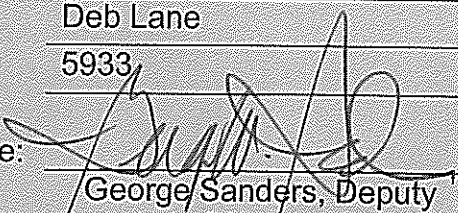


CONTRACT ROUTING SHEET

Date Prepared: 10/1/07

Need Date: ~~10/13/07~~ - 10/12/07 per Deb Lane

PROCESSING DEPARTMENT:

Department: General Services
 Dept. Contact: Deb Lane
 Phone #: 5933
 Department Head Signature: 
George Sanders, Deputy Director

CONTRACTOR:

Name: Durock Properties (Tim Miles)
 Address: 4331 Rancho Road
Cameron Park, Ca95682 95667
 Phone: ((916) 358-5555

ATTORNEY - DAVE L. LIVINGSTON

2007 OCT - 8 PM 12:19
DEPT. PROBATION COUNSEL

Hand Delivered

CONTRACTING DEPARTMENT: Probation Department

Service Requested: Lease Agreement #309-L0811
 Contract Term: Feb. 1, 2007 - Jan. 31, 2012 Contract/Amendment Value: _____
 Compliance with Human Resources requirements? Yes: _____ No: _____
 Compliance verified by: _____

COUNTY COUNSEL: (Must approve all contracts and MOU's)

Approved: Conditional Disapproved: _____ Date: 10/15/07 By: D. Livingston DM
 Approved: ✓ Disapproved: _____ Date: 10/18/07 By: D. Livingston DM

ASSIGNMENT
 DATE 10/08/2007
 ATTORNEY DAVE LIVINGSTON
 DEPT/INDEX NO. 14/1200
 BY: [Signature]

* REVISE PER NOTES AND CONVERSATION w/ D. LANE on 10/15/07.

* Revised per notes and per lessons changes 10/18/07 DM

* 10/15/07: Approved w/ minor comments on the SYSTEM ON DEPT AGREEMENT.

2007 OCT 18 PM 11:35
DEPT. PROBATION COUNSEL

Hand Delivered

PLEASE FORWARD TO RISK MANAGEMENT. THANKS!

RISK MANAGEMENT: (All contracts and MOU's except boilerplate grant funding agreements)

Approved: ✓ Disapproved: _____ Date: 10/15/07 By: Costello
 Approved: _____ Disapproved: _____ Date: _____ By: _____

2007 OCT 15 PM 2:07
RECEIVED PROBATION DEPT

OTHER APPROVAL: (Specify department(s) participating or directly affected by this contract).

Departments: _____
 Approved: _____ Disapproved: _____ Date: _____ By: _____
 Approved: _____ Disapproved: _____ Date: _____ By: _____

COUNTY OF EL DORADO
LEASE # 309-L0811

THIS LEASE is made by and between **COUNTY OF EL DORADO**, a political subdivision of the State of California, hereinafter called "Lessee", and **DUROCK PROPERTIES LLC**, herein after referred to as "Lessor".

IT IS AGREED between the parties hereto as follows:

1. PREMISES

Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, for and in consideration of the rents, covenants and agreement hereinafter set forth, the "Premises" is more particularly described as follows:

Building B
Units 205, 206, 207, 208, 209, 210, & 211
3974 Durock Road
Shingle Springs, CA

The Premises consists of 10,346 square feet of improved office space together with the use of common parking areas.

2. TERM

The term of this Lease shall be for five (5) years commencing upon receipt of a certificate of occupancy and ending five (5) years from that date, subject however, to earlier termination as hereinafter more particularly provided in Paragraph 20.

3. PAYMENT

Lessee agrees to pay to Lessor as rent the sum of **Eighteen Thousand Four Hundred Fifteen Dollars and Eighty-Eight cents (\$18,415.88)** per month payable on the first day of each and every month. Rent payments shall not commence until Lessee is in receipt of a certificate of occupancy indicating the date upon which the Lease term shall begin and rent payments shall commence each and every month thereafter. Said monthly rent amount shall be adjusted one (1) year upon the date of occupancy and annually thereafter, in the amount of five cents (\$.05) per square foot of the then current price per square foot.

Rent shall be paid to the order of: **Durock Properties LLC, 4331 Rancho Road,
Cameron Park, CA 95682 Attn: Nello Olivo**

4. OPTION FOR ADDITIONAL TERMS

Lessee shall have the option to Lease the subject Premises for two (2) additional five (5) year terms after the initial Lease expiration date. Lessee shall notify Lessor in writing approximately sixty (60) days prior to the expiration of the first five (5) year term and each additional two (2) five (5) year terms thereafter, should Lessee elect to exercise said option (s). Lease payments for the sixth (6) year shall be at (\$2.00psf) for the amount of **Twenty Thousand Six Hundred Ninety-Two Dollars (\$20,692.00)** per month and shall be adjusted one (1) year from the date the option is extended in an amount equal to three and one half (3.5%) percent of the than current monthly rent and annually thereafter. All other terms and conditions of the lease during the option period shall remain the same unless a written amendment has been executed by all parties hereto.

5. USE OF PREMISES

The Premises are leased to the Lessee for the purpose of conducting business and activities permitted by law, including any government operations or uses related thereto. Lessee shall comply with all uses, property restrictions and occupancy limitations as required by the Durock Business Plaza Declaration of Covenants, Conditions and Restrictions recorded with the County of El Dorado on July 10, 2007, document no. 2007-00445099, a copy of which is attached hereto as Exhibit "A".

6. PROHIBITED USE

Lessee shall not commit or permit the commission of any acts on the Premises nor permit the use of the Premises in any way that will:

- (a) Increase the existing fire rates or cancel any fire, casualty, liability or other insurance policy insuring the building or its contents;
- (b) Violate or conflict with any law, statute, ordinance, governmental rule or regulation whether now in force or hereinafter enacted, governing the Premises;
- (c) Obstruct or interfere with the rights of other tenants or occupants of the building or injure or annoy them; and
- (d) Constitute commission of a waste on the Premises.

7. INSURANCE

Lessor shall provide proof of a policy of insurance satisfactory to the El Dorado County Risk Manager and documentation evidencing that Lessor maintains insurance that meets the following requirements:

- A. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
- B. If Lessor maintains employees, Workers' Compensation and Employers' Liability Insurance covering all employees of Lessor as required by law in the State of California.
- C. Lessor shall furnish a certificate of insurance satisfactory to the Lessee as evidence that the insurance required above is being maintained.
- D. The insurance shall be issued by an insurance company acceptable to Lessee or be provided through partial or total self-insurance likewise acceptable to Lessee. Lessee's consent shall not be unreasonably withheld. In the event Lessee refuses to accept Lessor's insurer, Lessee shall provide, in writing, the basis for such refusal.
- E. Lessor agrees that the insurance required above shall be in effect at all times during the term of this Lease. In the event said insurance coverage expires at any time or times during the term of this Lease, Lessor agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the Lease, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Lessee and Lessor agrees that the Lease shall not commence prior to the giving of such approval. In the event the Lessor fails to keep in effect at all times insurance coverage as herein provided, Lessee may, in addition to any other remedies it may have, terminate this Lease upon the occurrence of such event.
- F. The certificate of insurance must include a provision stating that the insurer will not cancel the insured's coverage without 30 day prior written notice to the Lessee.
- G. Any deductibles or self-insured retention must be declared to and approved by the Lessee. At the option of the Lessee either the insurer shall reduce or

eliminate such deductibles or self-insured retention as respects the Lessee, its officers, officials and employees; or Lessor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

- H. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the Lessee, its officers, officials, employees or volunteers.
- I. The insurance companies shall have no recourse against the Lessee, its officers, officials or employees for payment of any premiums or assessments under any policy issued by any insurance company.
- J. Lessor's obligations shall not be limited by the foregoing requirements and shall survive the expiration of this Agreement.
- K. In the event Lessor cannot provide an occurrence policy, Lessor shall provide insurance covering claims made as a result of performance of this Lease for not less than three (3) years following completion of this Lease.
- L. The Certificate of Insurance shall meet additional standards as may be determined by the Lessee, either independently or in consultation with Lessee's Risk Manager, as essential for protection of Lessee.
- M. Lessor shall provide property insurance on all real property owned by Lessor covered by this Lease under a standard "all risk" policy. The policy shall insure for not less than ninety percent (90%) of the replacement value of the property.

8. INDEMNIFICATION

Lessor shall indemnify, defend, and hold harmless Lessee, its officers, agents and employees, from and against any claims, actions, suits, costs, expenses (including reasonable attorney's fees) and other cost of defense incurred or liabilities, whether for damage to or loss of property, or injury to or death of person, which in any way arise from or are connected with the acts or omissions of Lessor or its officers, agents, employees, contractors, subcontractors, or business invitees, or Lessor's use of the Premises, unless such damage, loss, injury, or death shall be caused by the sole, or active negligence of County, or the willful misconduct of County, as expressly provided by statute.

Lessee shall indemnify, defend, and hold harmless Lessor, its officers, agents, and employees, from and against any claims, actions, suits, costs, expenses (including

reasonable attorney's fees) and other cost of defense incurred or liabilities, whether for damage to or loss of property, or injury to or death of person, which in any way arise from or are connect with the acts or omissions of Lessee or its officers, agents, employees, contractors, subcontractors, or business invitees, or Lessee's use of the Premises to the extent such loss, damage, injury, or liability is not covered by the insurance required as provided for in paragraph 7. "INSURANCE" above, unless such damage, loss, injury or death shall be caused by the sole, or active negligence of Lessor, or the willful misconduct of Lessor.

The duties of Lessor or Lessee to indemnify and save each other harmless include the duties to defend as set forth in California Civil Code Section 2778. The provisions of this section shall survive the termination of the Lease for any event occurring prior to the termination.

