federal standards concerning acceptable levels of exposure to mold. Sources of indoor moisture that may lead to mold problems include, but are not limited to flooding, leaks, seepage, sprinkler spray hitting the Residence, overflow from sinks or sewers, damp basement or crawl space, steam from shower or cooking, humidifiers, wet clothes drying indoors, watering house plants, and clothes dryers exhausting indoors.

Each Owner should take precautions to prevent the growth of mold in the Residence from these and other sources. Preventative measures include, but are not limited to the following: (1) regularly cleaning the Residence; (2) regularly checking for accumulated moisture in corners and unventilated areas; (3) running fans, dehumidifiers and air conditioners to reduce indoor humidity; (4) stopping the source of any leak or flooding; (5) removing excess water with mops or a wet vacuum; (6) moving wet items to a dry, well-ventilated area; (7) regularly cleaning and disinfecting indoor and outdoor surfaces that may contain mold; (8) having major appliances, such as furnaces, heat pumps, central air conditioners, ventilation systems and furnace-attached humidifiers inspected, cleaned and serviced regularly by a qualified professional; (9) cleaning the refrigerator, air conditioner and dehumidifier drip pans and filters regularly and ensuring that refrigerator and freezer doors seal properly; and (10) avoiding over-watering of landscaping.

It is the Owner's responsibility to monitor that Owner's Residence and Unit on a continual basis for excessive moisture, water and mold accumulation. For additional information regarding mold, please refer to the following websites: California Department of Health Services – <http://www.dhs.ca.gov>; Centers for Disease Control and Prevention – <http://www.cdc.gov/nceh>; U.S. Environmental Protection Agency – <http://www.epa.gov>; Illinois Department of Public Health – <http://www.idph.state.il.us>; and Washington State Department of Health – <http://www.doh.wa.gov>.

### **3.21 NATURAL HAZARD ZONE DISCLOSURES.**

**3.21.1 Earthquake Fault Zones.** California is subject to a wide range of earthquake activity. California has many known faults as well as yet undiscovered faults. Owner must evaluate the potential for future seismic activity that might seriously damage an Owner's Residence and Unit. A major earthquake, which some have predicted will occur in our lifetimes, could cause very serious damage to Residences, located even many miles from the epicenter of the earthquake. A more moderate earthquake occurring on a more minor fault, or on an undiscovered fault, could also cause substantial damage.

Declarant makes no representations or warranties as to the degree of earthquake risk within the Community. Please read "The Homeowner's Guide to Earthquake Safety," and consult with the City, County, other public agencies, and appropriate experts to evaluate the potential risk.

**3.21.2 Seismic Hazard Zone.** Many portions of California are subject to risks associated with seismic activity. Areas that meet the definition of "Seismic Hazard Zone"

in the Seismic Hazards Mapping Act (California Public Resources Code Section 2690, *et seq.*) are shown on maps that are prepared and released by the California Department of Conservation, Division of Mines and Geology. Such zones may pose an increased risk of damage to property from earthquakes and liquefaction. As of the date this Declaration is Recorded, Declarant has been information that the Community is not in a seismic hazard zone. Owners are advised to consult with the City, County, other public agencies, and appropriate experts to evaluate the potential risk. For more information concerning seismic activity and risks, read "The Homeowner's Guide to Earthquake Safety."

**3.21.3 Area of Potential Flooding.** Declarant has been informed that no maps are currently available to determine whether the Community is located within an Area of Potential Flooding (or Dam Inundation Zone). The Office of Emergency Services is required to designate areas within which personal injury or death would, in its determination, result from the partial or total failure of any dam. These areas of potential flooding, as defined in the California Emergency Services Act (California Government Code Section 8984.4, *et seq.*), are shown on maps released by the Office of Emergency Services, copies of which will also be on file with the County after they are prepared. Declarant makes no representations, guarantees or warranties with respect to any future dam inundation zone determinations. Please contact the Office of Emergency Services for further information concerning Areas of Potential Flooding.

**3.22 CHANGE IN PLANS.** Declarant has the right to develop the Annexable Area with Improvements that may be different in design, size, character, style and price from those in Phase 1 or any other Phase.

**3.23 NO ENHANCED PROTECTION AGREEMENT.** No language in this Declaration, any Notice of Addition or any Supplemental Declaration shall constitute, or be interpreted to constitute, an enhanced protection agreement ("**EPA**"), as defined in California Civil Code Section 901. Further, no express or implied representations or warranties made by Declarant in any other writing are intended to constitute, or to be interpreted to constitute, an EPA.

**3.24 ADDITIONAL PROVISIONS.** There may be provisions of various laws, including the Davis-Stirling Common Interest Development Act codified at Sections 1350, *et seq.* of the California Civil Code [after January 1, 2014, Section 4000] and the Federal Fair Housing Act codified at Title 42 United States Code, Section 3601, *et seq.*, which may supplement or override the Governing Documents. Declarant makes no representations or warranties regarding the future enforceability of any portion of the Governing Documents.

## **ARTICLE 4 THE ASSOCIATION**

**4.1 GENERAL DUTIES AND POWERS.** The Association has the duties and powers enumerated and described in the Governing Documents, in addition to the general and implied powers of a nonprofit mutual benefit corporation, generally to do all things that a corporation organized under California law may lawfully do which are necessary or proper in operating for the general welfare of the Owners, subject only to the limits on the exercise of such powers listed in the Governing Documents. Unless otherwise indicated in the Articles, Bylaws,

this Declaration, or the Supplemental Declarations, the powers of the Association may be exercised by the Board.

**4.2 SPECIFIC DUTIES AND POWERS.** In addition to its general powers and duties, the Association has the following specific powers and duties.

**4.2.1 Association Property.** The power and duty to accept, maintain and manage the Common Property in accordance with the Governing Documents. The Association may install or remove capital Improvements on the Common Property. The Association may reconstruct, replace or refinish any Improvement on the Common Property.

**4.2.2 Utilities.** The power and duty to obtain, for the benefit of the Community, all water, gas and electric services necessary for the Common Property. The power and duty to obtain for the benefit of the Community, all commonly metered residential utilities.

**4.2.3 Granting Rights.** The power to grant exclusive or nonexclusive easements, licenses, rights of way or fee interests in the Association Property owned in fee simple by the Association, to the extent any such grant is reasonably required (a) for Improvements to serve the Community, (b) for purposes of conformity with the as-built location of Improvements installed or authorized by Declarant or the Association, (c) in connection with any lawful lot line adjustment, or (d) for other purposes consistent with the intended use of the Community. This power includes the right to create and convey easements for one or more Owners over portions of the Association Property. The Association may de-annex any portion of the Community from the encumbrance of the Declaration in connection with any lawful lot line adjustment.

After the Association acquires fee title to or any easement right over Association Property, the affirmative vote of members owning at least sixty-seven percent (67%) of the Condominiums in the Community shall be required before the Board may grant exclusive use of any portion of that Association Property to any member, except as provided in California Civil Code Section 1363.07 [after January 1, 2014, Sections 4202(a)(4) and 4600]. Any measure placed before the members requesting that the Board grant exclusive use of any portion of the Association Property shall specify whether the Association will receive any monetary consideration for the grant and whether the Association or the transferee will be responsible for providing any insurance coverage for exclusive use of the Association Property.

**4.2.4 Employ Personnel.** The power to employ Persons necessary for the effective operation and maintenance of the Association Property, including legal, management and accounting services.

**4.2.5 Insurance.** The power and duty to keep insurance for the Association Property in accordance with this Declaration.

**4.2.6 Sewers and Storm Drains.** The power and duty to maintain any private sewer systems, private storm drains, or private drainage facilities in the Association Property in accordance with the Governing Documents.

4.2.7 **Maintenance Guidelines.** The power and duty to (a) operate, maintain and inspect the Association Property and its various components in conformity with any Maintenance Guidelines and any maintenance manual, and (b) review any maintenance manual for necessary or appropriate revisions no less than annually after the Board has prepared the Budget.

4.2.8 **Rules and Regulations.** The power, but not the duty, to adopt, amend, repeal and create exceptions to, the Rules and Regulations.

(a) ***Standards for Enforceability.*** To be valid and enforceable, a Rule must satisfy all the following requirements:

- (1) The Rule must be in writing;
- (2) The Rule is within the authority of the Board conferred by law or by this Declaration, the Articles or the Bylaws;
- (3) The Rule is not inconsistent with governing law, this Declaration, the Articles or the Bylaws;
- (4) The Rule is adopted, amended or repealed in good faith and in substantial compliance with the requirements of Article 4 of Title 6 of Part 4 of Division 2 of the California Civil Code;
- (5) The Rule is reasonable; and
- (6) The Rule complies with the requirements of California Civil Code Section 1357.110 [after January 1, 2014, Section 4350].

(b) ***Areas of Regulation.*** The Rules and Regulations may concern use of the Community, signs, parking restrictions, minimum standards of property maintenance, and any other matter under the Association's jurisdiction.

(c) ***Limits on Regulation.*** The Rules and Regulations must apply uniformly to all Owners and must comply with this Declaration and all applicable state and local laws. The rights of Owners to display in or on their Residences and Units religious, holiday and political signs, symbols and decorations of the kinds normally displayed in single family residential neighborhoods shall not be abridged. However, the Association may adopt time, place and manner restrictions for such displays if they are visible outside the Residence. No modification to the Rules and Regulations may require an Owner to dispose of personal property that was in compliance with all rules previously in force; however, this exemption shall apply only during the period of such Owner's ownership of the Condominium and it shall not apply to: (1) subsequent Owners who take title to a Condominium after the modification is adopted; or (2) clarifications to the Rules and Regulations.

(d) ***Procedure for Adoption, Amendment and Repeal.*** Rules or procedures concerning (i) the use of Association Property, (ii) the use of a Condominium, including any aesthetic standards or Design Guidelines that affect Condominiums, (iii) member



discipline, including any schedule of monetary penalties for violation of the Governing Documents, (iv) any procedure for the imposition of penalties, (v) any standards for delinquent assessment payment plans, and (vi) any procedures adopted by the Association for resolution of assessment disputes (each, a ***Covered Rule***) may only be adopted, amended or repealed (each, a ***Rule Change***) in accordance with the following procedure:

(1) The Board must provide written notice (***Notice***) of a proposed Rule Change to the members at least thirty (30) days before making the Rule Change, except for an Emergency Rule Change (defined below). The Notice must include the text of the proposed Rule Change and a description of the purpose and effect of the proposed Rule Change;

(2) The decision on a proposed Rule Change shall be made at a Board meeting after consideration of comments made by the members of the Association;

(3) The Board shall deliver Notice of the Rule Change to every member of the Association within fifteen (15) days of adoption. If the change was an Emergency Rule Change, the Notice shall include the text of the Emergency Rule Change, and the date on which the Emergency Rule Change expires;

(4) If the Board determines that an immediate Rule Change is required to address an imminent threat to public health or safety, or an imminent risk of substantial economic loss to the Association, it may make the change on an emergency basis (***Emergency Rule Change***) and no Notice will be required. An Emergency Rule Change is effective for one hundred-twenty (120) days, unless the Emergency Rule Change provides for a shorter effective period. Any Rule Change that is adopted as an Emergency Rule Change may not be re-adopted under authority of this subpart;

(5) A Notice required by this Section 4.2.8(d) is subject to California Civil Code Section 1350.7 [after January 1, 2014, Sections 4040, 4045, and 4050];

(6) A Rule Change made pursuant to this Section 4.2.8(d) may be reversed as provided in California Civil Code Section 1357.140 [after January 1, 2014, Section 4365].

(e) ***Exceptions to Procedure.*** The procedure in Section 4.2.8(d) does not apply to:

(1) Rules that do not meet the definition of Covered Rules above;

(2) decisions of the Board regarding maintenance of Association Property;

(3) a decision on a specific matter that is not intended to apply generally;

(4) a decision setting the amount of an Annual Assessment or a Special Assessment;

(5) a Rule Change that is required by law if the Board has no discretion as to the substantive effect of the changes; or

(6) issuance of a document that merely repeats existing law or the Governing Documents.

(f) **Use of Facilities.** The Rules and Regulations may (1) specify a maximum number of guests which an Owner, tenant or other Person may admit to the Association Property recreational facilities at one time, (2) establish rules for allowing Owners, tenants or other Persons to use Association Property facilities for private functions, or (3) establish admission fees, deposit requirements and other fees for the use of any facilities on the Association Property.

4.2.9 **Borrowings.** The power, but not the duty, to borrow money for purposes authorized by the Articles, Bylaws, Declaration, any Supplemental Declarations or any Notice of Addition, and to use the Association Property as security for the borrowing.

4.2.10 **Contracts.** The power, but not the duty, to enter into contracts. This includes contracts with Owners or other Persons to provide services or to maintain Improvements in the Community and elsewhere which the Association is not otherwise required to provide or maintain by this Declaration.

4.2.11 **Telecommunications Contract.** Notwithstanding anything in the Governing Documents to the contrary, the Board shall have the power to enter into, accept an assignment of, or otherwise cause the Association to comply with the terms and provisions of an exclusive telecommunications services contract ("**Telecommunications Contract**") with a telecommunications service provider ("**Service Provider**"), pursuant to which the Service Provider shall serve as the exclusive provider of Telecommunications Services to each Condominium in the Community. The Board shall only enter into, accept an assignment of, or otherwise cause the Association to comply with the terms of the Telecommunications Contract if the Board determines that the Telecommunications Contract is in the best interests of the Association. Although not exhaustive, the Board shall consider the following factors in making such a determination:

(a) **Initial Term and Extensions.** The initial term of the Telecommunications Contract should not exceed five (5) years, and, if the Telecommunications Contract provides for automatic extensions, the length of each such extension should also not exceed five (5) years.

(b) **Termination.** The Telecommunications Contract should provide that: (1) at least six (6) months before the end of either the initial or any extended term of the Telecommunications Contract, the entire Membership of the Association may, with the vote or written approval of more than fifty percent (50%) of all Members other than Declarant, prevent any automatic extension that the Telecommunications Contract may provide for (with or without cause), and thereby cause the Telecommunications Contract to expire, and (2) at any time, the Board may terminate the Telecommunications Contract if, in the sole discretion of the

Board, the Service Provider fails to provide quality, state-of-the-art Telecommunications Services.

(c) **Fees.** Whether the monthly fee charged to the Association by the Service Provider for the provision of the Telecommunications Services to all of the Condominiums represents a discount from the comparable retail fees charged by the Service Provider in the general geographic area in which the Community is located, and, if so, the amount of such discount.

(d) **Installation of Telecommunications Facilities.** Whether the Service Provider is solely responsible for the installation, and the cost thereof, of all of the Telecommunications Facilities necessary to provide Telecommunications Services to each Condominium.

(e) **Removal of Telecommunications Facilities.** Whether the Service Provider has the right to remove the Telecommunications Facilities upon expiration or termination of the Telecommunications Contract.

4.2.12 **Resale Program.** After Declarant no longer owns a Condominium or portion of the Annexable Area, or with Declarant's consent, the Association may provide services related to the sale of real property and may own, operate, and staff a center for the purpose of facilitating the sale of real property in the Community. Any such center shall be operated in accordance with policies and procedures adopted by the Association.

4.2.13 **Indemnification.**

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

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

(c) **Provided by Contract.** The Association also has the power, but not the duty, to contract with any Person to provide indemnification in addition to any

indemnification authorized by law on such terms and subject to such conditions as the Association may impose.

4.2.14 **Annexing Additional Property.** The power, but not the duty, to annex, pursuant to Section 16.2, additional property to the Community encumbered by this Declaration.

4.2.15 **Vehicle and Parking Restrictions.** The power granted in Section 2.10 to identify Authorized Vehicles or Restricted Vehicles and to modify the vehicle and parking restrictions in the Governing Documents.

4.2.16 **License and Use Agreements.** The Association may enter into agreements with Declarant or any homeowners association having jurisdiction over the Annexable Area to share facilities located on the Association Property ("**Facility**") with the Owners of Residences in the Annexable Area. Any such agreement shall be in form and content acceptable to Declarant, the Board of Directors (without the approval of Owners) and Declarant or the board of directors of any adjacent homeowners association and shall include provisions regarding use and sharing of maintenance costs for the Facility.

4.2.17 **Landscaping.** The Board has the power, but not the duty, to grant Owners revocable licenses that allow Owners to replace and/or add landscaping Improvements to any portion of the Association Property, subject to the prior written approval of the Board, any reasonable restrictions or conditions the Board may impose, and the right of the Board to revoke such license, remove the Improvements and charge the Owner for the cost of such removal.

4.2.18 **Prohibited Functions.**

(a) **Property Manager.** The Association is prohibited from hiring a Manager as an employee of the Association. The Manager shall at all times be a professional manager employed as an independent contractor or agent working at its own place of business.

(b) **Off-site Nuisances.** The Association shall not use any Association funds or resources to abate any annoyance or nuisance emanating from outside the physical boundaries of the Community.

(c) **Political Activities.** The Association shall not conduct, sponsor, participate in or expend funds or resources toward any activity, campaign or event, including any social or political campaign, event or activity which does not directly and exclusively pertain to the authorized activities of the Association. Furthermore, the Association shall not participate in federal, state or local activities or activities intended to influence a governmental action affecting areas outside the Community (for example, endorsement or support of legislative or administrative actions by a local governmental authority), nor shall it support or campaign for or against candidates for elected or appointed office or ballot proposals. There shall be no amendment of this Section so long as Declarant owns any portions of the Community.

4.2.19 **Standing to Resolve Disputes.** The Association shall have standing to institute, defend, settle or intervene in litigation, alternative dispute resolution or administrative proceedings (each, an "**Action**") in its own name as the real party in interest and without joining

the Owners, in matters pertaining to (a) damage to the Association Property, (b) damage to portions of the Condominiums which the Association is obligated to maintain or repair, and (c) damage to portions of the Condominiums which arises out of, or is integrally related to, damage to the Association Property or portions of the Condominiums that the Association is obligated to maintain or repair (each, a ***"Claim"***). However, the Association shall not have standing to institute, defend, settle or intervene in any Action in any matter pertaining only to an individual Condominium and not included in subsections (b) and (c) above.

The Association may, in its sole discretion, elect to institute, intervene in, continue, settle or dismiss an Action at any time. If the Association institutes or intervenes in an Action on a Claim, the Association's standing shall be exclusive, and the Owners shall thereafter be barred from instituting a new Action or maintaining a pending Action on the same Claim. The Association's election to institute or intervene in an Action on a particular Claim shall not create any affirmative obligation on the part of the Association to maintain, settle or dismiss the Action, except in the Association's sole discretion, and subject to Section 12.4. If the Association elects to settle an Action, the terms of the settlement shall be binding on the Owners, and the Owners shall be barred from instituting or continuing any other Action on the same Claim. If the Association elects to dismiss an Action, the dismissal shall be with prejudice to the institution or continuation by one or more Owners of any Action on the same Claim.

#### 4.3 **STANDARD OF CARE, NON-LIABILITY.**

##### 4.3.1 **Scope of Powers and Standard of Care.**

(a) ***General Scope of Powers.*** Rights and powers conferred on the Board, the Design Review Committee or other committees or representatives of the Association by the Governing Documents are not duties, obligations or disabilities charged upon those Persons unless the rights and powers are explicitly identified as including duties or obligations in the Governing Documents or law. Unless a duty to act is imposed on the Board, the Design Review Committee or other committees or representatives of the Association by the Governing Documents or law, the Board, the Design Review Committee and the committees have the right to decide to act or not act. Any decision not to act is not a waiver of the right to act in the future.

(b) ***Business Affairs.*** This Section 4.3.1(b) applies to Board member actions in connection with management, personnel, maintenance and operations, insurance, contracts and finances, and Design Review Committee member actions. Each Board member shall perform the duties of a Board member in good faith, in a manner the Board member 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. When performing Board duties, a Board member is entitled to rely on information, opinions, reports or statements, including financial data prepared or presented by:

(1) One (1) or more officers or employees of the Association whom the Board member believes to be reliable and competent in the matters presented;

(2) Counsel, independent accountants or other Persons as to matters which the Board member believes to be within such Person's professional or expert competence; or

(3) A committee of the Board upon which the Board member does not serve, as to matters under its designated authority, which committee the Board member believes to merit confidence, so long as, in any such case, the Board member acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

This Section 4.3.1(b) is intended to be a restatement of the business judgment rule established in applicable law as it applies to the Association. All modifications and interpretations of the business judgment rule applicable to the Association shall be interpreted to modify and interpret this Section 4.3.1(b).