9. ALTERATIONS

A. Lessor shall provide, at its own expense, prior to occupancy by the Lessee, the alterations in accordance with Exhibit "B", marked "Tenant Improvements", incorporated herein and made by reference by a part hereof, to be completed within 60 days after the issuance of permits, but in no case shall the construction of the tenant improvements take longer than 60 days after the execution of this lease. Lessor shall pay and require payments of wages in accordance with a scale of prevailing wage rates determined by California Law, which scale is on file at the El Dorado County Department of General Services, Facilities Division. Lessor shall provide Lessee with a notice of completion and certificate of occupancy indicating the date upon which the Lease term shall begin.

B. Lessee shall not make or permit any other person to make any alterations to the Premises without the written consent of Lessor first obtained. Should Lessor consent to the making of any alterations to the Premises by the Lessee, subsequent to execution of this Lease, said alterations shall be made at the sole cost and expense of Lessee by a contractor or other person selected by Lessee and approved in writing by Lessor before work commences. Any and all alterations, with the exception of previously approved relocatable walls and other alterations readily removable without significant damage to the building Premises, interior or exterior, shall on expiration or sooner termination of this Lease, become the property of Lessor and remain on the Premises.

10. MAINTENANCE AND REPAIRS

Lessee shall, at all times during the term of this Lease and any renewal or extension thereof, maintain, at Lessee's sole cost and expense, the Premises, in a good, clean, and safe condition, and shall on expiration or sooner termination of this Lease surrender the Premises to Lessor in as good condition and repair as they are in on the date of this Lease, reasonable wear and tear and damage by the elements excepted.

11. ADA MODIFICATIONS

Lessor agrees at its sole cost and expense to make changes necessary to bring the subject premises up to the accessibility standards of the Americans with Disabilities Act (ADA).

12. INSPECTION BY LESSOR

Lessee shall permit Lessor or Lessor's agent, representative, or employees to enter the Premises at all reasonable times for the purpose of inspecting the Premises to determine whether Lessee is complying with the terms of the Lease and for the purpose of doing other lawful acts that may be necessary to protect Lessor's interest in the Premises under this lease.

13. SERVICES FURNISHED BY LESSOR

Lessor is responsible for the payment of all local, state and federal taxes associated with or attributable to the property subject to this Lease Agreement, the operation of this Lease and the income flowing to Lessor through this Lease agreement. Lessor shall, at Lessor's own cost and expense, maintain the exterior walls, exterior windows, automobile parking areas, exterior lighting, sidewalks, driveway maintenance, retaining walls, ramps, plumbing, electrical, heating and air-conditioning, landscaped areas, air-conditioning and heating equipment and ductwork, and roof and structural supports of the building of which the Premises are a part, in good order and repair, excepting any repairs caused by the negligent or willful act of Lessee or Lessee's agents or servants.

14. UTILITIES

(a) Water and sewer suitable for the intended use of the Premises shall be provided and paid by Lessee.

(b) Gas and/or electric utilities shall be obtained and paid by Lessee.

(c) Janitorial services, including the cleaning of windows and replacement of light globes or

fluorescent tubes, shall be paid by Lessee.

(d) Garbage removal shall be provided and paid for by Lessor.

(e) Lessee shall obtain and pay for telephone service.

(f) Snow removal shall be provided for and paid by the Lessor.

15. AIR-CONDITIONING AND HEATING

Lessor has provided, and shall maintain, or cause to be maintained, in the building of which the Premises are a part, an air conditioning and heating system.

16. DESTRUCTION OF PREMISES

Should said Premises, or the building of which they are a part, be damaged or destroyed by any cause not the fault of Lessee, Lessor shall at Lessor's sole cost and expense promptly repair the same and the rent payable under this Lease shall be abated for the time and to the extent Lessee is prevented from occupying the Premises in their entirety; provided, however, that should the cost of repairing the damage or destruction exceed twenty-five (25%) percent of the full replacement cost of the Premises, Lessee may choose, in lieu of Lessor making the repairs required by this paragraph to terminate this Lease by giving Lessor ten (10) days' written notice of such termination.

17. CONDEMNATION OF PREMISES

Should all or any part of the Premises be taken by any public or quasi-public agency or entity under the power of eminent domain during the term of the Lease:

- (a) Either Lessor or Lessee may terminate this Lease by giving the other thirty (30) days' written notice of termination; provided, however, that Lessee cannot terminate this Lease unless the portion of the Premises taken by eminent domain is so extensive as to render the remainder of the Premises useless for the purposes intended by this Lease.
- (b) Any and all damages and compensation awarded or paid because of the taking, except for amounts paid Lessee for moving expenses or for damage to any personal property or trade fixtures owned by Lessee, shall belong to Lessor, and Lessee shall have no claim against Lessor or the entity exercising eminent domain power for the value of the unexpired term of this Lease.
- (c) Should any portion of the building containing the Premises, other than the Premises,

be taken by eminent domain, Lessor or Lessee may, at its option, terminate this Lease.

18. ASSIGNMENT OR SUBLEASING

Lessee shall not sub-lease, encumber, assign, or otherwise transfer its rights or interests under this Lease, without the express written consent of the Lessor first had and received, provided said consent by Lessor shall not be unreasonably withheld.

19. ACTS CONSTITUTING BREACHES BY LESSEE

Lessee shall be guilty of a material default and breach of this Lease should:

- (a) Any rent be unpaid when due and remain unpaid for thirty (30) days after written notice to pay such rent or to surrender possession of the Premises has been given to Lessee by Lessor;
- (b) Lessee default in the performance of or breach any provision, covenant, or condition of this Lease other than one for the payment of rent and such default or breach is not cured within thirty (30) days after written notice thereof is given by Lessor to Lessee; or
- (c) Lessee breaches this Lease and abandons the Premises prior to the expiration of the term of this Lease.

20. NON-APPROPRIATION

A. Lessor acknowledges that Lessee's funding for this Lease is in large part dependent upon receipt of certain state, federal and other funds by Lessee. Lessee may terminate this Lease upon sixty (60) days notice if funds are not budgeted in any fiscal year for the leasehold of these Premises. If the termination for lack of funding provision of this paragraph is utilized by the Lessee, Lessee agrees not to lease other space for the non-funded function for the remainder of the then-current fiscal year.

B. In the event, the Lessee terminates this lease, pursuant to this paragraph, Lessee shall, upon Lessor's written request, reimburse Lessor for the remaining amortized cost, if any, of the tenant improvements required by paragraph 9. In support of such request, Lessor shall provide Lessee with accounting records supporting the remaining amortized cost for tenant improvements.

21. LESSOR'S LIABILITY

In the event of a transfer of Lessor's title or interest to the property during the term of this Lease, Lessee agrees that the grantee of such a transfer will be substituted as Lessor under this Agreement, provided that all deposits are transferred to the grantee. Lessor shall be released from all future liability under this Lease Agreement, but shall not be released from the obligation to indemnify Lessee under paragraph 8 above for acts or omissions occurring prior to the transfer unless so released by Lessee in writing.

22. NOTICES

Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Lease or by law to be served on or given to either party hereto by the other party hereto shall be in writing and shall be deemed duly served and given when personally delivered to the party, Lessor or Lessee, to whom it is directed or any managing employee of such party or, in lieu of such personal service, when deposited in the United States mail, first-class postage prepaid, addressed to:

Lessor: Durock Properties LLC
Attn: Nello Olivio
4331 Rancho Road
Cameron Park, CA 95682
Telephone: (916) 358-5555 ext 16

Lessee: County Of El Dorado, General Services Department
360 Fair Lane
Placerville, California 95667
Attention: George Sanders
Telephone: (530) 621-5846

Either party, Lessor or Lessee, may change its address for purposes of this paragraph by giving written notice of the change to the other party in the manner provided in this paragraph.

23. BINDING ON HEIRS AND SUCCESSORS

This Lease shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties, Lessor and Lessee, hereto.

24. TIME OF ESSENCE

Time is expressly declared to be the essence of this Lease.

25. WAIVER

The waiver of any breach of any of the provisions of this Lease by Lessor shall not constitute a continuing waiver or a waiver of any subsequent breach by Lessee either of the same or of another provision of this Lease.

26. SOLE AND ONLY AGREEMENT

This instrument constitutes the sole and only agreement between Lessor and Lessee respecting the Premises and correctly sets forth the obligations of Lessor and Lessee to each other as of its date. Any agreements or representations respecting the Premises or their leasing by Lessor to Lessee not expressly set forth in this instrument are null and void.

27. HOLD OVER

Any holding over after the expiration of this Lease shall be construed as a month-to-month tenancy at the monthly rental amount then in effect. In the event the Lessor wishes to terminate said month to month tenancy, Lessor shall provide Lessee written notice at least ninety (90) days prior to said termination.

28. SEVERABILITY

If any provision, clause or part of this Lease Agreement, or the application thereof under certain circumstances, is held invalid, the remainder of this Lease Agreement or the application of such provisions, clauses, or parts under other circumstances shall not be affected thereby.

29. CALIFORNIA FORUM AND LAW

Any dispute resolution action arising out of this Lease Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have executed this Lease Agreement the day and year first below written.

LESSOR: DUROCK PROPERTIES LLC

Dated: _____

Signed: _____

**Nello Olivo
General Partner**

Dated: _____

Signed: _____

**Michael Suthard
General Partner**

LESSEE: COUNTY OF EL DORADO

Dated: _____

Signed: _____

**, Chairman
Board of Supervisors**

**ATTEST:
Cindy Keck, Clerk of the
Board of Supervisors**

By: _____

Dated: _____

**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
DUROCK ROAD LLC, A CALIFORNIA LIMITED LIABILITY COMPANY**

This Declaration of Covenants, Conditions and Restrictions for Durock Road development (the "Declaration") is made by Durock Road LLC, a California Limited Liability Company ("Declarant").

RECITALS

WHEREAS, Declarant is the owner of that certain property in the County of El Dorado, State of California, which is more particularly described in Exhibit "A" attached hereto and incorporated herein.