(c) **Association Governance.** This Section 4.3 applies to Board actions and Design Review Committee decisions in connection with interpretation and enforcement of the Governing Documents, architectural and landscaping control, regulation of uses within the Community, rulemaking and oversight of committees. Actions taken or decisions made in connection with these matters shall be reasonable, fair and nondiscriminatory.

#### 4.3.2 Non-liability.

(a) **General Rule.** No Person is liable to any other Person (other than the Association or a party claiming in the name of the Association) for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries or damage result from the Person's willful or malicious misconduct. No Person is liable to the Association (or to any party claiming in the name of the Association) for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries or damage result from such Person's negligence or willful or malicious misconduct. The Association is not liable for damage to property in the Community unless caused by the negligence of the Association, the Board, the Association's officers, the Manager or the Manager's staff.

(b) **Non-liability of Volunteer Board Members and Officers.** A volunteer Board member or volunteer Association officer shall not be personally liable to any Person who suffers injury, including bodily injury, emotional distress, wrongful death or property damage or loss as a result of the tortious act or omission of the volunteer officer or Board member if all applicable conditions specified in California Civil Code Section 1365.7 [after January 1, 2014, Section 5800] are met.

(c) **Non-liability of Owners.** Pursuant to California Civil Code Section 1365.9 [after January 1, 2014, Section 5805], no Owner shall be liable for any cause of action in tort which can be brought against the Owner solely because of the Owner's undivided interest in the Common Area so long as the Association keeps one (1) or more policies of insurance which include coverage for general liability of the Association in the amount required by California Civil Code Section 1365.9 [after January 1, 2014, Section 5805] and that insurance is in effect for the cause of action being brought.

#### 4.4 MEMBERSHIP.

4.4.1 **Generally.** Every Owner shall automatically acquire a Membership in the Association and retain the Membership until such Owner's Condominium ownership ceases, at which time such Owner's Membership shall automatically cease. Ownership of a Condominium is the sole qualification for Membership. Memberships are not assignable except to the Person to whom title to the Condominium is transferred, and every Membership is appurtenant to and may not be separated from the fee ownership of the Condominium. The rights, duties, privileges and obligations of all Owners are as provided in the Governing Documents.

4.4.2 **Transfer.** The Membership of any Owner may not be transferred, pledged or alienated in any way, except on the transfer or encumbrance of such Owner's Condominium, and then only to the transferee or Mortgagee of the Owner's Condominium. A prohibited transfer is void and will not be reflected in the records of the Association. Any Owner who has sold the Owner's Condominium to a contract purchaser under an agreement to purchase may delegate the Owner's Membership rights to the contract purchaser. The delegation must be in writing and must be delivered to the Association before the contract purchaser may vote. The contract seller shall remain liable for all Assessments attributable to the contract seller's Condominium which accrue before title to the Condominium is transferred. If the contract seller fails or refuses to delegate the Membership rights to the contract purchaser before the Close of Escrow, the Association may record the transfer to the contract purchaser in the Association's records. However, no contract purchaser will be entitled to vote at Association meetings during the term of a purchase contract without satisfactory evidence of the delegation of the contract seller's Membership rights to the contract purchaser. The Association may levy a reasonable transfer fee against a new Owner and such Owner's Condominium (which fee shall be paid through escrow or added to the Annual Assessment chargeable to such new Owner) to reimburse the Association for the administrative cost of transferring the Membership to the new Owner on the Association's records. Such fee may not exceed the Association's actual cost involved in changing its records.

4.4.3 **Classes of Membership.** The Association classes of voting Membership are as follows:

(a) **Class A.** Class A members are all Owners except Declarant for so long as a Class B Membership exists. Class A members are entitled to one (1) vote for each Condominium owned by such Class A members which is subject to Assessment. Declarant shall become a Class A member on conversion of Declarant's Class B Membership as provided below. The vote for each Condominium shall be exercised in accordance with Section 4.5, but no more than one (1) Class A vote may be cast for any Condominium.

(b) **Class B.** The Class B Member is Declarant. The Class B Member is entitled to three (3) votes per Condominium it owns which is subject to Assessment. The Class B Membership shall convert to Class A on the earlier to occur of the following events:

(1) The second (2<sup>nd</sup>) anniversary of the first Close of Escrow in the most recent Phase; or

(2) The fourth (4<sup>th</sup>) anniversary of the first Close of Escrow in the Community.

Solely for the purpose of compliance with the FHA/VA Requirements, and solely to the extent there is no inconsistency with the above, the Class B Membership shall convert to Class A on the earlier to occur of the date that is 120 days after the date on which 75 percent (75%) of the Units in the Community and Annexable Area have been conveyed to Owners in transactions subject to Public Reports.

#### 4.5 VOTING RIGHTS.

4.5.1 **Limits Generally.** All voting rights are subject to the Governing Documents. Except as provided in Sections 4.5.2 and 12.3 of this Declaration and as provided in the Bylaws, as long as there is a Class B Membership, any provision of the Governing Documents which expressly requires the vote or written consent of a specified percentage (instead of a majority of a quorum) of the Association's voting power before action may be undertaken shall require the approval of such specified percentage of the voting power of both the Class A and the Class B Memberships. Except as provided in Section 12.3 of this Declaration and as provided in the Bylaws, on termination of the Class B Membership, any provision of the Governing Documents which expressly requires the vote or written consent of Owners representing a specified percentage (instead of a majority of a quorum) of the Association's voting power before action may be undertaken shall then require the vote or written consent of Owners representing such specified percentage of both (a) the Association's total Class A voting power, and (b) the Association's Class A voting power represented by Owners other than Declarant.

4.5.2 **Vote to Initiate Right to Repair Law Claim.** Beginning on the date of the first annual meeting of Owners, Declarant relinquishes control over the Association's ability to decide whether to initiate a Right to Repair Law Claim. This means that Declarant, current employees and agents of Declarant, Board members who are appointed by Declarant, Board members elected by a majority of votes cast by Declarant, and all other Persons whose vote or written consent is inconsistent with the intent of the preceding sentence, are prohibited from participating and voting in any decision of the Association or Owners to initiate a Right to Repair Law Claim. The Association must obtain the vote or written consent of a simple majority of the Association's voting power, excluding votes attributable to Declarant, in order to initiate a Right to Repair Law Claim.

4.5.3 **Joint Ownership.** When more than one (1) Person holds an interest in any Condominium ("co-owners"), each co-owner may attend any Association meeting, but only one (1) co-owner shall be entitled to exercise the single vote to which the Condominium is entitled. Co-owners owning the majority interests in a Condominium may designate in writing one (1) of their number to vote. Fractional votes shall not be allowed and the vote for each Condominium shall be exercised, if at all, as a unit. Where no voting co-owner is designated or if the designation is revoked, the vote for the Condominium shall be exercised as the co-owners owning the majority interests in the Condominium agree. Unless the Association receives a written objection in advance from a co-owner, it shall be conclusively presumed that the voting co-owner is acting with the co-owners' consent. No vote may be cast for any Condominium if



the co-owners present in person or by proxy owning the majority interests in such Condominium fail to agree to the vote or other action. The nonvoting co-owner or co-owners are jointly and severally responsible for all obligations imposed on the jointly-owned Condominium and are entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in the Governing Documents are binding on all Owners and their successors in interest.

**4.6 UNSEGREGATED REAL PROPERTY TAXES.** To the extent not assessed to or paid by the Owners, the Association shall pay all real and personal property taxes and assessments levied on the Community. If all Condominiums in a Phase are taxed under a tax bill covering all of such Phase, then each Owner shall pay the Owner's share of any installment due under the tax bill to the Association at least ten (10) days before the delinquency date. The Association shall transmit the taxes to the appropriate tax collection agency on or before the delinquency date. The Association shall allocate taxes equally among the Owners and their Condominiums in such Phase, based on the total number of Condominiums in such Phase. The Association shall, at least forty five (45) days before the delinquency date of any tax installment, deliver to each Owner in such Phase a copy of the tax bill, along with a written notice setting forth the Owner's obligation to pay the Owner's share of the tax installment and the potential additional charges to the Owner for failure to comply. The Association shall pay the taxes on behalf of any Owner who does not pay the Owner's share. The Association shall add to the Annual Assessment of a delinquent Owner the amount of any sum advanced, plus interest at the rate of ten percent (10%) per annum and any amount necessary to reimburse the Association for any penalty or late charge actually assessed in connection with the tax bill for a Phase, which late charge results from the failure of the delinquent Owner to make timely payment of the Owner's share of the taxes. Until Close of Escrow for the sale of ninety percent (90%) of the Condominiums in the Community has occurred, this Section may not be amended without the written consent of Declarant.

## **ARTICLE 5 DESIGN REVIEW COMMITTEE**

**5.1 MEMBERS OF COMMITTEE.** The Design Review Committee shall be composed of three (3) members. The initial members of the Design Review Committee shall be representatives of Declarant until one (1) year after the original issuance of the Public Report for Phase 1 ("*First Anniversary*"). After the First Anniversary, the Board may appoint and remove one (1) member of the Design Review Committee, and Declarant may, but is not obligated to, appoint and remove a majority of the members of the Design Review Committee and fill any vacancy of such majority, until the earlier to occur of (a) Close of Escrow for the sale of ninety percent (90%) of all the Condominiums in the Community and the Annexable Area, or (b) the fifth (5<sup>th</sup>) anniversary of the original issuance of the Public Report for Phase 1, after which the Board may appoint and remove all members of the Design Review Committee. Design Review Committee members appointed by the Board must be Owners, but Design Review Committee members appointed by Declarant need not be Owners. Members of the Board of Directors may serve as Design Review Committee members.

## 5.2 POWERS AND DUTIES.

5.2.1 **General Powers and Duties.** The Design Review Committee shall consider and act upon all plans and specifications submitted for its approval, including inspection of work in progress to assure conformity with plans approved by the Design Review Committee, and shall perform such other duties as the Board assigns to it.

5.2.2 **Issuance of Standards.** The Design Review Committee shall annually issue and update its Design Guidelines and provide notice of any requirements for Committee approval of proposed Improvements. The notice shall describe the types of proposed Improvements that require Committee approval, and it shall include a copy of the procedure used to review and approve or disapprove such proposed Improvements. The Design Guidelines may require a fee to accompany each application for approval, and may identify additional factors which the Design Review Committee will consider in reviewing submissions. The Design Review Committee may provide that fees it imposes be uniform, or that fees be determined in any other reasonable manner. The Design Review Committee may require such detail in plans and specifications submitted for its review as it deems proper, including landscape plans, floor plans, site plans, drainage plans, elevation drawings and descriptions or samples of exterior materials and colors.

5.2.3 **Retaining Consultants.** The Design Review Committee has the power, but not the duty, to retain licensed architects, contractors and other professionals to advise its members in connection with decisions.

## 5.3 REVIEW OF PLANS AND SPECIFICATIONS.

5.3.1 **Improvements Requiring Approval.** No construction, reconstruction, installation, removal or alteration of any outdoor Improvement on a Unit, including landscaping, grading, excavation, filling or other alteration to the grade or level of the land, may be commenced by any Owner without prior Design Review Committee approval. However, a Residence may be repainted or refinished without prior Design Review Committee approval so long as the Residence is repainted or refinished with materials that are identical to the materials originally used by Declarant or last applied to the Improvement with Committee approval (as applicable). The provisions of this Article apply to construction, installation and alteration of solar energy systems, as defined in Section 801.5 of the California Civil Code, subject to the provisions of California Civil Code Sections 714 and 714.1, the applicable Building Code, zoning regulations, and other laws.

5.3.2 **Application Procedure.** Owners who seek Committee approval shall submit plans and specifications showing the dimensions, exterior elevation, color, materials used and location of the proposed Improvements, along with an initial review fee in an amount set in writing from time to time by the Committee, along with all other deposits and review materials required under this Article (collectively, an **"Application"**). Until changed by the Board, the address for the submission of the Application is the Association's principal office. The form of Application used by the Design Review Committee may include spaces allowing "Adjacent Owners" to sign or initial the Application confirming that they have been notified of the application. The Design Review Committee may establish a definition of "Adjacent Owners" in

its Design Guidelines. Applications will be complete and may be approved or disapproved by the Design Review Committee even if all of the Adjacent Owners do not initial the Applications so long as the Owner submitting plans and specifications (the "*Applicant*") certifies that the Applicant has asked the Adjacent Owners to sign the Applications. The requirement that the Applicant attempt to obtain the signatures of Adjacent Owners is intended only to provide notice of the pending application to the Adjacent Owners. It does not create in the Adjacent Owners any power to approve or disapprove the Application by signing or withholding a signature. Only the Committee may approve or disapprove an Application.

The Design Review Committee shall deliver its written approval, disapproval, or request for additional information or materials to the Applicant at the address listed in the Application no later than the date that is forty-five (45) calendar days after the date on which the Design Review Committee has received the complete Application (the "*Review Deadline*"). If, on the Review Deadline, the Committee has failed to deliver to the Applicant its written approval, disapproval, or request for additional information or materials, then the Application shall be deemed approved, and the Manager or a representative of the Board or Committee shall at the request of the Applicant execute a written approval therefor within fifteen (15) days after receipt of such request.

**5.3.3 Standard for Approval.** A decision on a proposed Improvement shall be consistent with California law, made in good faith and may not be unreasonable, arbitrary or capricious. If disapproved, the written decision shall include both an explanation of why the proposed Improvement is disapproved and a description of the procedure for reconsideration by the Board. The Design Review Committee shall approve an Application only if it determines that (a) installation, construction or alterations of the Improvements in the locations proposed will not be detrimental to the appearance of the Community as a whole, (b) the appearance of the proposed Improvements will be in harmony with the existing Improvements and the overall design theme in the Community, (c) installation, construction or alteration of the proposed Improvements will not detract from the beauty, wholesomeness and attractiveness of the Community or the enjoyment of the Community by the Owners, (d) maintenance of the proposed Improvements will not become a burden on the Association, and (e) the proposed Improvements are consistent with the Governing Documents. The Committee's decision on a proposed change may not violate any governing provision of law, including the Fair Employment and Housing Act, or a building code or other applicable law governing land use or public safety. The Committee may consider the impact of views from other Units, reasonable privacy right claims, passage of light and air, beneficial shading and other aesthetic factors in reviewing, approving or disapproving any Application. However, neither the Declarant nor the Association warrants that any views in the Community are protected. No Unit is guaranteed the existence or unobstructed continuation of any particular view. In review of an Application, the Committee shall not make any determination as to non-aesthetic factors such as general safety, fire protection, noise mitigation or compliance with building codes or applicable industry building standards.

5.3.4 **Conditions of Approval.** The Design Review Committee may condition its approval of an Application for any Improvement on any one (1) or more of the following:

(a) The Applicant's delivery to the Association of security acceptable to the Association against any mechanic's lien or other encumbrance which may be Recorded against the Association Property or another Owner's Unit as a result of such work;

(b) The Applicant's delivery to the Association of the review fee described in Section 5.3.1 above;

(c) Such changes to the Application as the Design Review Committee considers appropriate;

(d) The Applicant's agreement to grant to the Association or other Owners such easements as are made reasonably necessary by the existence of the Improvement;

(e) The Applicant's agreement to install water, gas, electrical or other utility meters to measure any increased utility consumption;

(f) The Applicant's agreement to reimburse the Association for the cost of maintaining the Improvement (should the Association agree to accept maintenance responsibility for the Improvement as built);

(g) The Applicant's agreement to complete the proposed work within a stated period of time;

(h) If required by the Committee, the Applicant's deposit of adequate funds with the Association to repair or restore any Association Property that may be damaged by the Applicant or the Applicant's contractors. The Design Review Committee will determine the actual amount of the deposit in each case, but the amount shall be at least enough to cover the cost of repairing or restoring damage that is reasonably foreseeable to the Design Review Committee. The deposit shall be refundable to the extent the Design Review Committee finds that the work of Improvement is complete, and that the Association Property was not damaged or was restored at least to its condition when the work began;

(i) If required by the Committee, the submission of additional plans and specifications or other information before approving or disapproving the Application.

5.3.5 **Governmental Approvals.** The Applicant shall meet the requirements of all applicable ordinances, codes and regulations of the City and County, including zoning laws, building and safety codes, fire codes and applicable inspection and permit requirements before making any construction, installation or alterations permitted under this Declaration. All approvals issued by the Committee are in addition to, and not in lieu of, applicable governmental approvals, which the Applicant must also obtain at his sole cost, prior to or concurrently with Committee approvals, and before commencing any work. Furthermore, governmental approvals are in addition to, and not in lieu of, Committee approvals required under the Governing Documents. No determination by any governmental agency that the Applicant has met

applicable governmental requirements for a particular Improvement shall relieve the Applicant of its obligation to obtain all required Committee approvals required under this Article and the Governing Documents.

**5.3.6 Matters Outside Scope of Approval.** The Design Review Committee's approval or disapproval of each Application shall be based solely on the aesthetic considerations listed in this Article. Approval of any Application does not constitute a finding by the Design Review Committee that the Application or any portion of the Application (a) incorporates good engineering practices, (b) complies with applicable law, ordinance, code, or regulation, including zoning laws, building and safety codes or fire codes, (c) complies with the requirements of any utility provider, or (d) is permissible under the terms of any easement, license, permit, Mortgage, deed of trust, or other recorded or unrecorded instrument (other than the Governing Documents) that affects the land. Nothing in this Declaration shall be construed to require Design Committee approval of any construction, reconstruction, installation, removal or alteration of an Improvement by Declarant or by the Association.

**5.3.7 Exculpation of Committee.** By submitting an Application, each Applicant is deemed to agree that neither the Design Review Committee, nor the members thereof, nor Declarant, nor their respective agents, employees, attorneys or consultants shall be liable to any Person for:

(a) Any matter outside the Committee's scope of approval as discussed in Section 5.3.6 above;

(b) Any defect in any Improvement constructed by or on behalf of the Applicant pursuant to an approved Application;

(c) Any loss, damage, or injury to Persons or property arising out of or in any way connected with work performed by or on behalf of the Applicant pursuant to an approved Application; or

(d) Any loss, damage, or injury to Persons or property arising out of or in any way connected with the performance of the Design Review Committee's duties hereunder, unless due to willful misconduct or gross negligence.

**5.4 MEETINGS AND ACTIONS OF THE DESIGN REVIEW COMMITTEE.** The Design Review Committee shall meet as necessary to perform its duties. The Design Review Committee may, by resolution unanimously adopted in writing, designate an Owner or a Declarant representative to serve as a Design Review Committee Representative to take any action or perform any duties for and on behalf of the Design Review Committee except the granting of variances. The Design Review Committee Representative need not be a current member of the Design Review Committee. In the absence of such designation, the vote or written consent of a majority of the Design Review Committee constitutes an act of the Design Review Committee. All approvals issued by the Design Review Committee must be in writing. Verbal approvals issued by the Design Review Committee, any individual Design Review Committee member or any other representative of the Association are not valid, are not binding on the Association and may not be relied on by any Person. If within six (6) months after

issuance of the approval, an Owner either does not begin work pursuant to approved plans or obtain an extension of time to begin work, the approval shall be automatically revoked and a new approval must be obtained before work can begin.

**5.5 NO WAIVER OF FUTURE APPROVALS.** The Design Review Committee's approval of any proposals, plans and specifications or drawings for any work done or proposed in connection with any matter requiring the Design Review Committee's approval does not waive the right to withhold approval of any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval.

**5.6 COMPENSATION OF MEMBERS.** The Design Review Committee's members shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in performing their duties.