NOW, THEREFORE, Durock Road LLC hereby declares as follows:

1. Declarant hereby declares that all of the Development shall be held, sold and conveyed subject to the following easements, restrictions, associations, reservations, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development. These covenants, easements, restrictions, conditions, associations and reservations: (i) create a general plan and scheme for the subdivision development, sale and use of the Development as a "condominium project" as that term is defined in California Civil Code section 135 1(f) for commercial development purposes in accordance with California Civil Code section 1373; (ii) are for the benefit and protection of the Development and for the protection and enhancement of the desirability, value and attractiveness of all Units and Common Area located therein; (iii) run with the Development and bind all parties having or acquiring any right, title or interest in the Development or any part thereof; and (iv) inure to the benefit of the successors and assigns of each Owner of any property within the Development.
2. It is the further intention of the Declarant to sell and convey commercial Units contained within a single Common Area building shell to Owners, subject to the protective covenants, conditions, restrictions, limitations, reservations, liens, grants of easements, rights, rights of way, charges and equitable servitudes between Declarant and such Owners as set forth in this Declaration.
3. All of the real property comprising the Development is held and owned and shall be held, owned, operated, managed, conveyed, hypothecated, encumbered, leased, used, occupied, and improved subject to the following covenants, conditions, and restrictions, all of which are declared and agreed to be in furtherance of a plan and purpose of protecting, preserving, and enhancing the value, desirability, and attractiveness of the Development and every part thereof, and of fostering the development, management, improvement, enjoyment, and sale of the real property comprising the Development and any part thereof.
4. All of the covenants, conditions, and restrictions set forth in this Declaration shall constitute enforceable equitable servitudes as provided in California Civil Code Section 1354, shall constitute covenants that shall run with the real property comprising the Development, and shall be binding upon and inure to the benefit of each Owner of any portion of such real property or of any interest therein and their heirs, successors, and assigns. The covenants, conditions, restrictions, rights, reservations, easements, and equitable servitudes set forth herein shall run with and burden the Properties and shall be binding upon all Persons, as defined herein, having or acquiring any right, title or interest in the Properties, or any part thereof, their heirs, successors and assigns; shall inure to the benefit of every portion of the Properties and any interest therein; and shall inure to

the benefit of and be binding upon, and may be enforced by Declarant, the Association, each Owner and their respective heirs, executors and administrators, and successive owners and assigns. The foregoing recitals are true and correct and are incorporated herein by this reference.

Article I.
Definitions

- (1) "*Architectural Control Committee*" or "*ACC*". A committee created pursuant to Article VIII of this Declaration.
- (2) "*Architectural Committee Rules*". The rules adopted by the Architectural Control Committee.
- (3) "*Articles*". The Articles of Incorporation of the Association, as such Articles may be amended from time to time.
- (4) "*Assessment, Annual*". The annual or supplemental charge against each Owner and his Unit, representing a portion of the Common Expenses, which are to be paid by each Owner to the Association in the manner and proportions provided herein. Said Annual Assessment shall be the amount disclosed on each year's Budget to be paid in equal monthly installments.
- (5) "*Assessment, Capital Contribution*". A charge against each initial Owner and his Unit, representing payment of capital to the Association, which are paid at time of the conveyance from the Declarant to the first Owner in an amount equal to the Annual Assessment estimated for the first three (3) months.
- (6) "*Assessment, Capital Improvement*". A charge against each Owner and his Unit, representing a portion of the costs to the Association for installation or construction of any Improvements on any portion of the Common Area which the Association may from time to time authorize, pursuant to the provisions of this Declaration. Such charge shall be levied among all Owners and their Units in the same proportion as Annual Assessments.
- (7) "*Assessment, Reconstruction*". A charge against each Owner and his Unit, representing a portion of the cost to the Association for reconstruction of any portion of the Improvements on the Common Area pursuant to the provisions of this Declaration. Such charge shall be levied among all Owners and their Units in the same proportion as Annual Assessments.
- (8) "*Assessment Special*". A charge against a particular Owner and his Unit, directly attributable to, or reimbursable by, that Owner, equal to the cost incurred by the Association for corrective action, performed pursuant to the provisions of this Declaration, or a reasonable fine or penalty assessed by the Association, plus interest and other charges on such Special Assessment as provided for herein.
- (9) "*Association*". Shall refer to Durock Road Owner's Association, a California nonprofit corporation, its successors and assigns.
- (10) "*Association Maintenance Funds*". The accounts created for receipts and disbursements of the Association, pursuant to Article VI hereof
- (11) "*Beneficiary*". A mortgagee under a mortgage or a beneficiary under a deed of trust, as the case may be, and the assignees of such mortgagee or beneficiary.
- (12) "*Board*" or "*Board of Directors*". The Board of Directors of the Association, elected pursuant to the Bylaws of the Association.
- (13) "*Budget*". A written, itemized estimate of the expenses to be incurred by the Association performing its

functions under this Declaration prepared pursuant to the Bylaws.

(14) "*Bylaws*". The Bylaws of the Association, as such Bylaws may be amended from time to time.

(15) "*Close of Escrow*". The date on which a deed is recorded conveying a Unit in the Properties from Declarant to a member of the buying public.

(16) "*Common Area*". (i) All the real property and Improvements which are described in Exhibit B, owned or leased by the Association, (ii) all real property over which the Association holds an easement for the common use and enjoyment of all of the Owners, and (iii) any other property owned or held by the Association for the use and enjoyment of the Owners. As more particularly described in California Civil Code Section 1351(f), the Building Common Area is the real property to be held in undivided interest within the condominium project. Each Owner shall have, as appurtenant to the Owner's Unit, an equal undivided interest in the Building Common Area of the Condominium Building containing the Owner's Unit. As more particularly shown on the Plan and as described elsewhere in this Declaration, certain portions of the Building Common Area are Exclusive Use Common Area.

(17) "*Common Expenses*". Those expenses for which the Association is responsible under this Declaration, including the actual and estimated costs of: maintenance, management, operation, repair and replacement of the Common Area; unpaid Special Assessments, Reconstruction Assessments and Capital Improvement Assessments as defined in Article VI; the costs of any commonly metered utilities and other commonly metered charges for the Properties; costs of management and administration of the Association including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and other employees; the costs of all utilities, gardening, trash pickup and other services benefiting the Common Area; the costs of fire, casualty and liability insurance, worker's compensation insurance, and other insurance all covering the Properties; the costs of bonding the members of the management body; taxes paid by the Association and other charges imposed upon the Association by any governmental entity because the Project is a common-interest community; amounts paid by the Association for discharge of any lien or encumbrance levied against the Properties, or portions thereof; and the costs of any other item or items incurred by the Association for any reason whatsoever in connection with the Properties, for the benefit of all of the Owners.

(18) "*Condominium*". A building unit or portion therein located on the subject property designed and intended for use and occupancy as a business-commercial site. Condominium shall mean an estate in real property as defined in California Civil Code sections 783 and 1351(f), consisting of a fee interest in a Unit, an undivided interest in common in the Building Common Area of the Condominium Building containing the Unit, together with any easements or other interests in the Development or any portion thereof as are described in the Declaration, in the Condominium Plan, or in the deed conveying a Condominium.

(19) "*Declarant*". Durock Road LLC, a California limited liability company, its successors and assigns.

(20) "*Declaration*". This instrument as it may be amended from time to time.

(21) "*Deed of Trust*". A mortgage or a deed of trust as the case may be.

(22) "*Improvement*". Any structure or appurtenance thereto of every type and kind, including but not limited to Units and other buildings, walkways, sprinkler pipes, recreational facilities, private streets, driveways, parking areas, fences, screening walls, block walls, retaining walls, gates, sun decks, balconies, landscaping, antennae, hedges, windbreaks, porch, patio, patio covers, railings, plantings, planted trees and shrubs, poles, signs, storage areas, exterior air conditioning and water-softening fixtures or equipment, drainage tanks, curbs, lighting, and other improvements relating thereto.

(23) *Reserved*

(24) "*Majority of Owners*" or "*Majority of Members*". Owners of more than 50% of the total number of

Units contained in the Project.

(25) *"Manager"*. The Person appointed by the Association hereunder as its agent and delegated certain duties, powers or functions of the Association as further provided in this Declaration and in the Bylaws. The Association shall retain a Manager at all times during the term of this Declaration.

(26). *"Member" or "Membership"*. "Member" shall mean any Person holding a membership in the Association, as provided in this Declaration. "Membership" shall mean the property, voting and other rights and privileges of Members as provided herein, together with the correlative duties and obligations contained in this Declaration and the Articles and Bylaws of the Association.

(27). *"Mortgage," "Mortgagee," "Mortgagor"*. "Mortgage" shall mean any Recorded Mortgage or deed of trust or other conveyance of a Unit or other portion of the Properties to secure the performance of an obligation, which will be reconveyed upon the completion of such performance. The term "Deed of Trust" or "Trust Deed" when used herein shall be synonymous with the term "Mortgage." The term "Mortgagee" shall mean a person or entity to which a Mortgage is made and shall include the Beneficiary of a Deed of Trust. "Mortgagor" shall mean a person or entity who mortgages his or her unit to another (i.e., the maker of a Mortgage), and shall include the Trustor of a Deed of Trust. The term "Trustor" shall be synonymous with the term "Mortgagor," and the term "Beneficiary" shall be synonymous with the term "Mortgagee."

(28). *"Notice and Hearing"*. Written notice and a hearing before the Board, at which the Owner concerned shall have an opportunity to be heard in person, or by counsel at Owner's expense, in the manner further provided in the Bylaws.

(29). *"Owner"*. The Person or Persons, including Declarant, holding fee simple interest of record to any Unit. The term "Owner" shall include sellers under executory contracts of sale but shall exclude Mortgagees.

(30) *"Person"*. A natural individual or any other entity with the legal right to hold title to real property.

(31) *"Project"*. The Properties.

(32) *"Properties"*. All of the Property described in Exhibit A, attached hereto and incorporated herein by reference together with any real property as may hereafter be annexed thereto pursuant to Article XV of this Declaration.

(33) *"Record," "Recorded," "Filed" or "Recordation"*. With respect to any document, the recordation of such document in the official records of the County Recorder of El Dorado County, California.

(34). *"Rules, Rules and Regulations"*. The rules and regulations adopted by the Board for the use of the Common Areas pursuant to the Bylaws as such Rules and Regulations may be amended from time to time.

(35) *"Unit"*. Any Commercial Unit shown upon any Recorded plat or map of the Properties. "Unit" shall mean the elements of a Condominium that are not owned in common with the other Owners of Condominiums within the Development. Each Unit is a separate legal interest in real property, which is shown, defined and delineated on the Condominium Plan as a separately numbered parcel located within a Condominium Building. The boundaries of each Unit shall be the approximate dimensions set forth on the Condominium Plan and as follows: The interior unfinished surfaces (exclusive of paint, paper, wax, tile, enamel or other finishes) of its perimeter walls, bearing walls, floors, ceilings, windows, and window frames, doors and door frames, and trim, and includes both the portions of the building so-described and the air space

so-encompassed. Each Unit specifically includes the utility installations located within its boundaries that the Owner has exclusive use of, including, without limitation, space heaters, air conditioners units, plumbing and lighting fixtures located entirely within the Unit they serve. Bearing walls located within the interior of a Unit, if any, are Common Area, not part of the Unit, except for the finished surfaces thereof. In interpreting this Declaration and the Condominium Plan, the existing physical boundaries of the Unit shall be conclusively presumed to be its boundaries rather than the boundaries or other description expressed in the Condominium Plan or this Declaration, regardless of settling or lateral movement of the Condominium Buildings and regardless of variations between the boundaries shown on the Condominium Plan or the deed and the Declaration and those of the buildings.

Article II.
Owners' Property Rights

2.1. OWNERS' EASEMENTS OF ENJOYMENT

Every Owner shall have a right and nonexclusive easement of ingress and egress and of enjoyment in, to and over the Common Area, and such easement shall be appurtenant to and shall pass with title to every Unit, subject to the following:

- a. The right of the Association to limit the number of guests and tenants an Owner or his tenant may authorize to use the Common Area and its facilities;
- b. The right of the Association to establish uniform Rules and Regulations pertaining to the use of the Common Area;
- c. The right of the Association in accordance with the Articles, Bylaws and this Declaration, with the vote or written assent of two-thirds (2/3) of the voting power of the Association, to borrow money for the purpose of improving or adding to the Common Area facilities, and in aid thereof, subject to the provisions of Article XII of this Declaration, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of such Mortgagee shall be subordinated to the rights of the Owners under this Declaration;
- d. The right of the Association to suspend the voting rights and right of use of the Common Area by a Member for any period during which any assessment against his Unit remains delinquent, and for a period not to exceed thirty (30) days after notice and hearing as provided for in the Bylaws for any infraction of the Association Rules;
- e. Subject to the provisions of Article XIII of this Declaration, the right of the Association to dedicate, release, alienate or transfer the Common Area to any public agency, authority, utility or other Person for such purposes and subject to such conditions as may be agreed to by the Members;
- f. The right of Declarant and its sales agents, representatives and prospective purchasers, to the nonexclusive use of the Common Area and any facilities thereon, without cost, for access, ingress, egress, use and enjoyment, in order to show and dispose of the Properties and any other commercial developments in the vicinity of the Properties until the last Close of Escrow for the sale of a Unit in the Properties or such other commercial developments; provided, however, that such use shall not unreasonably interfere with the rights of enjoyment of the other Owners as provided herein;
- g. The rights and reservations of Declarant as set forth in Article XIV of this Declaration or subsequent declarations;
- h. The right of the Association (by action of the Board) to reconstruct, replace or refinish any Improvement or

portion thereof upon the Common Area in accordance with the original design, finish or standard of construction of such Improvement, or of the general Improvements within the Properties, as the case may be; and if not in accordance with such original design, finish or standard of construction only with the vote of or the written consent of the Owners holding seventy-five percent (75%) voting power of the Association and the approval of the Beneficiaries of fifty-one percent (51%) of the first Mortgages on Lots in the Properties;

i. The right of the Association to replace destroyed trees or other vegetation and to plant trees, shrubs and ground cover upon any portion of the Common Area;

j. The right of the Association, acting through the Board, to restrict access to and use of portions of the Common Area; and

k. The easements reserved in Sections 2.3, 2.4, 2.6, 2.9 and 2.10.

2.2. PARKING RESTRICTIONS

The Association, through its officers, board of directors, committees and agents is hereby empowered to establish "parking," "guest parking," and "no parking" areas within the Common Area, as well as to enforce these parking limitations by all means lawful for such enforcement on city or county streets, including the removal of any violating vehicles by those so empowered and assessing the cost thereof to the owner of such vehicle and if the owner of such vehicle is an Owner, said cost shall be assessable against the Owner's Lot in the same manner as Association dues including without limitation a lien therefore, after notice and opportunity of the Owner to be heard.

2.3. EASEMENTS FOR VEHICULAR AND PEDESTRIAN TRAFFIC

In addition to the general easements for use of the Common Area reserved herein, there shall be, and Declarant hereby reserves and covenants for itself and all future Owners within the Properties, nonexclusive easements appurtenant for vehicular and pedestrian traffic over the streets and walkways within the Common Area, subject to the parking provisions set forth in Sections 2.2 and 10.5 hereof.

2.4. EASEMENTS FOR PUBLIC SERVICE USE

In addition to the foregoing easements over the Common Area, there shall be and Declarant hereby reserves and covenants for itself and all future Owners within the Properties, easements for public services of the City and County in which the Properties are located, including but not limited to, the right of the police and fire departments to enter upon any part of the Common Area for the purpose of carrying out their official duties.

2.5. WAIVER OF USE

No Owner may exempt himself from personal liability for assessments duly levied by the Association, nor release the Unit or other property owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area or any facilities thereon or by abandonment of his Unit or any other property in the Properties.

2.6 EASEMENTS FOR WATER AND UTILITY PURPOSES

In addition to the foregoing easements over the Common Area, there shall be and Declarant hereby reserves and covenants for itself and all future Owners within the Properties, easements for public and utility purposes, including but not limited to, the right of any public utility or mutual water district of ingress or egress over the Common Area for purposes of reading and maintaining meters, and using and maintaining fire hydrants located on the Common Area.

2.7. TAXES

Each Owner shall execute such instruments and take such action as may reasonably be specified by the Association to obtain separate real estate tax assessment of each Unit. If any taxes or assessments may, in the opinion of the Association, become a lien on the Common Area, or any part thereof, such taxes or assessments may be paid by the Association as a Common Expense.

2.8. EASEMENT DATA

The recording data, required to be contained herein pursuant to California law for any easements and licenses appurtenant to or included in this Common Interest Commercial Development or to which any portion of this Common Interest Commercial Development is or may become subject by virtue of a reservation in this Declaration, is as follows: The recording data for all easements and licenses reserved pursuant to the terms of this Declaration is the same as the recording data for this Declaration.

2.9. RESERVATION OF EASEMENTS

Declarant hereby reserves for the benefit of each Owner and his Unit reciprocal, nonexclusive easements over the adjoining Unit or Units for the control, maintenance and repair of the utilities serving such Owner's Unit. Declarant expressly reserves for the benefit of all of the real property in the Properties, and for the benefit of all of the Units, the Association and the Owners, reciprocal, nonexclusive easements over all Units and the Common Area, for the installation, maintenance and repair of utility services and drainage facilities, for drainage from the property of water resulting from the normal use of adjoining Units, and for maintenance and repair of any Unit. In the event that any Unit encroaches upon the Common Area, as a result of construction approved by the ACC or as a result of reconstruction, repair, shifting, settlement or movement of any portion of the Properties, a valid easement for minor encroachment and for the maintenance of the same shall exist so long as the minor encroachment exists. Declarant and the Owners of each Unit on which there is constructed a Unit along or adjacent to such Unit line shall have an easement appurtenant to such Unit over the Unit line to and over the adjacent Unit, for the purposes of accommodating any natural movement or settling of any Unit located on such property, any encroachment of any Unit due to minor engineering or construction variances, and any encroachment of eaves, roof overhangs, patio walls and architectural features comprising parts of the original construction of any Unit located on such property.

2.10. CONSTRUCTION EASEMENT

Declarant reserves for a period of seven (7) years after the date of Recording of this Declaration an easement over the Properties for the completion of construction of Improvements thereon.

Article III. **Unit Owner's Association**

3.1. ORGANIZATION OF ASSOCIATION

The Association will be incorporated under the name of Durock Road Owner Association, as a non-profit corporation under California Nonprofit law.

3.2. DUTIES AND POWERS

Duties and powers of the Association are those set forth in this Declaration, the Articles and Bylaws, together with its general and implied powers of a nonprofit corporation and generally to do any and all things that a non-profit corporation organized under the laws of the State of California may lawfully do which are necessary or proper, in operating for the peace, health, comfort, safety and general welfare of its Members, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws and in this Declaration. The Association shall make available for inspection by any prospective purchaser of a Unit, any Owner of a Unit, and the Beneficiaries, insurers and guarantors of the first Mortgage on any Unit, current copies of the Declaration, the Articles of Incorporation, the Bylaws, the Rules and Regulations and all other books, records, and financial statements of the Association.

3.3. MEMBERSHIP

Every Owner of a Unit, upon Close of Escrow on such Unit, shall automatically become a Member of the Association and shall remain a Member thereof until such time as his ownership ceases, at which time his Membership in the Association shall automatically cease. Memberships in the Association shall not be assignable, except to the Person to which title to the Unit has been transferred, and every Membership in the Association shall be appurtenant to and may not be separated from the fee ownership of such Unit. Ownership of such Unit shall be the sole qualification for Membership in the Association.

3.4. TRANSFER

The Association Membership held by any Owner of a Unit shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such Owner's Unit, and then only to the purchaser or Mortgagee of such Unit. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. A Class A Member who has sold his Unit to a contract purchaser under an agreement to purchase shall be entitled to delegate to such contract purchaser his Membership rights in the Association prior to Close of Escrow. Such delegation shall be in writing and shall be delivered to the Board before such contract purchaser may vote. However, the contract seller shall remain liable for all charges and assessments attributable to his Unit until fee title to the Lot sold is transferred. If the Owner of any Unit should fail or refuse to transfer the Membership registered in his name to the purchaser of such Unit upon transfer of fee title thereto, the Board of Directors shall have the right to record the transfer upon the books of the Association. Until satisfactory evidence of such transfer has been presented to the Board, the purchaser shall not be entitled to vote at meetings of the Association. The Association may levy a reasonable transfer fee against a new Owner and his Unit (which fee shall be 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 records of the Association.