**5.7 INSPECTION OF WORK.** The Design Review Committee or its duly authorized representative may inspect any work for which approval of plans is required under this Article ("**Work**"). The right to inspect includes the right to require any Owner to take such action as may be necessary to remedy (including removal of) any noncompliance with the Design Review Committee-approved plans for the Work or with the requirements of this Declaration ("**Noncompliance**").

**5.7.1 Time Limit for Inspections.** When the Work is complete, the Applicant shall immediately provide the Committee with written notice of completion on the form prescribed by the Committee. The Design Review Committee's right to inspect the Work and notify the responsible Owner of any Noncompliance shall terminate on the date that is sixty (60) calendar days after the date on which the Committee has received written notice from the Applicant on a form provided by the Committee that the Work is complete. If the Design Review Committee fails to send a written notice of Noncompliance to an Applicant before this time limit expires, the Work shall be deemed to comply with the approved Application.

**5.7.2 Noncompliance.** If an Improvement that requires the prior approval of the Design Review Committee is (a) commenced or completed without prior written approval by the Committee, (b) is not completed within the time limit established by the Committee in its approval, or (c) is not completed in substantial conformity with the approved Application, or (d) if no time limit is established by the Committee, the Applicant fails to complete the Work within one (1) year after the date on which the Application was approved, then a Noncompliance is deemed to exist, and then the Committee has the right, but not the obligation, to deliver a written notice of Noncompliance to the violating Owner, and the Association may, but is not required to, pursue the remedies set forth in this Section.

**5.7.3 Remedy for Noncompliance.** The Committee shall notify the Board in writing when an Owner fails to remedy any Noncompliance within sixty (60) days after the date of the notice of Noncompliance. After Notice and Hearing, the Board shall determine whether there is Noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a Noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days after the date that notice of the Board ruling is given to the Owner. If the Owner does not comply with the Board ruling within that period,

the Association may record a Notice of Noncompliance (if allowed by law), correct the Noncompliance and charge the Owner for the Association's costs, or commence an action for damages or injunctive relief, as appropriate, to remedy the Noncompliance.

**5.8 VARIANCES.** The Design Review Committee may authorize variances from compliance with any of the architectural provisions of this Declaration or the Design Guidelines including restrictions on height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations require. Variances must be evidenced in writing, must be signed by a majority of the Committee, and become effective on Recordation. After Declarant's right to appoint a majority of the Design Review Committee's members ends, the Board must approve any variance recommended by the Design Review Committee before any such variance becomes effective. If variances are granted, no violation of this Declaration shall be deemed to have occurred concerning the matter for which the variances were granted. The granting of a variance does not waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provision of this Declaration covered by the variance, nor does it affect the Owner's obligation to comply with all laws affecting the use of that Owner's Unit. The Committee's written variance shall be Recorded against the Applicant's Condominium in the Official Records. The cost of Recording the variance shall be borne solely by the Applicant. No variance shall conflict with local ordinances or any specific plan for the Community without the prior written approval of the City.

**5.9 PRE-APPROVALS.** The Design Review Committee may authorize pre-approval of specified types of construction activities if, in the exercise of the Design Review Committee's judgment, a pre-approval is appropriate to carry out the purposes of the Governing Documents.

**5.10 APPEALS.** If a proposed Improvement is disapproved, the applicant is entitled to reconsideration by the Board of Directors at an open meeting that satisfies the requirements of California Civil Code Section 1363.05 [after January 1, 2014, Sections 4090, 4155, 4900, 4910, 4920, 4923, 4925(a) 4925(b), 4930, 4935(a), 4935(b), 4935(e), 4950(a), 4950(b), 5000(b)]. This paragraph does not require reconsideration of a decision that is made by the Board, or the Design Review Committee if the Committee has the same membership as the Board.

## **ARTICLE 6 PROPERTY EASEMENTS AND RIGHTS**

### **6.1 EASEMENTS.**

**6.1.1 Maintenance and Repair.** Declarant reserves for the benefit of the Association and all Association agents, officers and employees, nonexclusive easements over the Community as necessary to fulfill the obligations and perform the duties of the Association.

**6.1.2 Utility Easements.** Declarant reserves easements to install and maintain utilities over the Association Property for the benefit of the Owners and their Condominiums. Declarant reserves the right to grant additional easements and rights-of-way throughout the Community to utility companies and public agencies as it deems necessary for the

proper development and disposal of the Community. Such right of Declarant shall expire on the Close of Escrow for the sale of the last Condominium in the Community and the Annexable Area.

6.1.3 **Encroachments.** Declarant reserves, for its benefit and for the benefit of all Owners and their Condominiums, a reciprocal easement appurtenant to each Condominium over the other Condominiums and the Association Property to accommodate (a) any existing encroachment of any wall or any other Improvement installed by Declarant or approved by the Design Review Committee, and (b) shifting, movement or natural settling of the Residences or other Improvements. Use of the easements may not unreasonably interfere with each Owner's use and enjoyment of the burdened Residences.

6.1.4 **Easements for Public Service Use.** Declarant reserves easements over the Community for public services of the Local Government Agencies, including but not limited to, the right of law enforcement and fire protection personnel to enter upon the Community to carry out their official duties. In addition, Declarant hereby reserves in favor of the City and County Fire Departments' easements for access, ingress and egress, maintenance, repair and replacement of underground piping, fire lines, fire laterals and other fire protection equipment over all Lots and Association Property in the Community, provided, however that this easement shall not impose any obligations on fire department.

6.1.5 **Easements for Water and Utility Purposes.** Declarant reserves easements over the Community for public and private utility purposes, including but not limited to, the right of any public utility or mutual water district of ingress and egress over the Community to read and maintain meters, and use and maintain fire hydrants.

6.1.6 **Completion of Improvements.** Declarant reserves the right and easement to enter the Community to complete any Improvement which Declarant considers desirable to implement Declarant's development plan.

6.1.7 **Access Easements.**

(a) ***Reserved for Declarant and the Annexable Area.*** Declarant reserves for its benefit and for the benefit of the owners of Units located in the Annexable Area (whether annexed to the Community or not) easements for pedestrian and vehicular access, including construction access, over all Private Streets and sidewalks located within the Community.

(b) ***Reserved for Models.*** Declarant reserves for its benefit easements for pedestrian and vehicular ingress and egress over the Private Streets and through any entry gates serving the Community during business hours, seven (7) days per week, for access to those Units within the Community which are used by Declarant, or its assignee, for models or sales offices, as permitted by the City. Declarant shall have the right to assign this easement, by written assignment, to any successor in interest. This easement shall terminate when the use of such Condominiums by Declarant or its assignee, for models or sales office purposes, has been permanently terminated.



(c) **Interim Access for Association and Owners.** Declarant reserves for the benefit of the Association and the Owners, a nonexclusive interim access easement ("**Interim Access Easement**") over the areas shown as Private Streets on the Phase 1 Plan. Declarant may grant additional Interim Access Easements in future Phases as necessary to provide legal access, in accordance with Declarant's development plan. Interim Access Easements are granted for purposes of vehicular and pedestrian access, but they create no obligation on the Association or Owners to maintain the Improvements subject to the Interim Access Easement. An Interim Access Easement created in any Phase shall be effective when described and conveyed to the Association in an instrument Recorded with the first Close of Escrow in such Phase, and shall automatically terminate when the Private Street on which that Interim Access Easement is located is conveyed in fee to the Association. An Interim Access Easement shall be subject to relocation and termination by Declarant in order to accommodate Declarant's construction activities, provided such relocation and termination (1) is set forth in a Recorded instrument signed by Declarant, and (2) does not prevent legal access to any portion of the Community.

6.1.8 **Easements for Roving Patrol.** Declarant reserves easements over the Community for roving security patrol purposes, including the right of any security patrol or security personnel retained by Declarant or the Association of ingress and egress for purposes of providing roving patrol services to the Community.

6.1.9 **Community Wall Easements.** Declarant reserves for the benefit of the Association the following easements:

(a) An easement over all Units that are enclosed by a portion of the Community Wall, consisting of a three (3) foot-wide strip of land bounded on one side by the Residence-facing surface of the Community Wall, and extending along the entire length of that portion of the Community Wall that encloses the Unit, in order to accommodate the footings and other structural components of the Community Wall; and

(b) An easement for access over such Units as reasonably necessary for maintaining the Community Walls and related Improvements. If a Community Wall is damaged, the Association shall have the right to enter upon the Unit as necessary to reconstruct the Community Wall in the easement area, and the easements reserved hereby shall continue in effect so long as the Community Wall remains in place. In accordance with the Conditions of Approval imposed by the City, Owners of Condominiums along the southerly boundary of the Community will have trees planted in the backyard area of their Lots along the Community Wall. Per the City's Conditions of Approval for the Community, these trees may not be removed, as the trees serve as a landscape buffer between the Community and the adjacent train tracks.

6.1.10 **Drainage Easements.** Declarant reserves, for the benefit of the Community, the Owners and the Association, reciprocal nonexclusive easements for drainage of water over, across and on the Community, including the collection and drainage of retaining wall back drain flow from neighboring property.

6.1.11 **Easements for Maintenance of Association Maintenance Areas.** Declarant reserves, for the benefit of the Association, nonexclusive easements over each Unit as

necessary for access and maintenance of Association Maintenance Areas described in Section 1.1.6 and approximately depicted (as applicable to Phase 1) on *Exhibit D*, and in subsequent Phases of the Community in the applicable Notice of Addition or Supplemental Declaration. Notwithstanding their depiction in this Declaration or in a Notice of Addition or Supplemental Declaration, the actual locations and dimensions of the Association Maintenance Areas shall be defined by the physical locations of the Improvements as built by Declarant or rebuilt substantially in accordance with the original plans (if available). No Owner may interfere with the Association's exercise of its rights under the easements reserved in this Section. Additional Association Maintenance Area easements may be reserved (or if off-site, described) in a Notice of Addition or Supplemental Declaration applicable to the Phase that includes such easements. Association Maintenance Area easements located within the Units include the following:

(a) ***Maintenance of Cross-Unit Drainage Improvements and Association-Maintained BMPs.*** Nonexclusive easements over the Units for the placement and maintenance of cross-Unit Drainage Improvements as described herein and approximately depicted (as applicable to Phase 1) on *Exhibit D* and in subsequent Phases of the Community in the applicable Notice of Addition or Supplemental Declaration, and for Association-maintained BMPs as described in the SUSMP.

**6.1.12 Storm Drain Easements.** Owners whose Condominiums border the southerly boundary of the Community may be subject to a storm drain easement, which is located inside the Community Wall bordering the train tracks. Owners of these Condominiums shall not install any permanent Improvements that obstruct the storm drain.

**6.2 OWNERS' EASEMENTS.** Declarant reserves, for the benefit of every Owner, and each Owner's Family, tenants and invitees, the following:

**6.2.1 General Easements over Association Property.** Nonexclusive easements over the Association Property in the Community, for pedestrian and vehicular access, ingress and egress, encroachment, support, maintenance, drainage, repair, and for other purposes, all as applicable and as described in this Declaration, in a deed to the Condominium, or as may be shown on the Map or the Lot Line Adjustment, all as reasonably necessary for the use and enjoyment of each Condominium in the Community.

**6.2.2 General Easements over Three Sixty Community.** All those certain easements granted to the Association and the Members in the Cost Sharing Agreement, including nonexclusive easements over the Shared Private Streets for pedestrian and vehicular access, ingress and egress, encroachment, support, maintenance, drainage, repair, and for other purposes, all as applicable and as reasonably necessary for the use and enjoyment of each Condominium in the Community.

**6.2.3 Reciprocal Easements over the Units.** Reciprocal, nonexclusive easements over the Units in the Community for encroachment, support, maintenance, drainage, repair, and for other purposes, all as applicable and as described in this Declaration, in a deed to the Condominium, or as may be shown on the Map or the Lot Line Adjustment, all as reasonably necessary for the use and enjoyment of each Condominium in the Community (all as applicable).

The easements reserved in this Section 6.2.3 are appurtenant to and pass with title to every Condominium in the Community.

**6.2.4 Right of Attachment to Community Walls.** Declarant hereby reserves nonexclusive easements for the benefit of the Owners of Condominiums in the Community, the Association, and the owners of parcels adjacent to the Community, for the attachment to the Community Walls of proposed or required walls or fences (to avoid potential double-walling of properties).

**6.3 TELECOMMUNICATIONS EASEMENT.** Declarant reserves blanket easements (collectively, "*Telecommunications Easements*") over the Community for access and for purposes of constructing, installing, locating, altering, operating, maintaining, inspecting, upgrading, removing and enhancing Telecommunications Facilities (collectively, "*Telecommunications Purposes*") for the benefit of Declarant. Such easements are freely transferable by Declarant to any other Person and their successors and assigns. No one, except for Declarant and Declarant's transferees, may use the Community for Telecommunications Purposes. All Telecommunications Facilities shall be owned, leased or licensed by Declarant, as determined by Declarant, in its sole discretion and business judgment. Transfer of the Community does not imply transfer of any Telecommunications Easements or Telecommunications Facilities. The holders of the Telecommunications Easements may not exercise the rights reserved hereunder in any manner which will unreasonably interfere with the reasonable use and enjoyment of the Community by any Owner. If the exercise of any Telecommunications Easement results in damage to the Community, then the easement holder who caused the damage shall, within a reasonable period of time, repair such damage. If Declarant has not conveyed the Telecommunications Easements in a Phase to another Person before the last Close of Escrow in the Community and the Annexable Area, then Declarant grants the Telecommunications Easements to the Association effective as of the last Close of Escrow in the Community and the Annexable Area.

**6.4 DECLARANT'S RIGHT TO GRANT ADDITIONAL EASEMENTS.** Declarant reserves easements over the Association Property owned in fee simple by the Association for the exclusive use by an Owner or Owners of contiguous property as a yard, recreational, gardening, and landscaping area. Subject to Section 4.2.3, any such easement may be conveyed by the Declarant before the last Close of Escrow for sale of a Condominium in the Community and the Annexable Area. Such conveyance must be approved by the Board, which approval must not be unreasonably withheld. The purpose of the easement, the portion of the Association Property affected, the Unit to which the easement is appurtenant, and any restrictions on use of the easement area shall be identified in a Recorded grant of easement.

**6.5 DELEGATION OF USE.** Any Owner may delegate the Owner's right to use the Association Property in writing to the Owner's tenants, contract purchasers or subtenants who reside in such Owner's Residence, subject to regulation by the Board. An Owner who has delegated this right may not use the recreational facilities on the Association Property so long as such delegation remains in effect.

## **6.6 RIGHT OF ENTRY.**

**6.6.1 Association.** The Association has the right to enter the Units to inspect the Community, and may take whatever corrective action it determines to be necessary or proper. Entry onto any Units under this Subsection may be made after at least three (3) days' advance written notice to the Owner of the Unit, except for emergency situations, which shall not require notice. Any damage to a Residence or Unit caused by entry under this Subsection shall be repaired by the Association.

**6.6.2 Declarant.** The Declarant has the right to enter the Units and the Association Property (a) to comply with requirements for the recordation of subdivision maps or lot line adjustments in the Community or Annexable Area, (b) for repair of Improvements in accordance with the provisions of the Right to Repair Law, (c) to accommodate grading or construction activities, and (d) to comply with requirements of applicable governmental agencies. Declarant shall provide the applicable Owner reasonable notice before such entry, except for emergency situations, which shall not require notice. Any damage to the Community that is caused by entry under this Subsection shall be repaired by the Declarant. Unless otherwise specified in the applicable initial grant deed by which Declarant has transferred ownership of the subject Condominium or subject Association Property, this right of entry shall automatically expire on the later of the date that is twelve (12) years after (a) the date this Declaration is Recorded, or (b) the date the grant deed is Recorded by which Declarant first conveyed fee title to the subject real property under authority of a Public Report.

**6.6.3 Owners.** Each Owner shall permit other Owners, and their representatives, to enter the yard areas of the Owner's Unit to perform installations, alterations or repairs to the entering Owner's Residence, and to mechanical or electrical services to the entering Owner's Unit if (a) requests for entry are made in advance, (b) entry is made at a time reasonably convenient to the Owner whose yard is to be entered, and (c) the entered yard is left in substantially the same condition as existed immediately preceding such entry. Any damage to the Unit caused by entry under this Subsection shall be repaired by the entering Owner.

**6.6.4 Access to Drainage Improvements.** Each grantee of a Condominium covenants for such Owner, the Owner's heirs, successors and assigns, to permit free access by Owners of adjacent or adjoining Units and by the Association, its agents and employees, to all drainage ways located on such Owner's Unit, which affect said adjacent or adjoining Units, which access is essential for the maintenance of the drainage facilities for Units other than the Unit on which the drainage way is located.

## **ARTICLE 7**

### **ASSOCIATION MAINTENANCE FUNDS AND ASSESSMENTS**

**7.1 PERSONAL OBLIGATION TO PAY ASSESSMENTS.** Each Owner shall pay to the Association all Assessments established and collected pursuant to this Declaration. The Association shall not levy or collect any Assessment that exceeds the amount necessary for the purpose for which it is levied. All Assessments, together with late payment penalties, interest, costs, and reasonable attorney fees for the collection thereof, are a charge and a continuing lien on the Condominium against which such Assessment is made. Each Assessment,

together with late payment penalties, interest, costs and reasonable attorney fees, is also the personal obligation of the Person who was the Owner of the Condominium when the Assessment accrued. The personal obligation for delinquent Assessments may not pass to any new Owner ("**Purchaser**") unless expressly assumed by the Purchaser or unless the Purchaser has actual or constructive knowledge of such delinquent Assessments, whether by virtue of the Recordation of a Notice of Delinquent Assessment or receipt from the Association of a certificate pursuant to California Civil Code Section 1368(a)(4) [after January 1, 2014, Section 4525(a)(4)].

**7.2 ASSOCIATION MAINTENANCE FUNDS.** The Association shall establish trust accounts at a banking or savings institution for the Association Maintenance Funds and funds may be combined so long as reserve funds are not combined with operating funds and the funds are treated as separate funds for accounting purposes. The Board shall budget, establish and maintain at least the following accounts:

**7.2.1 General Operating Fund.** A General Operating Fund for current expenses of the Association.

**7.2.2 General Reserve Fund.** A General Reserve Fund for the deposit of Reserve Funds for the portion of Common Expenses allocated to (1) reserves for Improvements which the Board does not expect to repair or replace on an annual or more frequent basis, (2) payment of deductibles under the Association's insurance policies, and (3) any other funds which the Board may elect to establish.

**7.2.3 Miscellaneous Maintenance Funds.** Other Maintenance Funds as the Board of Directors deem necessary.

**7.3 PURPOSE OF ASSESSMENTS.** The Assessments shall be used exclusively to (a) promote the Owners' recreation and welfare, (b) operate, improve and maintain the Association Property, and (c) discharge any other Association obligations under this Declaration. All amounts deposited into the Association Maintenance Funds must be used solely for the purposes authorized by this Declaration, as more fully described below. Disbursements from the Reserve Fund shall be made by the Association only for the purposes specified in this Article and in California Civil Code Section 1365.5(c) [after January 1, 2014, Sections 5510(b) and 5515].

**7.3.1 General Operations.** Disbursements from the General Operating Fund shall be made for payment of Common Expenses, for the common benefit of all Owners.

**7.3.2 General Reserves.** Disbursements from the General Reserve Fund shall be made solely for payment of Reserve expenditures described in the Budget.

**7.4 WAIVER OF USE.** No Owner may be exempt from personal liability for Assessments duly levied by the Association, nor release such Owner's Condominium from the liens and charges thereof, by waiving use and enjoyment of the Association Property or by abandoning such Owner's Condominium.

**7.5 LIMITS ON ANNUAL ASSESSMENT INCREASES.** The following shall apply to the general component of Annual Assessments:

**7.5.1 Maximum Authorized Annual Assessment For Initial Year of Operations.** During the Fiscal Year in which Annual Assessments commence, the Board may levy an Annual Assessment per Condominium in an amount which exceeds one hundred twenty percent (120%) of the amount of Annual Assessments disclosed for the Community in the most current Budget filed with and approved by the DRE only if the Board first obtains the approval of Owners casting a majority of votes at a meeting or election of the Association in which more than fifty percent (50%) of the Condominiums are represented ("**Increase Election**"). This Section does not limit Annual Assessment increases necessary for addressing an "Emergency Situation" as defined in Section 7.5.6.