3.5. BOARD OF DIRECTORS

Except as otherwise provided in this Declaration, the Bylaws, or California law, the Board may act in all instances on behalf of the Association. Notwithstanding the foregoing, the Board may not act on behalf of the Association to amend the Declaration, to terminate the Common Interest Development or to elect Directors or determine their qualifications, powers and duties or terms of office, but the Board may fill vacancies in the Board for the un-expired portion of any term. Notwithstanding any provisions of this Declaration or the Bylaws to the contrary, the Owners, by a two-thirds vote of all persons present and entitled and to vote at any meeting of the Owners at which a quorum is present, may remove any Director with or without cause, other than a Director appointed by the Declarant. If a Director is sued for liability for actions undertaken in his role as a Director, the Association shall indemnify him for his losses or claims, and shall undertake all costs of defense, unless and until it is proven that the Director acted with willful or wanton misfeasance or with gross negligence. After such proof, the Association is no longer liable for the costs of defense, and may recover, from the Director

who so acted, costs already expended. Directors are not personally liable to the victims of crimes occurring within the Properties. Punitive damages may not be recovered against the Association, Directors or Officers. An officer, employee, agent or director of a corporate Owner, a trustee or designated beneficiary of a trust that owns a Unit, a partner of a partnership that owns a Unit, or a fiduciary of an estate that owns a Unit, may be an Officer or Director. In every event where the person serving or offering to serve as an Officer or Director is a record Owner, he shall file proof of authority in the records of the Association.

3.6. BYLAWS

The Bylaws must provide:

- a. The number of Directors and the titles of the Officers.
- b. For election by the Board of an Association President, Treasurer, Secretary and any other Officers specified by the Bylaws.
- c. Qualifications, powers and duties, terms of office and manner of electing and removing Directors and Officers, and tilling vacancies.
- d. Which, if any, respective powers the Board or Officers may delegate to other Persons or to a Manager.
- e. Which of the Officers may prepare, execute, certify and record amendments to the Declaration on behalf of the Association.
- f. A method for amending the Bylaws.

3.7. MEETINGS OF THE ASSOCIATION

A meeting of the Association must be held at least once each year. Special meetings of the Association may be called by the President, a majority of the Board, or by Owners having ten percent (10%) of the votes in the Association. Not less than ten (10) nor more than sixty (60) days in advance of any meeting, the Association's Secretary shall cause Notice to be hand delivered or sent postage prepaid by United States mail to the mailing address of each Unit or to any other mailing address designated in writing by any Owner. The Notice of the meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration, Articles, these Bylaws or other rules established by the Association, any budgetary changes and any proposal to remove an Officer or Director. The agenda for the meeting must contain the matters designated in applicable California law. Additionally, the Notice of the meeting must include notification of the right of a Member to (1) have a copy of the minutes or a summary of the minutes of the meeting distributed to him upon request if he pays the Association the cost of making the distribution; and (2) speak to the Association or Board of Directors unless the Board of Directors is in an executive session.

A quorum is present throughout any meeting of the Association if Members entitled to cast twenty percent (20%) of the votes of the Association are present in person or by proxy at the beginning of the meeting. A quorum is deemed present throughout any Board meeting if Directors entitled to cast fifty percent (50%) of the votes on that Board are present at the beginning of the meeting. Notwithstanding the presence of a sufficient number of Members to constitute a quorum, certain matters, including, without limitation, amendment to this Declaration, require 51% of votes of the total voting Membership.

3.8. DECLARANT'S DELIVERIES TO ASSOCIATION

Within 30 days after Owners other than the Declarant may elect a majority of the Board, Declarant shall cause to be delivered to the Association all property of the Owners and of the Association held by or controlled by Declarant, including:

- a. The original or a certified copy of the Recorded Declaration or amendments thereto, Articles,

Bylaws, minute books and other books and records of the Association and any Rules or Regulations which may have been adopted;

b. An accounting for money of the Association and financial statements from the date the Association received money to the date the period of the Declarant's control ends. The financial statements must fairly and accurately report the Association's financial condition prepared in accordance with generally accepted accounting principles;

c. The Association's money or control thereof;

d. All of Declarant's tangible personal property that has been represented by Declarant as property of the Association or, unless Declarant has disclosed in the public offering statement that all such personal property used in the Common Interest Community will remain Declarant's property, all of Declarant's tangible personal property that is necessary for, and has been used exclusively in, the operation and enjoyment of the Common Area, and inventories of these properties;

e. A copy of any plans and specifications used in the construction of Common Area Improvements in the Common Interest Community, which were completed within two years before the Declaration was recorded;

f. All insurance policies then in force, in which the Owners, the Association, or Directors and Officers are named as insured Persons;

g. Copies of any certificates of occupancy that may have been issued with respect to any Common Area Improvements comprising the Common Interest Community other than Units;

h. Any renewable permits and approvals issued by governmental bodies applicable to the Common Interest Community which are in force and any other permits and approvals so issued and applicable which are required by law to be kept on the premises of the community;

i. Written warranties of and concerning Common Area Improvements from the contractor, subcontractors, suppliers and manufacturers that are still effective.;

j. A roster of Owners and Mortgagees of Lots and their addresses and telephone numbers, if known, as shown on Declarant's records;

k. Contracts of employment in which the Association is a contracting party;

l. Any contract for service in which the Association is a contracting party or in which the Association or the Owners have any obligation to pay a fee to the Persons performing the services; and

m. A complete Study (hereinafter defined) of the reserves of the Association, conducted by a person qualified by training and experience to conduct such a Study. At the time the control of the Declarant ends, the Declarant shall:

(i) deliver to the Association a Reserve Fund that contains the Declarant's share of the amounts then due, and control of the Fund. If at the time the control of the Declarant ends, the Declarant has failed to pay its share of the amounts due, the Board shall authorize the Declarant to pay the deficiency in installments for a period of three (3) years, unless the Declarant and the Board agree to a shorter period.

(ii) disclose, in writing, the amount by which the Declarant has subsidized the Association's dues on a per unit or per lot basis.

3.9. BUDGET

The Board shall, not less than thirty (30) days nor more than sixty (60) days before the beginning of the fiscal year of the Association, prepare and distribute to each Owner a copy of:

- a. The Budget for the daily operation (the "Daily Operation Budget") of the Association. The Daily Operation Budget must include, without limitation, the estimated annual revenue and expenditures of the Association and any contributions to be made to the reserve account of the Association.
- b. The Budget to maintain the reserve (the "Reserve Budget"). The Reserve Budget must include, without limitation:
- c. The current estimated replacement cost, estimated remaining life and estimated useful life of each major component of the common elements;
- d. As of the end of the fiscal year for which the Reserve Budget is prepared, the current estimate of the amount of cash reserves that are necessary, and the current amount of accumulated cash reserves that are set aside, to repair, replace or restore the major components of the common elements;
- e. A statement as to whether the Board has determined or anticipates that the levy of one or more Special Assessments will be required to repair, replace or restore any major component of the common elements or to provide adequate reserves for that purpose; and
- f. A general statement describing the procedures used for the estimation and accumulation of cash reserves, including the qualifications of the person responsible for preparation of the Study required under Section 3.10.

In lieu of distributing copies of the Budgets of the Association, the Board may distribute to each Owner a summary of those Budgets, accompanied by a written notice that the Budgets are available for review at the business office of the Association or other suitable location and that copies of the Budgets will be provided upon request.

3.10. STUDY OF THE RESERVES

The Board shall:

- a. Cause to be conducted at least once every five (5) years a study of the reserves required to repair, replace and restore the major components of the common elements (the "Study");
- b. Review the results of that Study at least annually to determine if those reserves are sufficient; and
- c. Make any adjustments it deems necessary to maintain the required reserves.
- d. The Study must be conducted by a person qualified by training and experience to conduct such a Study, including a member of the Board, an Owner or the Manager of the Association who is so qualified. The study must include, without limitation:
- e. A summary of an inspection of the major components of the common elements the Association is obligated to repair, replace or restore;
- f. An identification of the major components of the common elements that the association is obligated to repair, replace or restore which have a remaining useful life of less than 30 years;

- g. An estimate of the remaining useful life of each major component identified pursuant to paragraph (b);
- h. An estimate of the cost of repair, replacement or restoration of each major component identified pursuant to paragraph (b) during and at the end of its useful life; and
- i. An estimate of the total annual assessments (the "Annual Assessments") that may be required to cover the cost of repairing, replacement or restoration of the major components identified in paragraph (b), after subtracting the reserves of the Association as of the date of the Study.

Article IV **Voting Rights**

4.1. CLASSES OF VOTING MEMBERSHIP

The Association shall have at least two (2) classes of voting Membership, as follows:

Class A. Class A Members shall originally be all Owners with the exception of Declarant for so long as there exists a Class B Membership. Class A Members shall be entitled to one (1) vote for each Unit owned and subject to assessment. Declarant shall become a Class A Member with regard to Units owned by Declarant upon conversion of Declarant's Class B Membership as provided below. When more than one Person holds an interest in any Unit, all such Persons shall be Members. The vote for such Unit shall be exercised pursuant to Section 4.2 of this Declaration, and in no event shall more than one (1) Class A vote is cast with respect to any Unit.

Class B. The Class B Member shall be Declarant and Declarant shall be entitled to one (1) vote for each Unit owned by Declarant. The Class B Membership shall cease and be converted to Class A Membership on the sale by Declarant of all Units owned by Declarant or on the seventh (7th) anniversary of the Recordation of this Declaration whichever event to first occur.

The Class B Member shall be entitled to appoint and/or remove all of the officers of the association and members of the Board of Directors until the earlier of:

Sixty (60) days after the conveyance of seventy-five percent (75%) of the Units to Owners other than Declarant; An estimate of the total annual assessments (the "Annual Assessments") that may be required to cover the cost of repairing, replacement or restoration of the major components identified in paragraph (b), after subtracting the reserves of the Association as of the date of the Study. Five (5) years after Declarant has ceased to offer Lots for sale in the ordinary course of business; or

(b) Five (5) years after any right to add new Units was last exercised.