**7.5.2 Maximum Authorized Annual Assessment For Subsequent Fiscal Years.** During the Fiscal Years following the Fiscal Year in which Annual Assessments commence, the Board may levy Annual Assessments which exceed the Annual Assessments for the immediately preceding Fiscal Year only as follows:

(a) If the increase in Annual Assessments is less than or equal to twenty percent (20%) of the Annual Assessments for the immediately preceding Fiscal Year, then the Board must either (1) have distributed the Budget for the current Fiscal Year in accordance with California Civil Code Sections 1365(a) [after January 1, 2014, Section 5300(a), 5300(b), 5300(b)(1), 5300(b)(2), 5300(b)(4), 5300(b)(5), 5300(b)(6), 5300(b)(7), 5300(b)(8), 5300(d), 5305, and 5565] or (2) obtain the approval of Owners casting a majority of votes in an Increase Election; or

(b) If the increase in Annual Assessments is greater than twenty percent (20%) of the Annual Assessments for the immediately preceding Fiscal Year, then the Board must obtain the approval of Owners casting a majority of votes in an Increase Election.

This Section does not limit Annual Assessment increases necessary for addressing an "Emergency Situation" as defined in Section 7.5.6.

**7.5.3 Supplemental Annual Assessments.** If the Board determines that the Association's essential functions may be properly funded by an Annual Assessment in an amount less than the maximum authorized Annual Assessment described above, it may levy such lesser Annual Assessment. If the Board determines that the estimate of total charges for the current year is or will become inadequate to meet all Common Expenses, it shall immediately determine the approximate amount of the inadequacy. Subject to the limits described in Sections 7.5.1, 7.5.2 and 7.5.4, the Board may levy a supplemental Annual Assessment reflecting a revision of the total charges to be assessed against each Condominium.

**7.5.4 Automatic Assessment Increases.** Despite any other provisions of this Section 7.5, on Declarant's annexation of the Annexable Area pursuant to Article 16, the Annual Assessment shall be automatically increased by the additional amount, if any, necessary to maintain the Association Property identified in the Notice of Addition as a part of the Phase that includes the Annexable Area as long as (a) the annexation is permitted by the DRE, and (b) the amount of such increase does not result in the levy of an Annual Assessment which is greater than the maximum potential Annual Assessment disclosed in all Public Reports for the Community.

**7.5.5 Emergency Situations.** For purposes of Sections 7.5.1, 7.5.2 and 7.7, an "Emergency Situation" is any one of the following:

- (a) An extraordinary expense required by an order of a court;
- (b) An extraordinary expense necessary to maintain the portion of the Community for which the Association is responsible where a threat to personal safety on the Community is discovered; and
- (c) An extraordinary expense necessary to maintain the portion of the Community for which the Association is responsible that could not have been reasonably foreseen by the Board when preparing the Budget. Before imposing or collecting an Assessment pursuant to this subsection (c), the Board shall adopt a resolution containing written findings regarding 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 resolution shall be distributed to the Owners with the notice of the assessment.

## **7.6 ANNUAL ASSESSMENTS.**

**7.6.1 Commencement of Annual Assessments.** Annual Assessments shall commence on all Condominiums in a Phase on the first day of the first calendar month after the first Close of Escrow in that Phase. However, the Close of Escrow for a Model Condominium Sale shall not cause the commencement of Annual Assessments in a Model Phase. Annual Assessments in a Model Phase shall commence against all Model Condominiums and Production Condominiums in the Model Phase on the first day of the first calendar month after the first Close of Escrow for the sale of a Production Condominium in the Model Phase. Annual Assessments for fractions of a month shall be prorated. Declarant shall pay its full pro rata share of the Annual Assessments on all unsold Condominiums for which Annual Assessments have commenced. The Board shall fix the amount of the Annual Assessment against each Condominium at least thirty (30) days in advance of each Annual Assessment period. However, unless otherwise established by the Board, the initial Annual Assessments shall be assessed in accordance with the most recent Budget on file with and approved by the DRE. Written notice of any change in the amount of any Annual Assessment, Capital Improvement Assessment or Reconstruction Assessment shall be sent by first-class mail to every Owner subject thereto not less than thirty (30) nor more than sixty (60) days before the increased Assessment becomes due.

**7.6.2 Apportionment of Annual Assessments.** All Annual Assessments shall be assessed uniformly and equally against the Owners and their Condominiums based on the number of Condominiums owned by each Owner. The Board may determine that funds in the Operating Fund at the end of the Fiscal Year be retained and used to reduce the following Fiscal Year's Annual Assessments. On dissolution of the Association incident to the abandonment or termination of the Community as a condominium project, any amounts remaining in any of the Association Maintenance Funds shall be distributed to or for the benefit of the Owners in the same proportions as such money was collected from the Owners.

**7.6.3 Payment of Annual Assessments.** Each Owner shall pay Annual Assessments in installments at such frequency, in such amounts and by such methods as are

established by the Board. If the Association incurs additional expenses because of a payment method selected by an Owner, the Association shall charge the additional expenses to the Owner. Each installment of Annual Assessments may be paid to the Association in one (1) check or in separate checks as payments attributable to specified Association Maintenance Funds. If any payment of an Annual Assessment installment (a) is less than the amount assessed and (b) does not specify the Association Maintenance Fund or Funds into which it should be deposited, then the amount received shall be credited in order of priority first to the Operating Fund, until that portion of the Annual Assessment has been satisfied, and second to the Reserve Fund.

**7.7 CAPITAL IMPROVEMENT ASSESSMENTS.** The Board may levy, in any Fiscal Year, a Capital Improvement Assessment or Reconstruction Assessment to defray, in whole or in part, the cost of any construction, repair or replacement of a capital Improvement or such other addition to the Association Property. No Capital Improvement Assessments in any Fiscal Year which, if added to the Capital Improvement Assessments already levied during such Fiscal Year, exceed five percent (5%) of the Association's Budgeted gross expenses for such Fiscal Year, may be levied without the vote or written consent of Owners casting a majority of votes at an Increase Election. The Board may levy, in any Fiscal Year, a Capital Improvement Assessment applicable to that Fiscal Year which exceeds five percent (5%) of the Association's Budgeted gross expenses for such Fiscal Year if such increase is necessary for addressing an Emergency Situation as defined in Section 7.5.5.

## **ARTICLE 8 INSURANCE**

**8.1 DUTY TO OBTAIN INSURANCE; TYPES.** The Association shall obtain and keep in effect at all times the following insurance coverages:

**8.1.1 Commercial General Liability.** A policy of commercial general liability insurance (including coverage for medical payments), insuring the Association and the Owners against liability for bodily injury, death and property damage arising from or relating to the ownership or use of the Association Property. Such policy shall specify amounts and include protection from liability and risks as are customarily covered in similar condominium developments in the area of the Community, and shall include a severability of interest endorsement or the equivalent which shall preclude the insurer from denying the claim of an Owner because of negligent acts or omissions of other Owners, or the Association or the Association's officers and directors acting in their capacity as officers and directors. The Association's policies shall at all times specify limits no less than the minimum amounts required by California Civil Code Sections 1365.7 and 1365.9 [after January 1, 2014, Sections 5800 and 5805].

**8.1.2 Fire and Casualty Insurance.** Fire and casualty insurance with extended coverage, special form, without deduction for depreciation, in an amount as near as possible to the full replacement value of all insurable Improvements on the Association Property. The casualty insurance shall not include earthquake coverage unless the Board is directed to obtain earthquake coverage by a majority of the Association's voting power.



**8.1.3 Fidelity Insurance.** Fidelity insurance coverage for any Person handling funds of the Association, whether or not such persons are compensated for their services, in an amount not less than the estimated maximum of funds, including reserve funds, in the custody of the Person during the term of the insurance. The aggregate amount of the fidelity insurance coverage may not be less than the sum equal to one-fourth (1/4) of the Annual Assessments on all Condominiums in the Community, plus reserve funds.

**8.1.4 Requirements of Fannie Mae, Ginnie Mae and Freddie Mac.** Notwithstanding anything in the Governing Documents to the contrary, the amount, term and coverage of any policy of insurance required under this Article VIII (including the endorsements, the amount of the deductible, the named insureds, the loss payees, standard mortgage clauses, notices of changes or cancellations, and the insurance company rating) shall also satisfy the minimum requirements established for this type of development (if applicable) by Fannie Mae, Ginnie Mae and Freddie Mac, or any successor to those entities, so long as any of those entities is a Mortgagee or Owner of a Condominium in the Community, except to the extent such coverage is not reasonably available or has been waived in writing by the entity requiring the insurance coverage. If the above entities have not established requirements on any policy required hereunder, the term, amount and coverage of such policy shall, subject to Section 8.1.1 above, be no less than that which is customary for similar policies on similar projects in the area of the Community.

**8.1.5 Other Insurance.** Such other insurance insuring other risks customarily insured by associations managing residential condominium projects similar in construction, location and use. Such additional insurance may include general liability insurance and director's and officer's errors and omissions insurance in the minimum amounts established in California Civil Code Section 1365.9 [after January 1, 2014, Section 5805].

**8.1.6 Beneficiaries.** The Association's insurance shall be kept for the benefit of the Association, the Owners and the Mortgagees, as their interests may appear as named insureds, subject, however, to loss payment requirements established in this Declaration.

**8.2 WAIVER OF CLAIM AGAINST ASSOCIATION.** All policies of insurance kept by or for the benefit of the Association and the Owners must provide that the Association and the Owners waive and release all claims against one another, the Board and Declarant, to the extent of the insurance proceeds available, whether or not the insurable damage or injury is caused by the negligence or breach of any agreement by any of the Persons.

**8.3 RIGHT AND DUTY OF OWNERS TO INSURE.** Each Owner is responsible for insuring the Owner's personal property and all other property and Improvements in the Owner's Condominium for which the Association has not purchased insurance in accordance with Section 8.1. Nothing in this Declaration precludes any Owner from carrying any public liability insurance he considers desirable; however, Owners' policies may not adversely affect or diminish any coverage under any of the Association's insurance policies. Duplicate copies of Owners' insurance policies shall be deposited with the Association on request. If any loss intended to be covered by the Association's insurance occurs and the proceeds payable are reduced due to insurance carried by any Owner, such Owner shall assign the proceeds of the

Owner's insurance to the Association, to the extent of such reduction, for application to the same purposes as the reduced proceeds are to be applied.

**8.4 NOTICE OF EXPIRATION REQUIREMENTS.** If available, each of the Association's insurance policies must contain a provision that the policy may not be canceled, terminated, materially modified or allowed to expire by its terms, without at least ten (10) days' prior written notice to the Board and Declarant, and to each Owner and Mortgagee, insurer and guarantor of a First Mortgage who has filed a written request with the carrier for such notice and every other Person in interest who requests such notice of the insurer. In addition, fidelity insurance shall provide that it may not be canceled or substantially modified without at least ten (10) days' prior written notice to any insurance trustee named pursuant to Section 8.5 and to each Fannie Mae servicer who has filed a written request with the carrier for such notice.

**8.5 TRUSTEE FOR POLICIES.** The Association is trustee of the interests of all named insureds under the Association's insurance policies. Unless an insurance policy provides for a different procedure for filing claims, all claims must be sent to the insurance carrier or agent by certified mail and be clearly identified as a claim. The Association shall keep a record of all claims made. All insurance proceeds under any Association insurance policies must be paid to the Board as trustees. The Board has the authority to negotiate loss settlements with insurance carriers, with participation, to the extent the Board desires, of First Mortgagees who have filed written requests within ten (10) days of receipt of notice of any damage or destruction as provided in Section 9.3. The Board is authorized to make a settlement with any insurer for less than full coverage for any damage, so long as the Board acts in accordance with the standard of care established in this Declaration. Any two (2) officers of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures are binding on all the named insureds. A representative chosen by the Board may be named as an insured, including a trustee with whom the Association may enter into an insurance trust agreement and any successor to such trustee, who shall have exclusive authority to negotiate losses under any insurance policy and to perform such other functions necessary to accomplish this purpose.

**8.6 ACTIONS AS TRUSTEE.** Except as otherwise specifically provided in this Declaration, the Board has the exclusive right to bind the Association and the Owners to all matters affecting insurance carried by the Association, the settlement of a loss claim, and the surrender, cancellation and modification of all such insurance. Duplicate originals or certificates of all policies of fire and casualty insurance kept by the Association and of all renewals thereof, together with proof of payment of premiums, shall be delivered by the Association to all Owners and Mortgagees who requested them in writing.

**8.7 ANNUAL INSURANCE REVIEW.** The Board shall review the Association's insurance policies at least annually to determine the amount of the casualty and fire insurance referred to in Section 8.1. If economically feasible, the Board shall obtain a current appraisal of the full replacement value of the Improvements in the Association Property except foundations and footings, without deduction for depreciation, from a qualified independent insurance appraiser, before each such annual review.

**8.8 REQUIRED WAIVER.** All of the Association's insurance policies insuring against physical damage must provide, if reasonably possible, for waiver of:

8.8.1 Subrogation of claims against the Owners and tenants of the Owners;

8.8.2 Any defense based on coinsurance;

8.8.3 Any right of setoff, counterclaim, apportionment, proration or contribution due to other insurance not carried by the Association;

8.8.4 Any invalidity, other adverse effect or defense due to any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act or omission of any named insured or the respective agents, contractors and employees of any insured;

8.8.5 Any right of the insurer to repair, rebuild or replace, and, if the Improvement is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the Improvements insured;

8.8.6 Notice of the assignment of any Owner of the Owner's interest in the insurance by virtue of a conveyance of any Condominium;

8.8.7 Any right to require any assignment of any Mortgage to the insurer;

8.8.8 Any denial of an Owner's claim because of negligence or willful acts by the Association or other Owners; and

8.8.9 Prejudice of the insurance by any acts or omissions of Owners that are not under the Association's control.

## **ARTICLE 9 DESTRUCTION OF IMPROVEMENTS**

**9.1 RESTORATION OF THE COMMUNITY.** Except as otherwise authorized by the Owners, if any portion of the Community which the Association is responsible for maintaining is destroyed, the Association shall restore the same to its former condition as promptly as practical and in accordance with applicable law and City approvals, including plan checks, permits and fee payments. The Association shall use the proceeds of its insurance for reconstruction or repair of the Community unless otherwise authorized in this Declaration or by the Owners. The Board shall commence such reconstruction promptly. The Community shall be reconstructed or rebuilt substantially in accordance with the original construction plans if they are available, unless changes recommended by the Design Review Committee have been approved by at least a majority of the Owners. If the insurance proceeds amount to at least ninety percent (90%) of the estimated cost of restoration and repair, the Board shall levy a Reconstruction Assessment to provide the additional funds necessary for such reconstruction. If the insurance proceeds amount to less than ninety percent (90%) of the estimated cost of restoration and repair, the Board may levy a Reconstruction Assessment and proceed with the restoration and repair only if both of the following conditions ("*Conditions To Reconstruction*")

have been satisfied: (a) the levy of a Reconstruction Assessment to pay the costs of restoration and repair of the Community is approved by the Owners, and (b) within one (1) year after the date on which the destruction occurred, the Board Records a certificate of the resolution authorizing the restoration and repair ("**Reconstruction Certificate**"). If either of the Conditions to Reconstruction does not occur after a destruction for which insurance proceeds available for restoration and repair are less than ninety percent (90%) of the estimated cost of restoration and repair, then the Board shall proceed as provided in Section 9.2.

**9.2 DAMAGE TO RESIDENCES-RECONSTRUCTION.** If all or any portion of any Residence or other Improvements on a Unit is damaged or destroyed by fire or other casualty, the Owner of the damaged Unit shall rebuild, repair or reconstruct the Residence and Improvements in accordance with all applicable laws and codes and in a manner which will restore them substantially to their appearance and condition immediately before the casualty or as otherwise approved by the Design Review Committee. If all or any portion of an Owner's Unit is destroyed to such an extent that it would be impractical to restore the Unit or rebuild damaged Improvements, the Owner shall install landscaping Improvements on the Unit in accordance with Design Review Committee Guidelines. The Owner of any damaged Unit or Residence and the Design Review Committee shall proceed with all due diligence, and the Owner shall cause reconstruction (as applicable) to commence within six (6) months after the damage occurs and to be completed within twelve (12) months after damage occurs, unless prevented by causes beyond such Owner's reasonable control. The transfer of a damaged Unit or a Unit with a damaged Residence to another Person will not extend the time allowed in this Section for commencement and completion of reconstruction by the transferee. However, no such transferee will be required to commence or complete reconstruction in less than thirty (30) days from the date the transferee acquired title to the Condominium.

**9.3 NOTICE TO OWNERS AND FIRST MORTGAGEES.** The Board, immediately on having knowledge of any damage or destruction of a Unit or affecting a material portion of the Community, shall promptly notify all Owners and First Mortgagees.

## **ARTICLE 10 EMINENT DOMAIN**

The term "taking" as used in this Article means inverse condemnation by exercise of the power of eminent domain or by sale under threat of the exercise of the power of eminent domain. The Board shall represent the Owners in any proceedings, negotiations, settlements, or agreements regarding takings. All takings proceeds shall be payable to the Association for the benefit of the Owners and their Mortgagees, and shall be distributed to such Owners and Mortgagees as provided in this Article.

**10.1 CONDEMNATION OF ASSOCIATION PROPERTY.** If there is a taking of the Association Property, then the award in condemnation shall be paid to the Association and shall be deposited in the General Operating Fund.

**10.2 CONDEMNATION OF CONDOMINIUMS.** If there is a taking of a Condominium, the award in condemnation shall be paid to the Owner of the Condominium;

however, such award shall first be applied to the balance then due on any Mortgages encumbering such Owner's Condominium, in order of priority.

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

## **ARTICLE 11 RIGHTS OF MORTGAGEES**

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

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

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

**11.2.2 Required Mortgagee Approvals.** A Mortgagee Majority must approve any amendment of any of the Governing Documents which is of a material adverse nature to First Mortgagees, as further described in Section 13.2.2.

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

**11.2.4 Notices.** Each Mortgagee and guarantor of a Mortgage encumbering one (1) or more Condominiums, upon filing a written request for notification with the Board, is entitled to written notification from the Association of: (a) any condemnation or casualty loss which affects either a material portion of the Community or the Condominium(s) securing the respective Mortgage, (b) any delinquency of sixty (60) days or more in the performance of any obligation under the Governing Documents, including the payment of Assessments or charges owed by the Owner(s) of the Condominium(s) securing the Mortgage, which notice each Owner hereby consents to and authorizes, (c) a lapse, cancellation, or material modification of any policy of insurance or fidelity bond kept by the Association and (d) any proposed action that requires the consent of a specified percentage of First Mortgagees.

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

**11.2.6 Unpaid Assessments.** If the First Mortgagee of a Condominium obtains fee title to the Condominium either by foreclosure or by any other remedy provided under the Mortgage, then the Mortgagee shall take title to the Condominium free and clear of any claims for more than six (6) unpaid regularly budgeted Annual Assessments or any charges levied or accrued against the Condominium before the date on which the Mortgagee acquired title to the Condominium.

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

**12.1 ENFORCEMENT OF GOVERNING DOCUMENTS.** All violations of the Governing Documents, except for: (a) those governed by Sections 12.2 or 12.3, or (b) those subject to the Right to Repair Law (and accordingly subject to resolution through Declarant's nonadversarial contractual provisions and alternative dispute resolution provisions commencing at Article 17 below), or California Civil Code Section 1375 [after January 1, 2014, Section 6000], *et seq.* (the "*Calderon Act*"), shall be resolved as follows:

**12.1.1 Right to Enforce.** The Board, the Association, the Declarant and any Owner may enforce the Governing Documents as described in this Article, subject to California Civil Code Sections 1363.810 [after January 1, 2014, Section 5900], *et seq.*, and 1369.510 [after January 1, 2014, Section 5925], *et seq.* Each Owner has a right of action against the Association for the Association's failure to comply with the Governing Documents. Each remedy provided for in this Declaration is cumulative and not exclusive or exhaustive.