Declarant may voluntarily surrender the right to appoint and remove officers and directors before termination of that period, but in that event Declarant may require, for the duration of the period of Declarant's control, that specified action of the Association or the Board of Directors, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective.

No later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units to Owners other than Declarant, at least one member and not less than twenty five percent (25%) of the members of the Board of Directors must be elected by Owners other than Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots to Owners other than Declarant, not less than thirty three and one third percent (33 1/3%) of the members of the Board of Directors must be elected by Owners other than Declarant.

4.2. VOTE DISTRIBUTION

All voting rights shall be subject to the restrictions and limitations provided in this Declaration and in the Articles and Bylaws. Class A Members shall be entitled to one (1) vote for each Unit in which they hold the interest required for membership. When more than one Person holds such interest or interests in any Lot ("co-owner"), all such co-owners shall be Members and may attend any meetings of the Association, but only one such co-owner shall be entitled to exercise the one (1) vote to which the Unit is entitled. Such co-owners may from time to time all designate in writing one of their number to vote. Fractional votes shall not be allowed, and the Class A vote for each Lot shall be exercised, if at all, as a unit. Where no voting co-owner is designated or if such designation has been revoked, the vote for such Unit shall be exercised as the majority of the co-owners of the Unit mutually agree. Unless the Board receives a written objection from a co-owner, it shall be conclusively presumed that the corresponding voting co-owner is acting with the consent of his or her co-owners. No vote shall be cast for any Unit where the co-owners present in person or by proxy owning the majority interests in such Unit cannot agree to said vote or other action. The nonvoting co-owner or co-owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly owned Unit and shall be entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established herein, or in the Bylaws, shall be deemed to be binding on all Owners, their successors and assigns.

Article V.
Jurisdiction Of Association

5. 1. JURISDICTION OF ASSOCIATION

The Association's obligations to maintain the Common Area shall commence on the date Annual Assessments commence on Lots in the Properties. Until commencement of Annual Assessments, the Common Area shall be maintained by Declarant. The Association, acting through the Board, shall have:

- a. The power and duty to maintain, repair and otherwise manage the Common Area and all facilities, Improvements and landscaping thereon in accordance with the provisions of Article VI and Article IX of this Declaration. Five (5) years after any right to add new Dwelling Units was last exercised. The power and duty to obtain, for the benefit of the Properties, all commonly metered water, gas and electric services, and the power but not the duty to provide for refuse collection and cable or master television service.
- b. The power and duty to grant easements, rights of way, or strips of land, where necessary, for utilities and sewer facilities over the Common Area to serve the Common Area and the Lots.
- c. The power and duty to maintain such policy or policies of liability and fire insurance with respect to the Common Area and personal property, if any, owned by the Association as provided herein in furthering the purposes of and protecting the interests of the Association and Members and as directed by this Declaration and the Bylaws of the Association.
- d. The power but not the duty to employ or contract with a professional Manager to perform all or any part of the duties and responsibilities of the Association as long as applicable California law, if any, is complied with, and the power to delegate its powers to committees, officers and employees. Any such management agreement, or any agreement providing for services by Declarant to the Association, shall be for a term not in excess of one (1) year, subject to cancellation by the Association for cause at any time upon not less than thirty (30) days' written notice, and without cause (and without penalty or the payment of a termination fee) at any time upon not less than ninety (90) days' written notice.
- e. The power but not the duty, after Notice and Hearing, to enter upon any area of a Unit, without being liable to any Owner except for damage caused by such entry, for the purpose of enforcing by peaceful means the provisions of this Declaration, or for the purpose of maintaining or repairing any such area if for any reason whatsoever the Owner thereof fails to maintain or repair any such area as required by this Declaration.

The cost of such enforcement, maintenance and repair shall be a Special Assessment enforceable as set forth in this Declaration. The Owner shall pay promptly all amounts due for such work, and the costs and expenses of collection may be added, at the option of the Board of Directors, to the amounts specially assessed against such Owner. Notwithstanding the foregoing, in the event of an emergency, entrance upon a Unit by or on behalf of the Board of Directors shall be permitted without Notice of Hearing for the purpose of enforcing the provisions of the Declaration or for the purpose of maintaining or repairing any area of the Unit improperly maintained by the Owner of the Unit.

f. The power but not the duty to reasonably limit the number of guests and tenants of the Owners using the Common Area.

g. The power but not the duty to establish uniform Rules and Regulations for the use of the Common Area, as provided in this Declaration.

h. The power but not the duty to appoint and remove members of the Architectural Committee all subject to the provisions of the Declaration.

i. The power but not the duty to enter upon a Unit adjacent to the Common Area, without being liable to any Owner except for damage caused by such entry, for the purpose of repairing and maintaining the Common Area.

j. The power but not the duty to perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary or appropriate to enforce or effectuate any of the provisions of this Declaration and the Association Rules.

k. The power but not the duty to levy assessments on the owner of Units and to enforce payment of such assessments, all in accordance with the provisions of the Declaration.

l. The power and authority on its own behalf or on behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Declaration and to enforce by mandatory injunction or otherwise, all of the provisions hereof.

5.2. THE ASSOCIATION RULES

By a majority vote of the Board, the Association may, from time to time, adopt, amend and repeal such rules and regulations as it deems reasonable including the levying of standard fines for infractions thereof (which fines will be assessed after notice and the opportunity of the Owner to be heard), which fines shall be equal to assessments and if unpaid shall become liens against the Owner's Lot in the same fashion as are unpaid assessments. Such rules and regulations are herein in the Declaration referred to as the "Rules." The Rules shall govern the use of any Common Area, by the Owners, by the families of the Owners, or by any invitee, licensee, lessee, or contract purchaser of an Owner; provided, however, that the Rules may not discriminate among Owners and shall not be inconsistent with the Declaration, the Articles or Bylaws. A copy of the Rules as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner. In the event of any conflict between any such Rules and any of the other provisions of the Declaration, or the Articles or Bylaws, the provisions of such Rules shall be deemed to be superseded by the provisions of the Declaration, the Articles or the Bylaws to the extent of such inconsistency. In the event of any conflict between the provisions of the Declaration and the provisions of the Bylaws or Articles of the Association, the provisions of the Declaration shall prevail.

5.3. NO PERSONAL LIABILITY

No member of the Board or any Committee of the Association, or any officer of the Association, or the

Declarant, or the Manager, if any, shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of such Board or Committee member, or any officer of the Association, the Board, the Manager, if any, any other representative or employee of the Association, the Architectural Committee, any other Committee, or the Declarant provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith, without willful or intentional misconduct.

5.4. EXERCISE OF ASSOCIATION POWERS BY BOARD

The Board itself or through the Association's employees, officers, agent or other persons designated by the Board for such purpose shall exercise for and on behalf of the Association all powers, duties and authority vested in or delegated to the Association and not otherwise requiring the consent or approval of the members of the Association, or a portion or percentage thereof by other provisions of this Declaration, the Articles or the Bylaws.

Article VI. **Covenant For Maintenance Assessments**

6.1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS

Declarant, for each Unit owned within the Properties, hereby covenants, and each Owner of any Unit by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (1) Annual Assessments for Common Expenses, (2) Capital Contribution Assessments, (3) Capital Improvement Assessments, (4) Special Assessments, (5) unpaid costs and fines under Sections 2.2 and 5.2 hereof, and (6) Reconstruction Assessments; such assessments to be established and collected as provided in this Declaration. Except as provided in this Section 6.1 all such assessments, together with interest, costs and reasonable attorneys' fees for the collection thereof, shall be a charge on the Unit and shall be a continuing lien upon the Unit against which such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Person who was the Owner of such, property at the time when the assessment became due. This personal obligation cannot be avoided by abandonment of a Unit or by an offer to waive use of the Common Area. The personal obligation for delinquent assessments shall not pass to any new Owner ("Purchaser") unless expressly assumed by the Purchaser.

6.2 MAINTENANCE FUNDS OF ASSOCIATION

The Board of Directors shall establish no fewer than two (2) separate accounts (the "Association Maintenance Funds") into which shall be deposited all monies paid to the Association, and from which disbursements shall be made, as provided herein, in the performance of functions by the Association under the provisions of this Declaration. The Association Maintenance Funds may be established as trust accounts at a banking or saving institution and shall include: (1) an Operating Fund for current expenses of the Association, and (2) an adequate Reserve Fund, funded on a reasonable basis, for replacements, restoration, painting and repairs (which would not reasonably be expected to recur on an annual or more frequent basis) of the major components of the common elements, including, without limitation, roofs, roads and sidewalks, and (3) any other funds which the Board of Directors may establish to the extent necessary under the provisions of this Declaration. To qualify for higher returns on accounts held at banking or savings institutions the Board of Directors may commingle any amounts deposited into any of the Association Maintenance Funds with one another, provided that the integrity of each individual Association Maintenance Fund shall be preserved on the books of the Association by accounting for disbursements from, and deposits to, each Association Maintenance Fund separately. Nothing contained herein shall limit, preclude or impair the establishment of additional Maintenance Funds by the Association, so long as the amounts assessed to, deposited into, and disbursed from any such Fund are earmarked for specified purposes authorized by this Declaration.

6.3. PURPOSE OF ANNUAL ASSESSMENTS

The Assessments levied by the Association shall be used exclusively to promote the common health, safety, benefit, recreation and welfare of the Owners and for the improvement, operation and maintenance of the Common Area and the performance of the duties of the Association as set forth in this Declaration. Disbursements from the Reserve Fund shall be made by the Board of Directors only for the specific purposes specified in this Article VI. The Reserve Fund may be used only for those purposes, including, without limitation, repairing, replacing and restoring roofs, roads and sidewalks, and must not be used for daily maintenance. Money in the Reserve Fund of the Association may not be withdrawn without the signature of at least one member of the Board and one officer of the Association who is not a member of the Board. Disbursements from the Operating Fund shall be made by the Board of Directors only for such purposes as are necessary for the discharge of its responsibilities herein for the common benefit of all of the Owners, other than those purposes for which disbursements from the Reserve Fund are to be used. Nothing in this Declaration shall be construed in such a way as to permit the use of Association assessments or funds to abate any nuisance or annoyance emanating from outside the boundaries of the Properties. Annual Assessments shall be used to satisfy Common Expenses of the Association, as provided herein and in the Bylaws.