**12.1.2 Violations Identified by the Association.** If the Board or the Design Review Committee determines that there is a violation of the Governing Documents, other than nonpayment of any Assessment, then the Board shall give written notice to the responsible Owner identifying (a) the condition or violation complained of, and (b) the length of time the Owner has to remedy the violation including, if appropriate, the length of time the Owner has to submit plans to the Design Review Committee and the length of time the Owner has to complete the work proposed in the plans submitted to the Design Review Committee. This requirement shall apply notwithstanding the fact that this Declaration may duplicate City ordinances or regulations. If an Owner does not perform corrective action within the allotted time, the Board, after Notice and Hearing, may remedy such condition or violation complained of, and the cost thereof shall be charged to the Owner as a Special Assessment. If the violation involves nonpayment of any Assessment, then the Board may collect such delinquent Assessment pursuant to the procedures established in Section 12.2.

**12.1.3 Violations Identified by an Owner.** If an Owner alleges that another Person is violating the Governing Documents (other than nonpayment of any Assessment), the complaining Owner must first submit the matter to the Board for Notice and Hearing before the

complaining Owner may resort to alternative dispute resolution, as required by California Civil Code Section 1369.510 [after January 1, 2014, Section 5925], *et seq.*, or litigation for relief.

**12.1.4 Legal Proceedings.** Failure to comply with any of the terms of the Governing Documents by any Person is grounds for relief which may include an action to recover damages, injunctive relief, foreclosure of any lien, or any combination thereof; however, the procedures established in California Civil Code Sections 1363.810 [after January 1, 2014, Section 5900], *et seq.*, and 1369.510 [after January 1, 2014, Section 5925] *et seq.* and in Sections 12.1.2 and 12.1.3 must first be followed, if they apply.

**12.1.5 Additional Remedies.** After Notice and Hearing, the Board may impose any of the remedies provided for in the Bylaws. The Board may adopt a schedule of reasonable fines or penalties which, in its reasonable discretion, the Board may assess against a Person for the failure of such Person to comply with the Governing Documents. Such fines or penalties may only be assessed pursuant to California Civil Code Section 1363 [after January 1, 2014, Sections 4800, 4805, 4820, 5000(a), 5240(b), 5850(a), 5855, and 5865]. After Notice and Hearing, the Board may direct the officers of the Association to Record a notice of noncompliance (if allowed by law) against a Condominium owned by any Owner who has violated any provision of this Declaration. The notice shall include a legal description of the Condominium and shall specify the provision of this Declaration that was violated, the violation committed, and the steps required to remedy the noncompliance. Once the noncompliance is remedied or the non-complying Owner has taken such other steps as reasonably required by the Board, the Board shall direct the officers of the Association to Record a notice that the noncompliance has been remedied.

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

**12.1.7 Limit on Expenditures.** The Association may not incur litigation expenses, including attorneys' fees, or borrow money to fund litigation, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings, unless the Association first obtains the consent of a majority of the Association's voting power (excluding the voting power of any Owner who would be a defendant in such proceedings) and, if applicable, complies with the requirements of California Civil Code Sections 1363.810 [after January 1, 2014, Section 5900], *et seq.*, and 1369.510 [after January 1, 2014, Section 5925], *et seq.* Such approval is not necessary if the legal proceedings are initiated (a) to enforce the use restrictions contained in Article 2, (b) to enforce the architectural and landscaping control provisions contained in Article 5, (c) to collect any unpaid Assessments levied pursuant to the Governing Documents, (d) for a claim, other than a Right to Repair Law Claim, the total value of which is less than Five Hundred Thousand Dollars (\$500,000), or (e) as a cross-complaint in litigation to which the Association is already a party. If the Association decides to use or transfer Reserve Funds or borrow funds to pay for any litigation, the Association must notify the Owners of the decision by mail. Such notice shall provide an explanation of why the litigation is being initiated or defended, why Operating Funds cannot be used, how and when the Reserve Funds will be replaced or the loan will be repaid, and a proposed budget for the litigation. The notice must state that the Owners have a right to review an accounting for the litigation which will be available at the Association's office. The accounting shall be updated monthly. If the

Association action to incur litigation expenses or borrow money to fund litigation concerns a Right to Repair Law Claim, then the voting requirements of both Sections 4.5.2 and 12.1.7 must be met.

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

## 12.2 DELINQUENT ASSESSMENTS.

12.2.1 **Delinquency.** Assessments are delinquent if not paid within fifteen (15) days after the due date established by the Association. Assessments not paid within thirty (30) days after the due date, plus all reasonable costs of collection (including attorneys' fees) and late charges bear interest at the maximum rate permitted by law commencing thirty (30) days after the due date until paid. The Association may also require the delinquent Owner to pay a late charge in accordance with California Civil Code Section 1366(e)(2) [after January 1, 2014, Section 5650(b)(2)]. The Association need not accept any tender of a partial payment of an Assessment and all costs and attorneys' fees attributable thereto. Acceptance of any such tender does not waive the Association's right to demand and receive full payment.

### 12.2.2 Creation and Release of Lien.

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

(b) **Notice Before Creating Lien.** Before the Association may place a lien on an Owner's Condominium to collect a past due Assessment, the Association shall send written notice ("**Notice of Intent to Lien**"), at least thirty (30) days before Recording the lien, to the Owner by certified mail which contains the following information: (1) the Association's fee and penalty procedure, (2) an itemized statement of the charges owed by the Owner, including the principal owed, any late charges, any interest, the method of calculation, and any attorneys' fees, (3) the collection practices used by the Association, (4) a statement that the Association may recover reasonable costs of collecting past due Assessments, (5) a statement that the Owner has the right to inspect the Association's records, pursuant to California Corporations Code Section 8333, (6) the following statement in 14-point boldface type or all capital letters: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION," (7) a statement that the Owner shall not be liable to pay the charges, interest and costs of collection if it is determined the Assessment was paid on time to the Association, (8) a statement that the Owner has the right to request a meeting with the Board, as provided by California Civil Code Section 1367.1(c) [after January 1, 2014, Sections 5665, 5670, 5705(b), and 5673] and Section 12.2.2(g) below, (9) a statement concerning the Owner's right to dispute the Assessment debt by submitting a written request for dispute



resolution to the Association pursuant to the Association's "meet and confer" program required in California Civil Code Section 1363.810 [after January 1, 2014, Section 5900], *et seq.* and (10) a statement concerning the Owner's right to request alternative dispute resolution with a neutral third party pursuant to California Civil Code Section 1369.510 [after January 1, 2014, Section 5925] before the Association may initiate foreclosure against the Owner's separate interest, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

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

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

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

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

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

(h) ***Notice of Delinquent Assessment.*** The lien becomes effective on Recordation by the Board or its authorized agent of a Notice of Delinquent Assessment ("***Notice of Delinquent Assessment***") securing the payment of any Assessment or installment thereof levied by the Association against any Condominium Owner, as provided in California Civil Code Section 1367 or 1367.1 [after January 1, 2014, Sections 5740, 5650(a), 5660 (intro), 5660(a)-(f), 5655, 5670, 5705(b), 5673, 5665, 5675, 5685(a), 5725(a), 5725(b), 5680, 5735, 5700(a), 5710(a), 5710(c), 5700(b), 5685(b), 5710(b), 4040(b), 5690, and 5740]. The Notice of Delinquent Assessment must identify (1) the amount of the Assessment and other authorized

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

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

(j) ***Secondary Addresses.*** Upon receipt of an Owner's written request identifying a secondary address for purposes of collection notices, the Association shall send an additional copy of any Notice of Intent to Lien, Notice of Delinquent Assessment or other Notice given under Section 12.2.2 to the secondary address provided. The Association shall notify Owners of their right to submit secondary addresses to the Association, when the Association issues its pro forma operating budget under California Civil Code Section 1365 [after January 1, 2014, Section 5300(a), 5300(b), 5300(b)(1), 5300(b)(2), 5300(b)(4), 5300(b)(5), 5300(b)(6), 5300(b)(7), 5300(b)(8), 5300(d), 5305, and 5565]. The Owner's request must be in writing and mailed to the Association in a manner which indicates the Association has received it. The Owner may identify or change a secondary address at any time, provided that, if a secondary address is identified or changed during the collection process, the Association shall only be required to send Notices to the indicated secondary address from the point the Association receives the request.

(k) ***Exceptions.*** Assessments described in California Civil Code Section 1367(c) [after January 1, 2014, Section 5725(b)] and California Code of Regulations Section 2792.26(c) may not become a lien against an Owner's Condominium enforceable by the sale of the Condominium under California Civil Code Sections 2924, 2924b and 2924c.

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

**12.2.3 Enforcement of Liens.** The Board shall enforce the collection of amounts due under this Declaration by one (1) or more of the alternative means of relief afforded by this Declaration, subject to the restrictions in California Civil Code Section 1367.4 [after January 1, 2014, Sections 5715(a), 5720(a), 5720(b), 5705, 5715, and 5720(c)(2)-(3)].

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

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

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

(d) The sale shall be conducted in accordance with the provisions of the California Civil Code applicable to the exercise of powers of sale in Mortgages, or in any manner permitted by law. The Association (or any Owner if the Association refuses to act) may sue to foreclose the lien if (1) at least thirty (30) days have elapsed since the date on which the Notice of Delinquent Assessment was Recorded, and (2) at least ten (10) days have elapsed since a copy of the Notice of Delinquent Assessment was mailed to the Owner affected thereby. The Association may bid on the Condominium at foreclosure sale, and acquire and hold, lease, mortgage and convey the same. On completion of the foreclosure sale, the Association or the purchaser at the sale may file suit to secure occupancy of the defaulting Owner's Condominium, and the defaulting Owner shall be required to pay the reasonable rental value for the Condominium during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. A non-judicial foreclosure to collect delinquent Assessments shall be subject to the right of redemption within 90 days after the sale, as provided in California Civil Code Section 1367.4 [after January 1, 2014, Sections 5715(a), 5720(a), 5720(b), 5705, 5715, and 5720(c)(2)-(3)].

(e) A suit to recover a money judgment for unpaid Assessments may be brought without foreclosing or waiving any lien securing the same, subject to the provisions of California Civil Code Section 1367.1(b) [after January 1, 2014, Section 5655], but this provision or any suit to recover a money judgment does not affirm the adequacy of money damages. Any recovery resulting from a suit at law or in equity initiated pursuant to this Section may include reasonable attorneys' fees as fixed by the court.

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

**12.2.5 Alternative Dispute Resolution.** An Owner may dispute the Assessments imposed by the Association as provided in this Declaration and in California Civil Code Sections 1367.1 [after January 1, 2014, Sections 5650(a), 5660 (intro), 5660(a)-(f), 5655, 5670, 5705(b), 5673, 5665, 5675, 5685(a), 5725(a), 5725(b), 5680, 5735, 5700(a), 5710(a), 5710(c), 5700(b), 5685(b), 5710(b), 4040(b), 5690, and 5740] and 1367.4 [after January 1, 2014, Sections 5715(a), 5720(a), 5720(b), 5705, 5715, and 5720(c)(2)-(3)]. If it is determined through dispute resolution pursuant to the Association's "meet and confer" program required in this Declaration or alternative dispute resolution with a neutral third party pursuant to California Civil Code Section 1369.510 [after January 1, 2014, Section 5925], *et seq.*, that the Association Recorded a Notice of Delinquent Assessment in error, the Association shall promptly reverse all late charges, fees, interest, attorney's fees, costs of collection, costs imposed for the Notice prescribed in Section 1367.1(a) [after January 1, 2014, Sections 5650(a) and 5600(a)-(f)], and costs of Recordation and release of the lien authorized under Section 1367.4(b) [after January 1, 2014, Section 5720(b)] and pay all costs related to the dispute resolution or alternative dispute resolution.

**12.2.6 Receivers.** In addition to the foreclosure and other remedies granted to the Association in this Declaration, each Owner, by acceptance of a deed to such Owner's Condominium, conveys to the Association all of such Owner's right, title and interest in all rents, issues and profits derived from and appurtenant to such Condominium, subject to the right of the Association to collect and apply such rents, issues and profits to any delinquent Assessments owed by such Owner, reserving to the Owner the right, before any default by the Owner in the payment of Assessments, to collect and retain such rents, issues and profits as they may become due and payable. On any such default, the Association may, on the expiration of thirty (30) days following delivery to the Owner of the "Notice of Delinquent Assessment" described in this Declaration, either in person, by agent or by receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness secured by the lien described in this Declaration, (a) enter in or on and take possession of the Condominium or any part thereof, (b) in the Association's name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and (c) apply the same, less allowable expenses of operation, to any delinquencies of the Owner, and in such order as the Association may determine. The entering upon and taking possession of the Condominium, the collection of rents, issues and profits and

the application thereof, shall not cure or waive any default or notice of default under this Declaration or invalidate any act done pursuant to such notice.

12.2.7 **Compliance with Law.** To the extent that any provision in this Section 12.2 conflicts with the provisions of the Davis-Stirling Act (California Civil Code Section 1350, *et seq.*) [after January 1, 2014, Section 4000] the statutory provisions shall control.

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

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

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

12.4 **DISPUTES WITH DECLARANT PARTIES.** The dispute resolution procedure implemented for the Community is contained in Article 17 of this Declaration with the intent to avoid costly and potentially lengthy traditional court proceedings. Any dispute between the Association or any Owners, on the one hand, and the Declarant, or any director, officer, partner, shareholder, member, employee, representative, contractor, subcontractor, design professional or agent of the Declarant (each, a ***"Declarant Party,"*** and collectively the ***"Declarant Parties"***), on the other hand, is a "Dispute" that shall be resolved in accordance with Article 17 of this Declaration.

## **ARTICLE 13 DURATION AND AMENDMENT**

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

## 13.2 TERMINATION AND AMENDMENT.

13.2.1 **Amendment Approval.** Notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form must be included in the notice of any Association meeting or election at which a proposed amendment is to be considered. To be effective, a proposed amendment (other than amendment or termination by Declarant as described in Section 13.2.6(a) or minor corrections by Declarant or by the Board, as described in Sections 13.2.6 or 13.2.7 respectively) must be adopted by the vote, in person, by proxy, or by written consent, of Owners representing not less than (1) sixty-seven percent (67%) of the voting power of each Class of the Association and (2) sixty-seven percent (67%) of the Association's voting power represented by Owners other than Declarant. If, however, the provision being considered for amendment requires amendment approval by a higher percentage of the voting power than that specified in this Section, then the proposed amendment shall not be adopted unless approved by such higher percentage of the voting power. As long as Declarant has the right to appoint a majority of the members of the Board, and the VA or FHA is making or insuring a Mortgage in the Community, the prior approval of the VA or FHA (whichever is making or insuring a Mortgage) is required for any amendment to the Declaration for the purpose of terminating the Declaration, dissolving the Association (except pursuant to merger or consolidation) or conveying all of the Association Property.

13.2.2 **Mortgagee Consent.** In addition to the consents required by Section 13.2.1, a Mortgagee Majority must approve any amendment to this Declaration, any Notice of Addition and any Supplemental Declaration which is of a material adverse nature to First Mortgagees, including the following:

(a) Any amendment of the provisions of this Declaration concerning any of the following:

- (1) Voting rights;
- (2) Increases in Assessments that raise the existing Assessment by more than 25%, Assessment liens or the priority of Assessment liens;
- (3) Reductions in reserves for maintenance, repair and replacement of the Community Association Property;
- (4) Responsibility for maintenance and repairs;
- (5) Reallocation of interest in the Association Property or rights to its use;
- (6) Redefinition of any Unit boundaries;
- (7) Convertibility of Units into Association Property or vice versa;

(8) Expansion or contraction of the Community or the addition, annexation or deannexation of real property to or from the Community other than by Declarant under Sections 16.1 and 16.5 of this Declaration;

(9) Hazard or fidelity insurance requirements;

(10) Imposing restrictions on leasing of Units;

(11) Imposing restrictions on a Unit Owner's right to sell or transfer that Owner's Unit;

(12) If the Community includes at least fifty (50) Units, any decision by the Association to establish self-management if professional management had been required previously by the Governing Documents or a First Mortgagee;

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

(14) Any provisions that expressly benefit Mortgagees.

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

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

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

(e) Any amendment relating to (i) the insurance provisions in Article 8, (ii) the application of insurance proceeds in Article 9, or (iii) the disposition of any money received in any taking under condemnation proceedings.

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

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

(h) The termination of the legal status of the Community after substantial destruction or condemnation.

**13.2.3 Amendment of Right to Repair Law Claims Provisions.** Neither this Section 13.2.3 nor Sections 1.1.52, 1.1.78, 1.1.79, 2.2.2, 3.23, 4.2.7, 4.5, 12.1.7, 12.4, 13.2.6, 13.2.7 or 15.7 may be amended without the prior written approval of Declarant until the

expiration of all applicable statutes of limitation or repose for the filing of a complaint or suit or other legal remedies against Declarant or its affiliates under the Right to Repair Law (including tolling periods).

**13.2.4 Termination Approval.** Termination of this Declaration requires approval of (a) a Mortgagee Majority pursuant to Section 13.2.2, (b) the Owners as provided in Section 13.2.1, and (c) Declarant (until the expiration of all applicable statutes of limitation or repose for the filing of a complaint or suit or other legal remedies against Declarant or its affiliates under the Right to Repair Law).

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

**13.2.6 Amendment or Termination by Declarant.**

(a) ***Before First Closing.*** Notwithstanding any other provisions of this Article, until the first Close of Escrow in the Community, Declarant may unilaterally amend or terminate this Declaration for any purpose by Recording in the Official Records an instrument signed and acknowledged by Declarant and any other record owners of the Community.

(b) ***Minor Corrections.*** Notwithstanding any other provisions of this Article, Declarant (as long as Declarant owns any portion of the Community or the Annexable Area) may unilaterally amend this Declaration or a Supplemental Declaration by Recording a written instrument signed by Declarant to: (1) conform this Declaration or any Notice of Addition or Supplemental Declaration to the rules, regulations or requirements of VA, FHA, FHFA, DRE, Fannie Mae, Ginnie Mae or Freddie Mac or the City, (2) amend, replace or substitute any Exhibit to correct typographical or engineering errors, (3) include any Exhibit that was inadvertently omitted from the Declaration, any Notice of Addition or Supplemental Declaration at the time of Recording, (4) comply with any City, County, State or Federal laws or regulations, (5) correct typographical errors, (6) supplement this Declaration with provisions which pertain to rights and obligations of Declarant, the Association or Owners arising under the Right to Repair Law, (7) re-Phase any portion of the Community, and (8) change any Exhibit or portion of an Exhibit to conform to as-built conditions.

Nothing in this Section 13.2.6 may be amended or terminated without the prior written approval of Declarant.

**13.2.7 Minor Corrections by the Board.** The Board may amend this Declaration for the reasons stated in parts (1), (2), (3), (4), (5) or (8) of Section 13.2.6(b) by Recording a written instrument signed by two officers of the Association certifying that the



Board approved the amendment for the purposes described therein. However, until the end of all applicable statutes of limitation or repose for the filing of a complaint or suit or other legal remedies against Declarant or its affiliates under the Right to Repair Law (including tolling periods), the Board must obtain the prior written approval of Declarant to any amendment approved by the Board, or any other amendment by the Board or Association that affects the rights of Declarant under the Right to Repair Law, this Declaration or any Supplemental Declaration or Notice of Addition, or for any amendment by the Board concerning matters discussed in Articles 3 or 15.

**13.2.8 Amendments Requiring City Approval.** Proposed amendments to this Declaration or a Supplemental Declaration shall be submitted for review to the Planning/Community Development Director or designee, and shall be approved by the City Attorney and the City Council prior to the amendments being valid. No later than the date that is thirty (30) calendar days after its receipt of a proposed amendment, the City shall deliver written notice of its approval or disapproval of the proposed amendment to the party who delivered the proposed amendment to the City. If the City fails to deliver such written notice within such 30-calendar day period, the City shall be deemed to have approved the proposed amendment.

## **ARTICLE 14 GENERAL PROVISIONS**

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

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

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

mail, postage prepaid, addressed to the Association at such address as may be fixed and circulated to all Owners.

**14.4 CONSTRUCTIVE NOTICE AND ACCEPTANCE.** Every Person who owns, occupies or acquires any right, title, estate or interest in or to any Condominium or other portion of the Community consents and agrees to every limit, restriction, easement, reservation, condition and covenant contained in this Declaration, whether or not any reference to these restrictions is in the instrument by which such Person acquired an interest in the Community. As soon as practicable before sale or transfer of title to a Condominium or other separate interest in the Community or execution of a real property sales contract therefor, the Owner of the Condominium or other separate interest shall provide to the purchaser copies of the Governing Documents listed in California Civil Code Section 1368(a) [after January 1, 2014, Section 4525] and its successor statutes.

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

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

**15.1 CONSTRUCTION RIGHTS.** Declarant has the right to (a) subdivide or re-subdivide the portions of the Community owned by Declarant, (b) complete or modify Improvements to and on the Association Property or any portion of the Community owned or leased solely or partially by Declarant, (c) alter Improvements and Declarant's construction plans and designs, (d) modify Declarant's development plan for the Community and the Annexable Area, including designating and redesignating Phases, reshaping the Condominiums and Association Property, and constructing Residences of larger or smaller sizes, values, and of different types, and (e) construct such additional Improvements as Declarant considers advisable in the course of development of the Community so long as any Condominium in the Community or the Annexable Area remains unsold. Declarant may temporarily erect barriers, close off and restrict access to portions of the Association Property as reasonably necessary to allow Declarant to exercise the rights reserved in this Section so long as an Owner's access to that Owner's Condominium is not eliminated.

### **15.2 SALES AND MARKETING RIGHTS.**

**15.2.1 Marketing and Sales Facilities.** Declarant's rights under this Declaration include the right to install and maintain such structures, displays, signs, billboards, flags and sales offices, and the right to use any Units, Residences or mobile homes owned or leased by Declarant in the Community as model home complexes, real estate sales offices or leasing offices, all as may be reasonably necessary to conduct the business of completing construction and disposing of the Condominiums and the Annexable Area by sale, resale, lease or otherwise.

**15.2.2 Use of Recreational Facilities.** Declarant reserves for its benefit, the right to use and occupy portions of the recreational facilities as necessary to the promotion and advertising of the Community and the marketing of Condominiums in the Community, including

visits and special events for prospective or new purchasers. The reservation of such rights shall be effective until the last Close of Escrow for a Condominium in the Community and Annexable Area. The right to use and occupy the recreational facilities shall be in accordance with reasonable terms of a lease, license, permit, or other written agreement entered into with the Association for such purpose; provided, however, that Declarant may not make any use or occupancy of any portion of the recreational facilities that would unreasonably interfere with the use and enjoyment thereof by the Owners of Condominiums in the Community, and their Families, tenants and invitees.

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

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

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

**15.5 USE RESTRICTION EXEMPTION.** Declarant and any Person to whom Declarant may assign all or a portion of its exemption under this Declaration is exempt from the use restrictions established in this Declaration and any other Governing Documents.

**15.6 ASSIGNMENT OF RIGHTS.** Declarant may assign its rights under the Governing Documents to any successor in interest to any portion of Declarant's interest in the Community by a Recorded written assignment.

**15.7 AMENDMENT.** No amendment may be made to this Article without the prior written approval of Declarant.

**15.8 POWER OF ATTORNEY.** Each Owner of a Condominium in the Community, by accepting a deed to a Condominium, shall be deemed to have (a) agreed and acknowledged

that the Owners own no interest in the Annexable Area which may be developed, if at all, by Declarant in its sole and absolute discretion, and (b) constituted and irrevocably appointed Declarant, for so long as Declarant owns all or any portion of the Annexable Area, as his attorney-in-fact, for himself and each of his Mortgagees, optionees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, and thereby to have conveyed a power of attorney coupled with an interest to Declarant as his attorney-in-fact to prepare, execute, acknowledge and Record any instrument for all or any portion of the Annexable Area. However, nothing set forth herein shall be deemed or construed as an agreement by Declarant that any Owner shall be entitled to any participation in or discretion over the preparation and Recordation of an instrument for all or any portion of the Annexable Area. The acceptance or creation of any Mortgage or other encumbrance, whether or not voluntary, created in good faith, or given for value, shall be deemed to be accepted or created subject to each of the terms and conditions of the power of attorney described in this Section.

**15.9 PARTICIPATION IN ASSOCIATION.** The Association shall provide Declarant with written notice of the transfer of any Condominium and all notices and other documents to which a Mortgagee is entitled pursuant to this Declaration, provided that Declarant shall not be required to make written request for such notices and other documents. Commencing on the date on which Declarant no longer has a representative on the Board, the Association shall provide Declarant with written notice of all meetings of the Board that any Owner is entitled to attend (each, an *"Open Meeting"*) as if Declarant were an Owner, and Declarant shall be entitled to have a representative (*"Declarant's Representative"*) present at all Open Meetings. However, the Board has the power to withhold information from the Declarant's Representative and to exclude the Declarant's Representative from any Open Meeting or portion thereof if, in the good faith judgment of the Board, access to such information or attendance at the Open Meeting would adversely affect the attorney-client privilege between the Association and its counsel or if, in the good faith judgment of the Board, access to such information or attendance at an Open Meeting would not be in the best interest of the Association or the Owners. The Declarant's Representative shall not be entitled to attend executive sessions of the Board. The Declarant's Representative will attend any Open Meeting it is permitted to attend in an observer capacity only, and it shall not have any right to vote on matters coming before the Board or Owners. Declarant's Representative shall be entitled to receive copies of the minutes of all Open Meetings. The Declarant's rights to receive written notice of meetings and to have a Declarant's Representative present at such meeting shall continue until the later of the date that is ten (10) years after the first Close of Escrow in the Community, or the expiration date of all applicable statutes of limitations or repose for the filing of a complaint or suit or other legal remedies against Declarant under the Right to Repair Law (including any tolling periods).

#### **15.10 DECLARANT APPROVAL OF ACTIONS.**

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

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

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

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

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

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

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

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

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

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

16.1 **ADDITIONS BY DECLARANT.** Declarant may add the Annexable Area to the Community and bring such added area under the general plan of this Declaration without the approval of the Association, the Board, or Owners, as long as Declarant owns any portion of the Annexable Area. No amendment may be made to this Section 16.1 without the prior written approval of Declarant

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

16.3 **ADDED AREA RIGHTS AND OBLIGATIONS.** Subject to the provisions of Section 16.1, when a Notice of Addition containing the provisions required by Section 16.4 is Recorded, all provisions in this Declaration will apply to the real property described in such Notice of Addition (the "*Added Area*") in the same manner as if the real property were originally covered by this Declaration. Thereafter, the rights, powers and responsibilities of the Owners,

lessees and occupants of Condominiums in the Added Area, as well as in the Community originally subject to this Declaration, will be the same as if the Added Area were originally covered by this Declaration. After the first day of the month following the first Close of Escrow in the Added Area, the Owners of Condominiums in the Added Area shall share in the payment of Assessments to the Association to meet Common Expenses of the Community. Voting rights attributable to the Condominiums in the Added Area may not be exercised until Annual Assessments have commenced on such Condominiums.

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

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

#### **ARTICLE 17**

##### **WARRANTY, DISCLAIMER OF WARRANTIES, RIGHT TO REPAIR ACKNOWLEDGEMENTS AND PROCEDURES, AND ALTERNATIVE DISPUTE RESOLUTION PROCEDURES**

The terms of this Article 17 shall apply to all Association Property, the Association and all Owners who purchase a Condominium from the Declarant; provided, however, that any dispute which involves the Declarant, Association or Common Area shall be resolved in accordance with the dispute resolution provisions of the Declaration.

## 17.1 WARRANTIES.

17.1.1 **Limited Home Warranty.** Declarant presently intends, but shall not have any obligation whatsoever, to extend a Home Builder's Limited Warranty (the "*Home Warranty*") to the original purchaser from Declarant of a Condominium in the Community. If Declarant extends a Home Warranty to such original purchaser, a copy of the form of the Home Warranty for the particular Condominium will be available from Professional Warranty Service Corporation, P.O. Box 800, Annandale, VA 22003-0800. Every original purchaser and every successive Owner of such Condominium shall be bound by and be a beneficiary of the Home Warranty during the "*Warranty Period*" as defined in the Home Warranty (and as generally summarized below). Any Dispute (as defined in Section 12.4 above), shall be resolved as provided in Section 17.1.4 below. Nothing in the Home Warranty or any other document provided by Declarant in conjunction with the original sale of a Condominium in the Community diminishes any rights or obligations the original purchaser (or any successive Owner) or the Declarant may have under the Right to Repair Law. The Home Warranty does not constitute either an "*enhanced protection agreement*" under California Civil Code Section 901 or alternative nonadversarial contractual provisions under Civil Code Section 914.

17.1.2 **Warranty Period Under the Home Warranty.** The Warranty Period of the Home Warranty for a particular Condominium is set forth in the Limited Warranty Validation Form included with the Home Warranty. The subsequent resale of the Condominium will not extend the Warranty Period.

17.1.3 **Coverage Limits for Residences.** The coverage limits under the Home Warranty for the Residence are set forth in the Limited Warranty Validation Form included with the Home Warranty.

17.1.4 **Arbitration of Disputes Subject to a Home Warranty.** Notwithstanding any other dispute resolution provisions set forth in this Declaration, all disputes during the Warranty Period between any of the Declarant Parties and the original purchaser of a Condominium in the Community, (or any successive Owner of such Condominium) relating to a Condominium that is subject to a Home Warranty shall be resolved by binding arbitration as provided in the Home Warranty (which is governed by the Federal Arbitration Act (9 U.S.C. §§ 1-16)), and shall be subject to the limitations on statutory and common law rights and remedies set forth in the Home Warranty. Should the binding arbitration provisions be ruled invalid, unenforceable or otherwise not applicable to a dispute between any of the Declarant Parties and the original purchaser, or any successive Owner, the dispute shall be resolved in accordance with the alternative dispute resolution provisions set forth in Section 17.4 below.

17.1.5 **DISCLAIMER AND WAIVER OF WARRANTIES AND OTHER RIGHTS.** ANY HOME WARRANTY ISSUED BY DECLARANT TO THE ORIGINAL PURCHASER OF A CONDOMINIUM IN THE COMMUNITY IS THE ONLY WARRANTY, EXPRESS OR IMPLIED, MADE BY DECLARANT WITH REGARD TO THE RESIDENCE. DECLARANT MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS REGARDING EITHER LATENT OR PATENT DEFECTS IN THE RESIDENCES, OR ANY COMPONENTS THEREOF, OR FIXTURES OR PERSONAL PROPERTY INSTALLED THEREIN, OR AS TO THE MERCHANTABILITY, FITNESS,

HABITABILITY, OR QUALITY THEREOF, AND TO THE FULLEST EXTENT ALLOWED BY LAW, EXPRESSLY DISCLAIMS ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES AND REPRESENTATIONS.

**17.2 RIGHT TO REPAIR ACKNOWLEDGMENTS AND NONADVERSARIAL PRE-LITIGATION PROCEDURES.**

**17.2.1 Owner's Acknowledgment of Right to Repair Procedures.**

Declarant hereby notifies each Owner of a Condominium in the Community of the existence of the nonadversarial prelitigation procedures set forth in California Civil Code Sections 910 through 938 (the "*Right to Repair Procedures*"), and further notifies each Owner that such procedures impact the legal rights of each Owner. Each Owner acknowledges that Declarant has notified such Owner of the name and address of the agent for notice of claims pursuant to Section 912(e) of the California Civil Code. Each Owner also acknowledges that Declarant has notified such Owner pursuant to California Civil Code Section 914(a) that Declarant intends to engage in the Right to Repair Procedures with respect to any formal claim initiated by an Owner under such procedures. Notwithstanding the forgoing, each Owner understands and agrees that pursuant to Section 915, Declarant's rights include the right not to go through the Right to Repair Procedures at any time. Each Owner covenants and agrees to comply with the provisions of the Right to Repair Procedures.

**17.2.2 Application of Right to Repair Law.** If a claim has been made by an Owner in compliance with California Civil Code Section 910 (a "*Right to Repair Claim*"), the dispute resolution procedures set forth in Section 17.1.4 above shall apply after application of the Right to Repair Procedures. If the parties to such dispute are unable to resolve such dispute in accordance with such pre-litigation procedures, the dispute shall be resolved in accordance with the provisions of Section 17.1.4 above and Section 17.4 below. In all cases, each party shall be solely responsible for its own attorneys' fees. Nothing herein diminishes the rights and obligations of Owner or Declarant under the Right to Repair Law Procedures with respect to any Right to Repair Law Claim.

**17.2.3 Delivery of Documents.** Each original Owner of a Condominium in the Community acknowledges that Declarant has instructed such Owner to provide any documents provided to such Owner in conjunction with the original purchase of such Condominium to any subsequent purchaser, and each Owner hereby covenants to provide all of such documents to any subsequent purchaser of such Owner's Condominium.

**17.2.4 Maintenance and Preventative Maintenance Schedules and Obligations.** Each Owner, as to his respective Condominium, acknowledges that Declarant has provided such Owner with maintenance and preventative maintenance schedules and obligations pertaining to such Owner's Condominium. Notwithstanding the foregoing, Declarant reserves the right, by written notice to each Owner, to supplement and/or amend such maintenance and preventative maintenance schedules and obligations from time to time. Each Owner also acknowledges that by law, such Owner is obligated to follow all reasonable maintenance and preventative maintenance schedules and obligations communicated in writing by Declarant as well as all commonly accepted maintenance practices. Each Owner covenants to faithfully follow all maintenance and preventative maintenance schedules and obligations applicable to



their respective Condominium, as the case may be (and each Owner shall require and cause any tenant or lessee of such Owner's Condominium to follow all such schedules and obligations).

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

**17.2.6 Indemnification.** Each Owner of a Condominium in the Community covenants to indemnify, defend and hold Declarant harmless from any loss, costs or damages arising from such Owner's failure or refusal to perform its respective obligations under this Section 17.2.

**17.2.7 Mortgagee Protection Provision.** A violation of any right of the Right to Repair Procedures set forth herein shall not affect or impair the lien or charge of any bona fide mortgage or deed of trust made in good faith and for value on the Condominium; provided, however, that all persons and/or entities now or hereafter acquiring any interest in the Condominium shall be bound by the Right to Repair Procedures set forth herein, without regard to whether such owner's title was acquired by foreclosure, a trustee's sale or otherwise.

**17.2.8 Termination of the Right to Repair Procedures.** The Right to Repair Procedures set forth in this Section 17.2 shall terminate and be of no further force or effect upon the first to occur of any of the following: (a) the repeal or judicial invalidation of the Right to Repair Law, or applicable portions thereof; (b) the expiration of all applicable statutes of limitations for the filing of any form of legal proceedings against Declarant in any way relating to or arising out of the development, construction, sale and/or transfer of any of the Condominiums in the Community, or (c) the fifteenth (15th) anniversary of the date of the Recordation of the Grant Deed conveying a specific Condominium to the original purchaser in the Official Records of the County in which the Community is located.

**17.3 ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.** All disputes between or among (a) any Owner(s) or the Association and/or (b) any Declarant Parties which in any way arise out of, or relate to, this Declaration or the Community, including, without limitation, (i) the interpretation and/or enforcement of this Declaration; (ii) damage to or defects in the design and/or construction of any Residence and/or other Improvements within a Condominium in the Community; or (iii) claims pursuant to a Home Warranty (the "*Subject Disputes*") shall be resolved in accordance with this Section 17.3. Each Owner of a

Condominium in the Community and Declarant, for and on behalf of itself and all of the Declarant Parties, acknowledge and agree that such implementation of dispute resolution procedures pursuant to this Declaration is in accordance with the philosophy and intent of the Federal Arbitration Act (9 U.S.C. Sections 1-16) which is designed to encourage the use of alternative methods of dispute resolution that avoid costly and potentially lengthy traditional court proceedings. Parties interpreting this subsection shall follow the federal court rulings which provide, without limitation, that the Federal Arbitration Act (A) is a congressional declaration of a liberal federal policy favoring arbitration agreements, notwithstanding substantive or procedural state policies to the contrary; (B) requires that federal and state courts rigorously enforce agreements to arbitrate; (C) requires the scope of this alternative dispute resolution agreement be interpreted broadly in favor of arbitration; and (D) requires disputes over whether an issue is arbitrable be resolved in favor of arbitration. Specifically, this subsection is to be interpreted in accordance with *Allied-Bruce Terminix Companies, Inc. v. Dobson*, 115 S. Ct. 834 (1995), and other federal court rulings. References herein to California Code Sections are not intended to be, and shall not be interpreted to be, a waiver of rights created under the Federal Arbitration Act.

**17.3.1 Arbitration of Disputes Subject to a Home Warranty.** To the extent that a Home Warranty has been issued by Declarant for a specific Condominium and the Warranty Period under such warranty is still in effect, all disputes regarding such Condominium shall be resolved by binding arbitration in accordance with the provisions of such warranty, as provided in Section 17.1.4 above.

**17.3.2 Unresolved and Other Disputes.** Any disputes between or among any Owner(s) and the Developer Parties in the following categories shall be resolved in accordance with the judicial reference provisions of Section 17.3.3 below: (a) disputes regarding property not subject to a Home Warranty, (b) disputes subject to a Home Warranty where the binding arbitration procedure has been ruled to be invalid, unenforceable or otherwise not applicable, and/or (c) disputes which are not otherwise subject to California Civil Code Section 1375 or the Right to Repair Law.

**17.3.3 Judicial Reference.** All disputes specified in Section 17.3.2 above shall be submitted to general judicial reference pursuant to California Code of Civil Procedure Sections 638 and 641-645.1 or any successor statutes thereto. Within ten (10) days of receipt by any party of a written request to resolve any such dispute under Section 17.3.2 above, the parties shall agree upon a single referee. If the parties are unable to agree upon a referee within such ten (10) day period, then any party may thereafter seek to have a referee appointed under the California Code of Civil Procedure Sections 638 and 640. If the referee is appointed by the Court, the referee shall be a retired judge from JAMS, the American Arbitration Association ("AAA") or similar mediation/arbitration entity. The proposed referee may be challenged for any of the grounds listed in Section 641 of the California Code of Civil Procedure. The parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. If a dispute involves parties other than those listed above, this provision shall be interpreted to bring those third-party disputes into the general reference procedure prescribed herein to the extent permitted by law. All parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. Declarant shall not be required to participate in the general reference proceeding if

all parties against whom Declarant has necessary or permissive cross-claims or counterclaims, including without limitation other Declarant Parties, will not or cannot be joined in the judicial reference proceeding.

The parties shall use the procedures adopted by JAMS for judicial reference (or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the parties), provided that the following rules and procedures shall apply in all cases unless the parties agree otherwise:

(a) If the Declarant is a party to such judicial reference proceedings, any fee to initiate such proceedings shall be advanced by the Declarant; however, the fees and costs of the judicial reference proceedings (e.g., the fee for the referee and all expert witness fees and costs, etc., but excluding all attorneys' fees) shall ultimately be borne as determined by the referee. In all cases, each party shall bear its own attorneys' fees at its sole cost and expense;

(b) The proceedings shall be heard in the County in which the Community is located, unless all parties agree to a different location;

(c) The referee shall have the power to decide all issues of fact and/or law, and to report a statement of decision to the court on such issues, and to issue all recognized remedies available at law or in equity for any cause of action that is before the referee;

(d) The referee may require one or more pre-hearing conferences;

(e) The parties shall be entitled to discovery, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge;

(f) A stenographic record of the proceedings shall be made;

(g) The referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable and shall stand as the decision of the court;

(h) The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge;

(i) The parties shall promptly and diligently cooperate with one another and the referee, and shall perform such acts as may be necessary to obtain a prompt and expeditious resolution of the dispute; and

(j) The statement of decision of the referee upon all of the issues considered by the referee shall be binding upon the parties, and upon filing of the statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon in the same manner as if the action had been tried by the court. The decision of the referee shall be appealable as if rendered by the court.