6.4 LIMITATIONS ON ANNUAL ASSESSMENT INCREASES

The Board shall not levy, for any Fiscal Year, an Annual Assessment which exceeds the "Maximum Authorized Annual Assessment" as determined pursuant to Sections 6.4(a) and 6.4(b) below, unless first approved by the vote of a Majority of Members.

(a) Maximum Authorized Annual Assessment for Initial Year of Operations. Until the first day of the Fiscal Year immediately following the Fiscal Year in which Annual Assessments commence, the Maximum Authorized Annual Assessment per Lot shall equal one hundred thirty percent (130%) of the amount of Annual Assessments disclosed in the initial Budget for the Association adopted by the Board of Directors. [Example: If the amount of the Annual Assessment disclosed in the initial Budget were \$400.00 per Unit, then the Maximum Authorized Annual Assessment for the following fiscal year would not exceed \$520.00.]

(b) Maximum Authorized Annual Assessment for Subsequent Fiscal Years. Starting with the first Fiscal Year immediately following the Fiscal Year in which Annual Assessments commence, the Maximum Authorized Annual Assessment in any Fiscal Year shall be one hundred thirty percent (130%) of twelve (12) times the monthly installment of the Annual Assessments levied during the last month of the preceding Fiscal Year.

Supplemental Annual Assessments. If the Board, by majority vote, determines that the important and essential functions of the Association may be properly funded by an Annual Assessment in an amount less than the Maximum Authorized Annual Assessment, 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 expenses for the Properties for any reason, it shall immediately determine the approximate amount of the inadequacy. Subject to the then Maximum Authorized Annual Assessment, the Board shall have the authority to levy, at any time by a majority vote, a supplemental Annual Assessment reflecting a revision of the total charges to be assessed against each Lot.

6.5. CAPITAL IMPROVEMENT AND RECONSTRUCTION ASSESSMENTS

The Board of Directors of the Association may levy, in any Fiscal Year, a Capital Improvement Assessment or Reconstruction Assessment applicable to that Fiscal Year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a Capital Improvement or other such addition upon the Common Area including fixtures and personal property

related thereto; provided that any proposed Capital Assessments already levied during such Fiscal Year exceeds ten percent (10%) of the budgeted gross expenses of the Association for such Fiscal Year, shall require the vote or written assent of a Majority of Members. The Association shall provide written Notice to each Owner of a meeting at which an Assessment for a Capital Improvement is to be considered at least twenty-one (21) calendar days before the meeting.

6.6. SPECIAL UNIT ASSESSMENT

The Association may also levy a Special Assessment, including fines against any Member, the Unit and/or Units to reimburse the Association for costs incurred in bringing the Member, or Unit (s) into compliance with the provisions of this Declaration, the Articles, Bylaws, and Association rules and regulations. Such Special Assessment may be levied upon vote of the Board after Notice has been sent to the alleged violator informing him that he has an opportunity to request a Hearing on the alleged violation and after the Hearing, if any, has occurred. The Board may *levy a* Special Assessment for each failure to comply that does not threaten the health and welfare of the common-interest community. The Special Assessment or fine must be commensurate with the severity of the violation, but must not exceed \$100 for each violation or a total amount of \$500, whichever is less. If a Special Assessment or fine is imposed and the violation is not cured within fourteen (14) days, the violation shall be deemed a continuing violation. Thereafter, the Board may impose an additional fine for the violation for each seven (7)-day period or portion thereof that the violation is not cured. Any additional fine may be imposed without Notice and an opportunity to be heard.

6.7. CAPITAL CONTRIBUTION ASSESSMENT

Each Unit shall be assessed a Capital Contribution Assessment in the amount equal to the Annual Assessment estimated for the first three (3) months, payable only one time upon conveyance of the Unit from the Declarant to the first Owner of the Unit. The Capital Contribution Assessment shall be paid to the Association as capital and shall be applied to satisfy Common Expenses of the Association, reduce deficits, or increase surplus, in operation, as the case may be. The Capital Contribution Assessment is non-refundable.

6.8. ALLOCATED INTEREST; UNIFORM RATE OF ASSESSMENT

Each Unit shall be allocated liability for Annual Assessments, Capital Improvement Assessments and Reconstruction Assessments based upon the ratio one Unit bears to all Units in the Project. Except as otherwise indicated in the Budget, Annual Assessments, Capital Improvement Assessments and Reconstruction Assessments provided for in this Article VI shall be assessed equally and uniformly against all Owners and their Units. The Association may, subject to Section 8.6, Section 9.3 and Article XI (d) hereof, levy Special Assessments against selected Owners who have caused the Association to incur special expenses due to willful or negligent acts of said Owners, their tenants, families, guests, invitees or agents. All installments of Annual Assessments shall be collected in advance on a regular basis by the Board of Directors at such frequency as the Board shall determine from time to time. As the conveyance of each Unit is Recorded and in the event additional Units are added to the Project, the liability for Annual Assessments, Capital Improvement Assessments and Reconstruction Assessments shall be reallocated as to all previously Recorded Units as of the annual Board meeting.

6.9. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS

The Board of Directors shall authorize and levy the amount of the Annual Assessment upon each Unit, as provided herein, by a majority vote of the Board. Annual Assessments shall commence on all Units on the first day of the first calendar month following the first Close of Escrow for the sale of a Unit from the Declarant to a member of the public. The first Annual Assessment shall be adjusted according to the number of months remaining in the Fiscal Year as set forth in the Bylaws. The Board of Directors shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period. Written notice of any change in the amount of any Annual Assessment shall be delivered to every

Owner subject thereto, not less than thirty (30) days prior to the effective date of such change. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association, setting forth whether the assessments on a specified Unit have been paid. A properly executed certificate of the Association as to the status of assessments against a Unit is binding upon the Association as of the date of its issuance.

Each monthly installment of Annual Assessments may be paid by the Owner to the Association in one check or payment or in separate checks, as payments attributable to deposits into specified Association Maintenance Funds. If any installment of an Annual Assessment payment is less than the amount assessed and the payment does not specify the Association Maintenance Fund or Funds into which it should be deposited, the receipt by the Association from that Owner 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.

From time to time the Board may determine that all excess funds remaining in the Operating Fund, over and above the amounts used for the operation of the Properties, may be retained by the Association and used to reduce the following year's Annual Assessments. Upon dissolution of the Association incident to the abandonment or termination of the Properties, any amounts remaining in any of the funds shall be distributed to or for the benefit of the Members in the same proportions as such monies were collected from the Members.

6.10. EXEMPT PROPERTY

The following property subject to this Declaration shall be exempt from the assessments herein:
All portions of the Properties dedicated to and accepted by a local public authority so long as such dedication remains effective; and the Common Area owned by the Association in fee.

6.11. ASSESSMENT AGAINST DECLARANTS PROPERTY

Declarant shall be relieved of all payment of the Annual Assessment based upon the following: Declarant shall pay the difference between the Capital Contribution Assessment and authorized Annual Assessment collected from the existing Owners and the total actual cost of Common Area and maintenance until such time as seventy-five (75%) percent of the Units are transferred to third party owners, at which time Declarant shall then pay an Annual Assessment for each Lot Declarant then owns until Declarant conveys same to a member of the public based upon the then current assessment per individual Unit.

The difference to be paid by Declarant as provided in the preceding paragraph of this § 6.11 shall be paid by Declarant either in cash or by providing services benefiting the Association at Declarant's expense.

Article VII.

Effect of Nonpayment of Assessments

7.1 REMEDIES OF THE ASSOCIATION

Any installment of an Annual Assessment, Capital Contribution Assessments, Capital Improvement Assessment, Special Assessment or Reconstruction Assessment shall be delinquent if not paid within thirty (30) days of the due date as established by the Board of Directors of the Association. The Board shall be authorized to adopt a system pursuant to which any installment of Annual Assessments, Capital Contribution Assessments, Capital Improvement Assessments, Special Assessments, or Reconstruction Assessments not paid within thirty (30) days after the due

date shall bear interest at the rate of up to ten percent (10%) per annum, commencing thirty (30) days from the due date until paid. In addition, the Board may require the delinquent Owner to pay a late charge to compensate the Association for increased bookkeeping, billing, and other administrative costs. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Unit.

No Owner may waive or otherwise escape liability for the Assessments provided for herein by nonuse of the Common Area or abandonment of his Unit. If any installment of an assessment is not paid within thirty (30) days after its due date, the Board shall mail within ten (10) days of the request an acceleration notice to the Owner and to each first Mortgagee of a Unit, which has requested a copy of the notice. The notice shall specify (1) the fact that the installment is delinquent, (2) the action required to cure the default, (3) a date, not less than thirty (30) days from the date the notice is mailed to the Owner, by which such default must be cured, and (4) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the installments of such assessment for the then current Fiscal Year and sale of the Unit. If the delinquent installment or installments of any assessment and any charges thereon are not paid in full on or before the date specified in the notice, the Board at its option may declare all of the unpaid balance of such assessment levied against such Owner and such Owner's Unit to be immediately due and payable without farther demand and may enforce the collection of the full assessment and all charges thereon in any manner authorized by law and this Declaration.