17.4 **WAIVER OF COURT AND JURY TRIAL.** AS TO ALL DISPUTES SUBJECT TO THE ALTERNATIVE DISPUTE RESOLUTION PROVISIONS SET FORTH OR REFERENCED IN THIS ARTICLE, EACH OWNER AND DECLARANT WAIVE ANY RIGHTS TO JURY TRIAL, APPEAL AND OTHER CIVIL LITIGATION PROCEEDINGS FOR SUCH DISPUTES, EXCEPT AS OTHERWISE EXPRESSLY SET FORTH OR REFERENCED HEREIN. IN THE EVENT ANY OF THE PROCEDURES SET FORTH OR REFERENCED HEREIN ARE DETERMINED TO BE INVALID OR UNENFORCEABLE, IN WHOLE OR IN MATERIAL PART, SUCH THAT THE RESOLUTION OF THE DISPUTE SHALL PROCEED BY WAY OF CIVIL LITIGATION PROCEEDINGS, EACH OWNER AND DECLARANT NONETHELESS WAIVE THE RIGHT TO JURY TRIAL WITH RESPECT TO SUCH DISPUTE.

17.5 **AMENDMENTS.** The provisions of this Article may not be amended without the express written consent of Declarant.

*[SIGNATURES ON NEXT PAGE]*

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

This Declaration is dated for identification purposes November 18, 2013.

WILLIAM LYON HOMES, INC.,  
a California corporation

By: 

Print Name: **Richard L. Puffer**

Title: **Assistant Secretary**

By: 

Print Name: **Dan C. George**

Title: **Vice President**

*Declarant*

STATE OF CALIFORNIA

COUNTY OF Orange

On Nov. 19, 2013, before me, Brenda G. Roberge  
(here insert name and title of the officer)

personally appeared Richard L. Puffer and Dan C. George  
and \_\_\_\_\_

personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Signature: Brenda G. Roberge



(SEAL)

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 2013, before me, \_\_\_\_\_  
(here insert name and title of the officer)

personally appeared \_\_\_\_\_  
and \_\_\_\_\_

personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

(SEAL)

## **EXHIBIT A**

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

All that certain real property located in the City of Hawthorne, County of Los Angeles, State of California, more particularly described as follows:

Units 13 through 93, inclusive, Association Property and Common Area located or to be located (i) over portions of Lots 8, 9, 10, 11 and 14 of Tract No. 54156, as shown on a subdivision map Recorded in Book 1334, Pages 1 to 13, inclusive, of Maps, in the Office of the Los Angeles County Recorder (the "*Map*") and (ii) over portions of Parcel 1 of Lot Line Adjustment 2013-LL02, which is set forth upon or constituted by the Certificate of Compliance, recorded on October 2, 2013, as Instrument No. 20131422327, in the Office of the Los Angeles County Recorder (the "*Lot Line Adjustment*").

**EXHIBIT B**

**ARTICLES OF INCORPORATION OF THE ASSOCIATION**



3615912

FILED  
Secretary of State  
State of California

REC OCT 31 2013

ARTICLES OF INCORPORATION  
OF  
THE TERRACES AT THREE SIXTY AT SOUTH BAY ASSOCIATION

ONE: The name of this corporation ("*Corporation*" herein) is The Terraces at Three Sixty at South Bay Association.

TWO: This corporation is a nonprofit mutual benefit corporation organized under the Nonprofit Mutual Benefit Corporation Law. The purpose of this corporation is to engage in any lawful act or activity, other than credit union business, for which a corporation may be organized under such law. The specific purpose of this corporation is to operate a homeowners association within the meaning of Section 23701t of the California Revenue and Taxation Code and Section 528 of the Internal Revenue Code and to manage a common interest development under the Davis-Stirling Common Interest Development Act.

THREE: The Corporation's initial agent for service of process is Richard Puffer, whose business address is 4695 MacArthur Court, 8th Floor, Newport Beach, CA 92660.

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

FIVE: The Corporation shall have and exercise any and all powers, rights and privileges which a corporation organized under the Nonprofit Mutual Benefit Corporation Law may now or hereafter have or exercise, provided that the Corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purpose of the Corporation, which is to operate a homeowners Corporation within the meaning of Section 23701t of the California Revenue and Taxation Code and Section 528 of the Internal Revenue Code and to manage a common interest development under the Davis-Stirling Common Interest Development Act. The Corporation does not have a corporate office. The common interest development is near the intersection of Aviation Boulevard and El Segundo Boulevard in Hawthorne, California 90250.


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

SEVEN: This corporation is an association formed to manage a common interest development under the Davis-Stirling Common Interest Development Act.

EIGHT: The Corporation has no managing agent.

3615912

The undersigned, who is the incorporator of the Corporation, has executed these Articles of Incorporation on October 31, 2013.

  
\_\_\_\_\_  
Richard Puffer, Incorporator



I hereby certify that the foregoing  
transcript or 2 page(s)  
is a full, true and correct copy of the  
original record in the custody of the  
California Secretary of State's office.

NOV 01 2013 65

Date: \_\_\_\_\_

Debra Bowen  
DEBRA BOWEN, Secretary of State

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

**BYLAWS**  
**OF**  
**THE TERRACES AT THREE SIXTY AT SOUTH BAY ASSOCIATION**

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CERTIFICATE OF SECRETARY

**BYLAWS**  
**OF**  
**THE TERRACES AT THREE SIXTY AT SOUTH BAY ASSOCIATION**

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

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

1.2 **NAME AND PRINCIPAL OFFICE.** The name of the Association is THE TERRACES AT THREE SIXTY AT SOUTH BAY ASSOCIATION. The principal office of the Association, if any, shall be located in the County or such other location as the Board may designate.

1.3 **APPLICATION.** These Bylaws apply to the condominium development known as THE TERRACES AT THREE SIXTY AT SOUTH BAY, located in the County. All Persons who use the facilities of the Community in any manner, are subject to the regulations in these Bylaws and in the Declaration. Use of any Condominium in the Community signifies acceptance and ratification of these Bylaws.

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

2.1 **NUMBER OF DIRECTORS.**

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

2.1.2 **Elected Directors.** Beginning with the first annual meeting of the Owners, the Association's property, business and affairs shall be governed and managed by a Board of Directors composed of three (3) persons elected at the first annual meeting. The authorized number of Directors may be changed by a duly adopted amendment to these Bylaws.

Beginning with the first annual meeting of the Owners, the Association's property, business and affairs shall be governed and managed by a Board of Directors composed of no fewer than three (3) nor more than five (5) persons elected at the first annual meeting. Initially, the number of directors will be fixed at three (3). The authorized number of Directors may be changed by a duly adopted amendment to these Bylaws.



**2.2 QUALIFICATIONS FOR HOLDING OFFICE.** Each Director, except for those initially appointed by Declarant to serve as interim Directors until the first annual meeting, must be (a) an Owner who meets the qualifications in this Section 2.2 or, (b) an agent of Declarant (as long as Declarant owns any portion of the Community).

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

(a) The Owner must be in compliance with the Governing Documents for the three (3) months immediately preceding the date of the election at which the Owner is being considered for election to the Board of Directors. To be in compliance, the Owner must correct, within five (5) days of receipt of notice, any violation of the Governing Documents for which the Owner has been determined to be responsible pursuant to applicable due process requirements;

(b) The Owner must be current in the payment of all Assessments for the three (3) months immediately preceding the date of the election at which the Owner is being considered for election to the Board of Directors; and

(c) The Owner must not be related by blood or marriage to or reside in the same household with any other Board member.

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

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

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

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

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

(e) Not be more than three (3) months in arrears in the payment of any Assessment;

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

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

(h) Refuse any type of gain, such as money, services, products, gifts or gratuities of a significant value, as determined by a majority vote of the Directors who

meet all of the required qualifications to serve as such, which gain is offered in relation to the Owner's service as a Director. In addition, the Owner must disclose such offers at an open meeting of the Board. Compensation for services duly approved by the Board and unrelated to duties as a Director or Officer of the Association, and reimbursement of expenses associated with services to the Association, do not constitute prohibited gain within the meaning of this subsection; and

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

## **2.3 ELECTION.**

**2.3.1 General Procedure.** On the date of the first annual meeting of the Owners, the offices of the three interim Directors shall be deemed to be vacant, and the Members of the Association (including Declarant) shall elect new Directors to fill all Board seats. At each annual meeting thereafter (as described in Section 4.2), new Directors shall be elected to fill vacancies on the Board. If an annual meeting is not held, or all vacancies on the Board are not filled at the annual meeting, vacancies may be filled in accordance with the procedure for filling vacancies set forth in Section 2.5.

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

**2.3.3 Special Election Requirement.** So long as either (a) Declarant is entitled to exercise its Class B Vote or (b) Declarant is entitled to exercise a majority of the Association's voting power, at least one (1) of the members of the Board must be elected solely by the votes of Owners other than Declarant.

**2.4 TERM OF OFFICE.** Each Director shall hold office until the earlier to occur (a) the end of the Director's term of office after a successor has been elected, or (b) the Director's death, resignation, removal or judicial adjudication of mental incompetence. At the first annual meeting, the term of office of the two (2) Directors receiving the highest number of votes shall be three (3) years and the term of office of the Director receiving the next highest number of votes shall be two (2) years. The term of office of each Director elected to fill a vacancy created by expiration of a Director's term of office shall be two (2) years. The term of office of each Director elected to the Board for any other reason shall be the balance of the unserved term. Any person serving as a Director may be reelected. There is no limit on the number of terms which a Director may serve.

## 2.5 VACANCIES.

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

2.5.2 **Declared Vacancies.** Subject to Section 2.6.2, the Board by a majority vote of the Directors who meet all of the requirements for incumbent directors in Section 2.2.2 above, may declare vacant the office of any Director who fails or ceases to meet any required qualification that was in effect at the beginning of the Director's current term of office.

2.5.3 **Agents of Declarant.** Notwithstanding anything in these Bylaws to the contrary, the office of any Director who is an employee or other agent of the Declarant shall be deemed to be vacant on the date on which the Director ceases to be an employee or agent of Declarant.

2.5.4 **Replacement.** Vacancies in elected seats on the Board caused by any reason other than the removal of a Director by the Board or by the Owners may be filled by either (a) vote of a majority of the remaining Directors, even though they may constitute less than a quorum, or (b) by vote of the Owners at a meeting, and any vacancy caused by the removal of a Director must be filled by a vote of the Owners.

## 2.6 REMOVAL OF DIRECTORS.

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

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

2.6.2 **Restrictions on Removal Powers.** Notwithstanding anything in these Bylaws to the contrary, any Director elected to office solely by the votes of Owners other than Declarant pursuant to Section 2.3.3 may be removed only by the vote of at least a simple majority of the Association's voting power represented by Owners other than Declarant.

2.6.3 **Removal for Failure to Qualify.** The Board, by a majority vote of Directors who meet all the qualifications for Directors in Section 2.2, may declare vacant the

office of any Director who was not elected by the votes of Declarant if such Director fails to meet the requirements of Section 2.2.

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

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

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

**2.8.2 Regular Meetings.** Regular meetings may be held at such time and place fixed from time to time by resolution adopted by a majority of a quorum of the Directors. The meeting place shall ordinarily be within the Community or as near as possible to the Community, but the Board may elect to hold a meeting at the Manager's corporate offices if such location is determined to be reasonable in the Board's business judgment. Regular meetings shall be conducted as frequently as the business of the Board justifies, but in no event may regular meetings be held any less frequently than quarterly. Each Director and the Members shall be given notice of the time and place of regular meetings of the Board not less than four (4) days before the date of the meeting, except in the case of an emergency meeting or a meeting that will be solely held in executive session (as described below).

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

**2.8.4 Executive Sessions.** Any Member of the Association may attend meetings of the Board, except when the Board adjourns to executive session to consider litigation, matters relating to the formation of contracts with third parties, Member discipline, personnel matters, or to meet with a Member, upon the Member's request, regarding the Member's payment of Assessments, as specified in the CID Act. The Board shall meet in

executive session, if requested by a Member who may be subject to a fine, penalty, or other form of discipline, and the Member shall be entitled to attend the executive session. Except as expressly permitted in this Section, only Directors, the Association's counsel and the Association's consultants may attend executive sessions. Except for an emergency meeting, Members shall be given notice of the time and place of a meeting that will be held solely in executive session at least two (2) days prior to the meeting, pursuant to the means of giving notice described below. Any matter discussed in executive session shall be generally noted in the minutes of the immediately following meeting that is open to the entire membership.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**2.10.17 Rules for Elections; Inspector of Elections.** The power and duty to adopt rules governing elections in accordance with the procedures prescribed in California Civil Code Section 1363.03(a) [after January 1, 2014, Section 5105(a)], and the power and duty to select an independent inspector of election in accordance with California Civil Code Section 1363.03(c) [after January 1, 2014, Section 5110].

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

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

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

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

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

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



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

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

(iv) Agreements for cable television services and equipment or satellite dish television services and equipment of not to exceed five years duration provided that the supplier is not an entity in which Declarant has a direct or indirect ownership interest of 10 percent or more.

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

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

(vii) A contract approved by the DRE.

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

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

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

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

**2.12 DISTRIBUTION OF INFORMATION.** The Board shall distribute the following financial information to all Owners (and any Beneficiary, insurer and guarantor of a

First Mortgage on request), regardless of the number of Owners or the amount of assets of the Association:

2.12.1 **Budget.** A pro forma operating budget for each Fiscal Year containing the information required under California Civil Code Section 1365(a) [after January 1, 2014, Sections 5300 and 5565], and including at least the following information must be distributed not less than thirty (30) nor more than ninety (90) days before the beginning of the Fiscal Year:

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

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

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

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

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

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

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

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

(d) A general statement setting forth the procedures used by the Board in calculating and establishing reserves to defray the costs of repair and replacement of, or additions to, major components of the Association Property and facilities for which the Association is responsible.

The Board may distribute a summary of each of the Budgets instead of the Budgets themselves, so long as the Board complies with the provisions of California Civil Code Section 1365(c) [after January 1, 2014, Section 5305].

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

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

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

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

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

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

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

**"This summary of the Association's policies of insurance provides only certain information, as required by subdivision (e) of Section 1365 of the Civil Code [after January 1, 2014, Section 5310(a)(7)], and should not be considered a substitute for the complete policy terms and conditions in the actual policies of insurance. Any Association member may, on request and provision of reasonable notice, review the Association's insurance policies and, on request and payment of reasonable duplication charges, obtain copies of those policies. Although the Association keeps the policies of insurance specified in this summary, the Association's policies of insurance may not cover your property, including personal property or, real property improvements to or around your dwelling, or personal injuries or other losses that occur in or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association members should consult with their individual insurance broker or agent for appropriate additional coverage."**

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

**2.12.5 Assessment and Foreclosure Notice.**

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

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

**NOTICE**

**ASSESSMENTS AND FORECLOSURE**

This notice outlines some of the rights and responsibilities of owners of property in common interest developments and the associations that manage them. Please refer to the sections of the California Civil Code indicated for further information. A portion of the information in this notice applies only to liens recorded on

or after January 1, 2003. You may wish to consult a lawyer if you dispute an assessment.

### **ASSESSMENTS AND NONJUDICIAL FORECLOSURE**

Assessments become delinquent 15 days after they are due, unless the governing documents provide for a longer time. The failure to pay association assessments may result in the loss of an owner's property through foreclosure. Foreclosure may occur either as a result of a court action, known as judicial foreclosure or without court action, often referred to as nonjudicial foreclosure. For liens recorded on and after January 1, 2006, an association may not use judicial or nonjudicial foreclosure to enforce that lien if the amount of the delinquent assessments or dues, exclusive of any accelerated assessments, late charges, fees, attorney's fees, interest, and costs of collection, is less than one thousand eight hundred dollars (\$1,800). For delinquent assessments or dues in excess of one thousand eight hundred dollars (\$1,800) or more than 12 months delinquent, an association may use judicial or nonjudicial foreclosure subject to the conditions set forth in California Civil Code Section 1367.4 [after January 1, 2014, Sections 5705, 5715 and 5720]. When using judicial or nonjudicial foreclosure, the association records a lien on the owner's property. The owner's property may be sold to satisfy the lien if the amounts secured by the lien are not paid.

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

The association must comply with the requirements of California Civil Code Section 1367.1 [after January 1, 2014, Sections 5650(a), 5660 (intro), 5660(a)-(f), 5655, 5670, 5705(b), 5673, 5665, 5675, 5685(a), 5725(a), 5725(b), 5680, 5735, 5700(a), 5710(a), 5710(c), 5700(b), 5685(b), 5710(b), 4040(b), 5690, and 5740] when collecting delinquent assessments. If the association fails to follow these requirements, it may not record a lien on the owner's property until it has satisfied those requirements. Any additional costs that result from satisfying the requirements are the responsibility of the association.

At least 30 days prior to recording a lien on an owner's separate interest, the association must provide the owner of record with certain documents by certified mail. Among these documents, the

association must send a description of its collection and lien enforcement procedures and the method of calculating the amount. It must also provide an itemized statement of the charges owed by the owner. An owner has a right to review the association's records to verify the debt.

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

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

### **PAYMENTS**

When an owner makes a payment, he or she may request a receipt, and the association is required to provide it. On the receipt, the association must indicate the date of payment and the person who received it. The association must inform owners of a mailing address for overnight payments.

An owner may dispute an assessment debt by submitting a written request for dispute resolution to the association as set forth in Article 5 (beginning with Section 1363.810) of Chapter 4 of Title 6 of Division 2 of the California Civil Code [after January 1, 2014, Section 5900]. In addition, an association may not initiate a foreclosure without participating in alternative dispute resolution with a neutral third party as set forth in Article 2 (beginning with Section 1369.510) of Chapter 7 of Title 6 of Division 2 of the California Civil Code [after January 1, 2014, Section 5925], if so requested by the owner. Binding arbitration shall not be available if the association intends to initiate a judicial foreclosure.

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

### **MEETINGS AND PAYMENT PLANS**

An owner of a separate interest that is not a timeshare may request the association to consider a payment plan to satisfy a delinquent assessment. The association must inform owners of the standards for payment plans, if any exist.

The board of the directors must meet with an owner who makes a proper written request for a meeting to discuss a payment plan when the owner has received a notice of a delinquent assessment.

These payment plans must conform with the payment plan standards of the association, if they exist.

**2.12.6 Accounts.** On at least a quarterly basis, the Board shall: (a) cause to be completed and review a current reconciliation of the Association's operating and reserve accounts, (b) review the current Fiscal Year's actual reserve revenues and expenses compared to the Budget for the then current Fiscal Year, (c) review the income and expense statement for the Association's operating and reserve accounts, (d) review the most current account statements prepared by the financial institutions where the Association keeps its operating and reserve accounts, and (e) fulfill any additional duties established by California Civil Code Section 1365.5 [after January 1, 2014, Sections 4177, 4178, 5500, 5510, 5515, 5520, 5550, and 5560]. The signatures of either one of the following two sets of individuals are required for the withdrawal of money from the Association's reserve accounts: 1) two [2] Directors; or 2) one [1] Director and one [1] Association officer (who is not also a Director). As used in this Subsection, the term "reserve accounts" means Budgeted funds that the Board has designated for use to defray the future repair and replacement of, or additions to, those major components of the Association Property which the Association is obligated to maintain.

**2.12.7 Reserve Study.** The Board shall cause a study of the reserve account requirements of the Community to be conducted in accordance with California Civil Code Section 1365.5(e) [after January 1, 2014, Sections 5550 and 5560]. As used in this Subsection, "reserve account requirements" means the estimated funds which the Board has determined are required to be available at a specified point in time to repair, replace or restore those major components of the Association Property which the Association is obligated to maintain.

### **ARTICLE III OFFICERS**

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

**3.2 ELECTION OF OFFICERS.** The Board shall annually elect the Association's officers at the first meeting of the Board to occur following the annual meeting of the Members. The Board shall adopt rules relating to the election of officers according to the procedures prescribed by California Civil Code Section 1357.100 *et seq* [after January 1, 2014, Section 4340]. Each officer shall hold his office at the pleasure of the Board, until he resigns or is removed, is otherwise found to be disqualified to serve or a successor is elected and qualified to serve.

**3.3 REMOVAL OF OFFICERS.** On an affirmative vote of a majority of the entire Board, any officer may be removed, either with or without cause, and a successor elected at any meeting of the Board. Any officer may resign at any time by giving written notice to the Board or to the President or Secretary. Any such resignation is effective on the date of receipt of such

notice or at any later time specified therein. Unless specified in the notice, acceptance of the resignation by the Board is not necessary to make it effective.

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

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

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

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

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



The Treasurer has such other powers and duties as may be prescribed by the Board or these Bylaws.

## **ARTICLE IV OWNERS**

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

**4.1.1 Classes of Membership.** The Association has two (2) classes of Membership, as described in the Declaration. The Class A and Class B Memberships are voting Memberships.

**4.1.2 Interpretation.** Except as provided in Section 2.3.3, any provision of the Bylaws which requires the vote or written consent of a specified percentage of the Association's voting power (i.e., actions requiring more than merely the vote or written consent of a majority of a quorum), requires the approval of such specified percentage of all of the following: (a) the Class A Membership; (b) the Class B Membership (so long as a Class B Membership exists); (c) the Association's total voting power; and (d) the voting power represented by Owners other than Declarant. Whenever a reference is made in these Bylaws or the Declaration to the Association's voting power, it is a reference to the voting power of the Class A and Class B Memberships.

### **4.2 OWNER MEETINGS.**

**4.2.1 First Annual Meeting.** The first annual meeting of Owners, whether regular or special, shall be held on the earlier to occur of (a) the date that is forty-five (45) days after the Close of Escrow for the sale of the Condominium representing the fifty-first (51<sup>st</sup>) percentile Condominium in Phase 1, or (b) the date that is six (6) months after the Close of Escrow for the first sale of a Condominium in Phase 1.

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

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

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

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

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

4.2.7 **Minutes, Presumption of Notice.** Minutes or a similar record of the proceedings of meetings of Owners, when signed by the President or Secretary, shall be presumed truthfully to evidence the matters described therein. A recitation in the minutes executed by the Secretary that proper notice of the meeting was given constitutes prima facie evidence that such notice was given.

4.2.8 **Consent of Absentees.** The actions taken at any meeting of Owners, however called and noticed, are valid as though taken at a meeting duly held after regular call and notice, if (a) a quorum is present either in person or by proxy, and (b) either before or after the meeting, each of the Owners not present in person or by proxy signs (1) a written waiver of notice, (2) a consent to the holding of such meeting, or (3) an approval of the minutes thereof. The Secretary shall file all such waivers, consents or approvals with the corporate records or make them a part of the minutes of the meeting.

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

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

**4.2.11 Proxies.** Votes may be cast in person or by proxy. Proxies must be in writing, comply in form with the requirements of California Civil Code Section 1363.03(d) [after January 1, 2014, Section 5130], and be filed with the Secretary in advance of each meeting. Every proxy is revocable and automatically ceases to have any further legal effect after completion of the meeting for which the proxy was filed. Any form of proxy or written ballot distributed by any Person to the Owners must afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted on, except it is not mandatory that a candidate for election to the Board be named in the proxy or written ballot. The proxy or written ballot must provide that, when the Owner specifies a choice, the vote shall be cast in accordance with that choice. The proxy must also identify the person authorized to exercise the proxy and the length of time it will be valid. No proxy is valid concerning a vote on any matter described in California Corporations Code Section 7613(g) unless the general nature of the proposal was described in the proxy.

**4.2.12 Notice.** The Secretary shall send to each Owner of record, and to each first Mortgagee who has filed a written request for notice with the Secretary, a notice of each annual or special meeting. The notice must be sent by first-class mail, at least ten (10) but not more than thirty (30) days before the meeting. The notice must state the purpose for the meeting as well as the day, hour and place where it is to be held. The notice may establish time limits for speakers and nominating procedures for the meeting. The notice must specify those matters the Board intends to present for action by the Owners, but, except as otherwise provided by law, any proper matter may be presented for action at the meeting. The notice of any meeting at which Directors are to be elected must include the names of all nominees when the notice is given to the Owners. The mailing of a notice, postage prepaid, in the manner provided in this Section, shall be considered notice served, forty-eight (48) hours after the notice has been deposited in a regular depository of the United States mail. Such notice must be posted in a conspicuous place on the Association Property and is deemed served on an Owner on posting if no address for such Owner has been then furnished the Secretary.

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

**4.2.14 Matters Requiring Secret Ballot.** Notwithstanding any other law or provision of the Governing Documents, an election regarding Assessments, selection of Board members, amendments to the Governing Documents, or the grant of exclusive use of Association Property under California Civil Code Section 1363.07 [after January 1, 2014, Section 4600] shall be held by secret ballot according to the procedures set forth in this Section 4.2.

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

4.4 **ACTION WITHOUT MEETING.** Except for election of Directors, any action which may be taken at a meeting of the Owners may be taken without a meeting by written ballot of the Owners, according to the provisions of California Civil Code Section 1363.03 [after January 1, 2014, Sections 5100 to 5125, inclusive]. Solicitations for ballots must specify (a) the number of responses needed to meet the quorum requirements, (b) the percentage of approvals necessary to approve the action, and (c) the time by which ballots must be received to be counted. The form of written ballot must afford an opportunity to specify a choice between approval and disapproval of each matter and must provide that, where the Owner specifies a choice, the vote shall be cast in accordance therewith. Receipt within the time period specified in the solicitation of (1) ballots which equal or exceed the quorum which would be required if the action were taken at a meeting, and (2) approvals which equal or exceed the number of votes which would be required for approval if the action were taken at a meeting at which the total number of votes cast was the same as the total number of ballots cast, constitutes approval by written ballot.

## **ARTICLE V AMENDMENTS**

These Bylaws may be amended by the vote or written consent of Owners representing at least (a) a majority of the voting power of each class of the Owners, and (b) a majority of the Association's voting power represented by Owners other than Declarant; provided that the specified percentage of each class of Owners necessary to amend a specific provision of these Bylaws may not be less than the percentage of affirmative votes prescribed for action to be taken under that provision. These Bylaws may be amended by a majority of the entire Board, (1) at any time before the Close of Escrow for the sale of the first Condominium, or (2) if the amendment is within the Board's power to adopt without Owner approval pursuant to the California Corporations Code and either (a) the proposed amendment conforms the Bylaws to California law or the requirements of DRE, FHA, VA, Fannie Mae, Ginnie Mae or Freddie Mac, or (b) the proposed amendment corrects a typographical error in the Bylaws. Any amendment to these Bylaws which materially affects the rights of Mortgagees as described in Article 11 or Section 13.2 of the Declaration must be approved by at least the percentage of Mortgagees specified in the applicable provision of Article 11 or Section 13.2 of the Declaration. If an amendment to these Bylaws materially affects matters listed in both Article 11 and Section 13.2 of the Declaration, then the amendment must be approved pursuant to the requirements of both Article 11 and Section 13.2 of the Declaration.

## ARTICLE VI MISCELLANEOUS

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

6.2 **CHECKS, DRAFTS AND DOCUMENTS.** All checks, drafts, orders for payment of money, notes and other evidences of indebtedness issued in the name of or payable to the Association must be signed or endorsed in the manner and by the person or persons the Board designates by resolution, subject to the requirements of Section 2.12.6 for withdrawing money from the Association's reserve accounts.

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

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

### 6.5 AVAILABILITY OF ASSOCIATION DOCUMENTS.

6.5.1 **Records To Be Maintained.** The Association shall keep at its principal office (or at such other place in or near the Community as the Board may prescribe) the Governing Documents and the Association's records, as defined in California Civil Code Section 1365.2(a) [after January 1, 2014, Sections 5200 to 5225, inclusive] (collectively, the "*Association Documents*"). The Association Documents shall be made available for inspection and copying by any Owner or the Owner's duly appointed representative for a purpose reasonably related to the Owner's interest as an Owner.

6.5.2 **Inspection Rights.** The Association shall make Association Documents available for the time periods and within the timeframes provided in California Civil Code Sections 1365.2 (i) and (j) [after January 1, 2014, Section 5210 (a) and (b)] for inspection and copying by an Association member, or the member's designated representative. The Association may bill the requesting member for the direct and actual cost of copying requested documents. The Association shall inform the member of the amount of the copying costs before copying the requested documents.

6.5.3 **Manner of Inspection.** The Association shall make the specified Association Documents available for inspection and copying in compliance with California Civil Code Sections 1365.2(c) and (d) [after January 1, 2014, Sections 5205(c)-(g) and 5215]. The inspection and copying rights provided in these Bylaws are subject to the rights and restrictions set forth in California Civil Code Sections 1365.2(c) through (f) [after January 1, 2014, Sections 5205(c)-(g), 5215, 5230, and 5235].

6.5.4 **Limitation on Information Disclosed.** The Association may withhold or redact information from the Association's Documents for any of the reasons as set forth in California Civil Code Section 1365.2(d) [after January 1, 2014, Section 5215].

6.5.5 **Distribution to Owners.** The Association shall provide the requested Association Documents as set forth in California Civil Code Section 1365.2(j) [after January 1, 2014, Section 5210(b)]. No later than ten (10) days after the Association receives written request from any Owner, the Association shall provide to that Owner a copy of each of the documents listed in California Civil Code Section 1365.2(a)(1) [after January 1, 2014, Sections 5200(a) and 5225] that have been requested by the Owner. Owners must be notified in writing when the budget required in Section 2.12.1 is distributed or at the time of any general mailing to the entire Association Membership of their right to have copies of the minutes of meetings of the Board and how and where those minutes may be obtained.

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

6.7 **STATUTORY AND REGULATORY REFERENCES.** From and after January 1, 2014, references in these Bylaws to provisions of California Civil Code Sections 1350 to 1378, inclusive, shall be deemed to refer to the corresponding successor provisions set forth in Division 4, Part 5 of the California Civil Code or to subsequently enacted replacement statutes. All references made in these Bylaws to other statutes or to regulations are to those statutes or regulations as currently in effect or to subsequently enacted replacement statutes or regulations. From and after July 1, 2013, references herein to the DRE or the California Department of Real Estate shall mean and refer to the California Bureau of Real Estate and any department or agency of the California state government which succeeds to its functions.

## **ARTICLE VII NOTICE AND HEARING PROCEDURE**

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

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

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

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

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

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

The date for the hearing may be not less than fifteen (15) days after the date the notice of hearing is mailed or delivered to the Respondent. The Respondent is entitled to attend the hearing, submit a statement of defense to the Board in advance of the hearing, or present a statement of defense and supporting witnesses at the hearing. If the Respondent does not attend the hearing, the Respondent waives these rights.

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

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

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



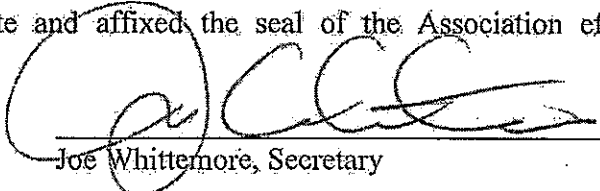
## CERTIFICATE OF SECRETARY

I, the undersigned, certify that:

1. I am the duly elected and acting Secretary of The Terraces at Three Sixty at South Bay Association, a California nonprofit mutual benefit corporation (the "*Association*"); and

2. The foregoing Bylaws comprising 26 pages (including this page) constitute the Bylaws of the Association duly adopted by the Association Board of Directors on November 1, 2013.

I have signed this Certificate and affixed the seal of the Association effective on November 1, 2013.

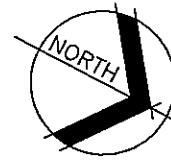
  
Joe Whittemore, Secretary

(SEAL)

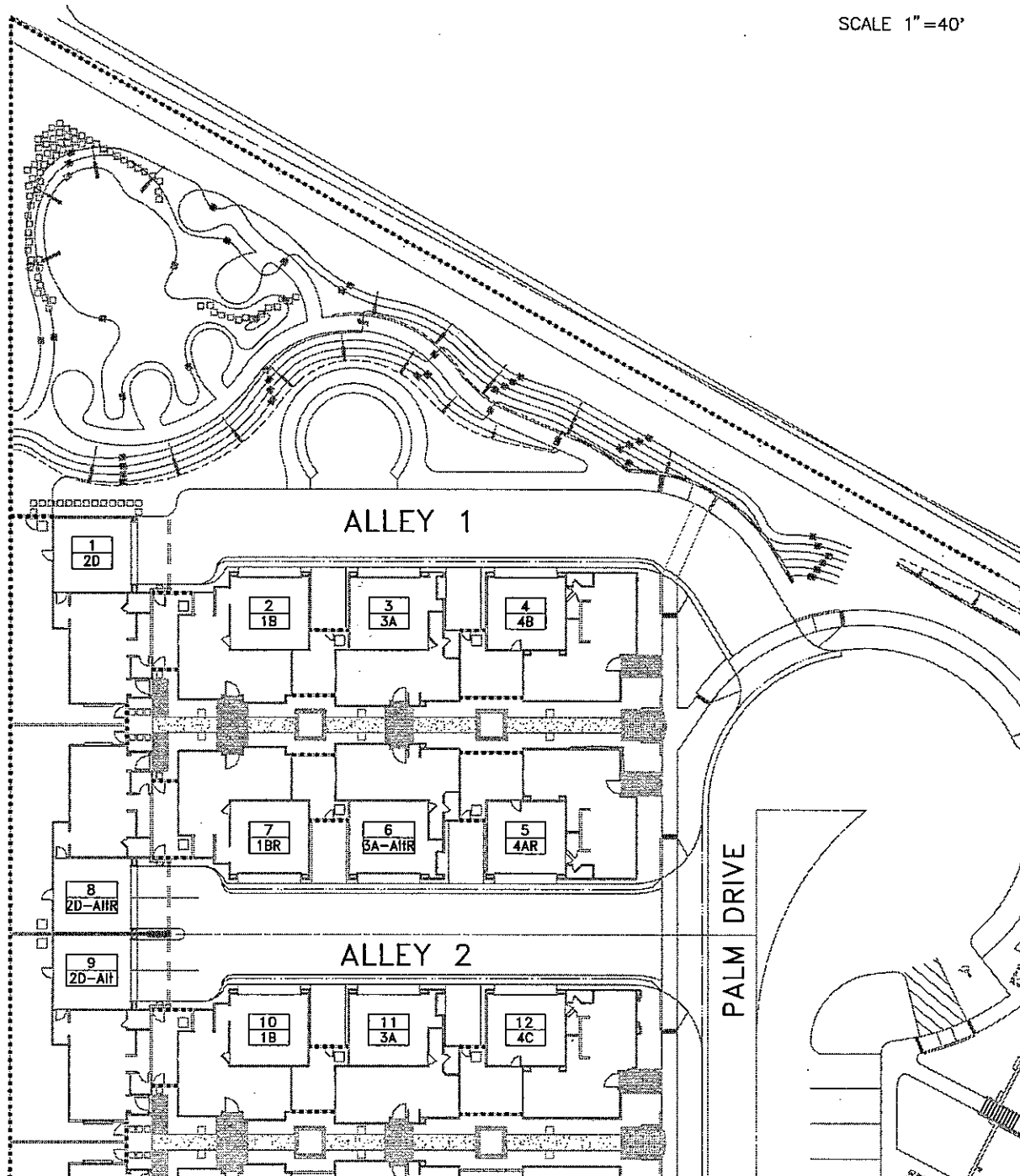
**EXHIBIT D**

**DEPICTION OF ASSOCIATION MAINTENANCE AREAS IN PHASE 1**

# THREE SIXTY AT SOUTH BAY THE TERRACES - TR 54156 WALL EXHIBIT 'D'



SCALE 1"=40'

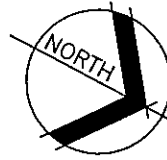


## LEGEND

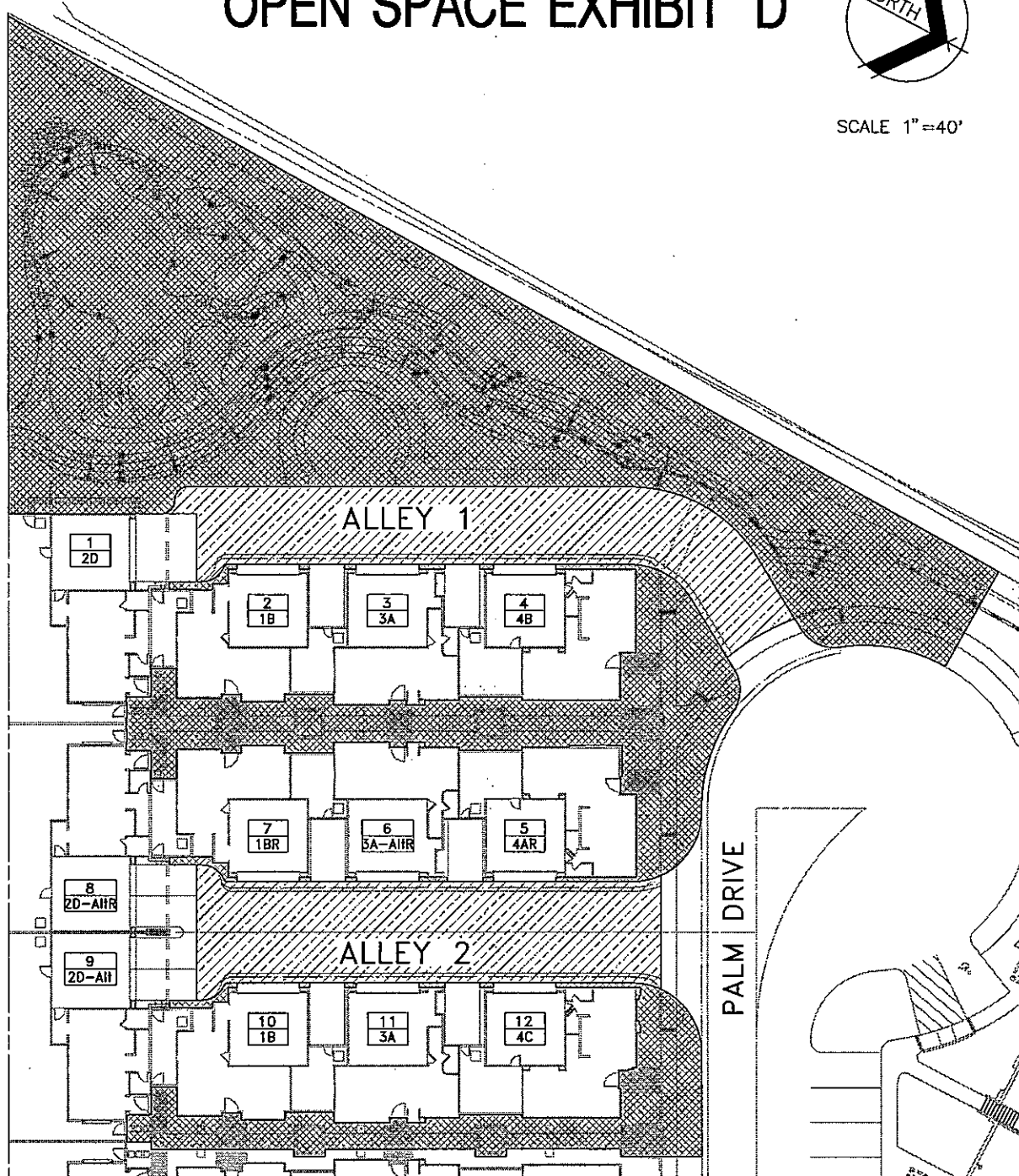
WALL LOCATION

SHEET 1 OF 1

# THREE SIXTY AT SOUTH BAY THE TERRACES - TR 54156 OPEN SPACE EXHIBIT 'D'



SCALE 1"=40'



## LEGEND



LANDSCAPING



STREETS

SHEET 1 OF 1