7.2 NOTICE OF ASSESSMENT

No action shall be brought to enforce any assessment lien created herein, unless a Notice of Assessment is deposited in the United States mail, within ten (10) days of the request, certified or registered, postage prepaid, to the Owner of the Unit, and a copy thereof has been Recorded by the Association. Said Notice of Assessment must state (a) the amount of the assessment and interest, costs (including attorneys' fees) and penalties, (b) a description of the Unit against which the assessment was made, and (c) the name of the record Owner of the Unit. The Notice of Assessment shall be signed and acknowledged by an officer of the Association. The lien shall continue until fully satisfied

7.3 FORCLOSURE SALE

A non-judicial action to foreclose an Association lien may be conducted by the Association, its agent or attorney in a manner consistent and permitted by law. The Association shall have the power to bid on the Lot at the foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Upon completion of the foreclosure sale, an action may be brought by the Association or the purchaser at the sale in order to secure occupancy of the defaulting Owner's Unit, and the defaulting Owner shall be required to pay the reasonable rental value of such Unit during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. No sale to foreclose an assessment lien may be conducted until (1) the Association has mailed by certified or registered mail, return receipt requested, to the Owner or his successor in interest, at his address if known, and at the address of the Unit, a notice of delinquent assessment which states the amount of the assessments and other sums which are due (i.e., fees, charges, late charges, fines and interest charged, if any), a description of the Unit against which the lien is imposed, and the name of the record Owner of the Unit; (2) the President of the Association or other person conducting the sale has executed and caused to be recorded, with the Clark County Recorder's Office, a notice of default and election to sell the Unit to satisfy the lien, which contains the same information as the notice of delinquent assessment, and such notice of default and election to sell shall also describe the deficiency in payment and the name and address of the person authorized by the Association to enforce the lien by sale; and (3) the Owner or his successor in interest has failed to pay the amount of the lien, including costs, fees and expenses incident to its enforcement, for 60 days following the recording of the notice of default and election to sell. Such sixty (60) day period shall commence on the first day following the latter of: (i) the day on which the notice of default is recorded, or (ii) the day on which a copy of the notice of default is mailed by certified or registered mail,

return receipt requested, to the Owner or his successor in interest at his address if known, otherwise to the address of the Unit. The Association, its agent or attorney shall, after the expiration of such sixty (60) day period and before the foreclosure sale, give notice of the time and place of the sale in the manner and for a time not less than that required by law for the sale of real property upon execution, except that a copy of the notice of sale must be mailed on or before the first publication or posting, by certified mail, return receipt requested, with postage prepaid to the Owner or such Owner's successor in interest at his address if known, and otherwise to the address of the Unit. The Association may not foreclose a lien by sale for the assessment of a fine for a violation of the Declaration, Bylaws or Rules, unless the violation is of a type that threatens the health and welfare of the residents of the Project.

7.4 CURING OF DEFAULT

Upon the timely curing of any default for which a Notice of Assessment was tiled by the Association, the officers thereof shall Record an appropriate Release of Lien, upon payment by the defaulting Owner of a reasonable fee to cover the cost of preparing and Recording such release. A certificate executed and acknowledged by any two (2) members of the Board stating the indebtedness secured by the liens upon any Unit created hereunder shall be conclusive upon the Association and the Owners as to the amount of such indebtedness as of the date of the certificate, in favor of all persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request at a reasonable fee, to be determined by the Board.

7.5 CUMULATIVE REMEDIES

The assessment liens and the rights to foreclosure and sale there-under shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided, and all pre or post judgment recovery remedies allowed by law.

7.6. MORTGAGE PROTECTION

Notwithstanding all other provisions hereof, no lien created under this Article VII, nor any breach of this Declaration, for the enforcement of any provision hereof shall defeat or render invalid the rights of the Beneficiary under any Recorded first Deed of Trust (meaning any deed of trust with first priority over other deeds of trust) upon a Lot made in good faith and for value; provided that after such Beneficiary or some other Person obtains title to such Lot by judicial foreclosure or by means of the powers set forth in such Deed of Trust, such Lot shall remain subject to the Declaration and the payment of all installments of Assessments accruing subsequent to the date such Beneficiary or other Person obtains title.

7.7. PRIORITY OF ASSESSMENT LIEN

The lien of the assessments, including interest and costs (including attorneys' fees), provided for herein shall be subordinate to the lien of any first Mortgage upon any Unit. Sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any unit pursuant to judicial or non-judicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments that became due prior to such sale or transfer. No sale or transfer shall relieve such unit from lien rights for any assessments thereafter becoming due. When the Beneficiary of a first Mortgage of record or other purchaser of a Unit obtains title pursuant to a judicial or non-judicial foreclosure of the first Mortgage, such Person, his successors and assigns, shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Unit by such Person. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from all of the Units including the Unit belonging to such Person, his successors or assigns.

Article VIII.
Architectural Control

8.1 MEMBERS OF COMMITTEE

The Architectural Control Committee, sometimes referred to in this Declaration as the "ACC," shall initially be composed of two (2) representatives of Declarant. Subject to the following provisions, Declarant shall have the right and power at all times to appoint and remove a majority of the members of the ACC or to fill any vacancy of such majority until the "turnover date" which shall be the date on which either (i) Close of Escrow has occurred for the sale of all of the Lots in the Properties, or (ii) seven (7) years following the date of Recordation of this Declaration, whichever occurs earlier. Commencing one (1) year from the date of the Recordation of this Declaration, the Board shall have the power to appoint one (1) member of the ACC, until the turnover date. After the turnover date, the Board shall have the power to appoint and remove all of the members of the ACC. Persons appointed to the ACC by the Board shall be from the membership of the Association, but Persons appointed to the ACC by Declarant need not be Members of the Association. The ACC shall have the right and duty to promulgate reasonable standards against which to examine any request made pursuant to this Article, in order to ensure that the proposed plans conform harmoniously to the exterior design and existing materials of the buildings in the Properties. Board members may also serve as ACC members.

8.2 REVIEW OF PLANS AND SPECIFICATIONS

The ACC shall consider and act upon any and all written plans and specifications submitted for its approval under this Declaration and perform such other duties as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with plans approved by the ACC. The initial ACC members are Nello Olivo and Joseph Doumit. All written submissions to the ACC shall be sent to 4331 Rancho Road, Cameron Park, California 95682. Notwithstanding anything contained in this Declaration, expressly or impliedly to the contrary, no demolition, addition, installation, modifications, decoration, redecoration or reconstruction of an Improvement, including but not limited to Units, Doorways, Hallways, Overhangs, landscaping, or other type of alteration, shall be commenced or maintained until the plans and specifications therefore showing the nature, kind, shape, height, width, color, materials and location of the same shall have been submitted to the ACC and approved in writing by the ACC: provided, however, that any Improvement may be repainted without ACC approval so long as the improvement is repainted the identical color which it was last painted. The Owner submitting such plans and specifications ("Applicant") shall obtain a written receipt thereof from an authorized agent of the ACC. Until changed by the Board, the address for submission of such plans and specifications shall be the principal office of the Association. The ACC shall approve plans and specifications submitted for its approval only if it deems that (a) the construction, alterations, or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area or the Properties as a whole, (b) the appearance of any structure affected thereby will be in harmony with the surrounding structures, (c) the construction thereof will not detract from the beauty, wholesomeness and attractiveness of the Properties or the enjoyment thereof by the Members, and (d) the upkeep and maintenance thereof will not become a burden on the Association.

The ACC may condition its approval of proposals or plans and specifications for any Improvement (1) upon the agreement by the Applicant submitting the same to furnish to the ACC a bond or other security acceptable to the ACC in an amount sufficient to (i) assure the completion of such Improvement or the availability of Funds adequate to remedy any nuisance or unsightly conditions occurring as a result of the partial completion of such Improvement, and (ii) to protect the Association and the other Owners against mechanic's liens or other encumbrances which may be Recorded against their respective interests in the Properties or damage to the Association Property as a result of such work, (2) on such changes therein as it deems appropriate, (3) upon the agreement by the Applicant to grant appropriate easements to the Association for the maintenance of the Improvement, (4) upon the agreement of the Applicant to reimburse the Association for the cost of maintenance or all four, and may require submission of additional plans and specifications or other

information prior to approving or disapproving material submitted. The ACC may also issue rules or guidelines setting forth procedures for the submission of plans for approval, requiring a fee to accompany each application for approval, outstanding additional factors which it will take into consideration in reviewing submissions. The ACC may provide that the amount of such fee shall be uniform, or that it may be determined in any other reasonable manner, such as based upon the reasonable cost of the construction, alterations or additions contemplated or the cost of architectural or other professional fees incurred by the ACC in reviewing plans. The ACC may require such detail in plans and specifications submitted for its review as it deems proper, including without limitation, floor plans, site plans, drainage plans, front and side yard landscaping plans, elevation drawings and description or samples of exterior material and colors. Until receipt by the ACC of any required plans and specifications, the ACC may postpone review of any plan submitted for approval. Decisions of the ACC and the reasons therefore shall be transmitted by the ACC to the Applicant at the address furnished by the Applicant, within forty-five (45) days after the date of receipt issued by the ACC for the final materials required by the ACC. Any application submitted pursuant to this Section shall not be deemed approved, unless written approval or a request for additional information or materials by the ACC shall have been transmitted to the Applicant within forty-five (45) days after the date of receipt by the ACC of all required materials. Failure to submit such a written approval shall be deemed a denial by the ACC of the requested alteration.

8.3 MEETINGS OF THE ACC

The ACC shall meet from time to time as necessary to perform its duties hereunder. The ACC may from time to time, by resolution unanimously adopted in writing, designate an ACC Representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the ACC, except the granting of variances pursuant to Section 8.8 of this Article. In the absence of such designation, the vote of a majority of the members of the ACC, or the written consent of a majority of the members of the ACC taken without a meeting, shall constitute an act of the ACC.

8.4 NO WAIVER OF FUTURE APPROVALS

The approval of the ACC of any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the ACC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval or consent.

8.5 COMPENSATION OF MEMBERS

The members of the ACC shall receive no compensation for services rendered, other than reimbursement by the Association for expenses incurred by them in the performance of their duties hereunder.

8.6 CORRECTION OF DEFECTS

Inspection of work and correction of defects therein shall proceed as follows:

a. The ACC or its duly appointed representative may at any time inspect any Improvement for which approval of plans is required under this Article. However, the ACC's right of inspection of Improvements for which plans have been submitted and approved shall terminate sixty (60) days after the work of Improvement has been completed and the respective Owner has given written notice to the ACC of such completion. The ACC's rights of inspection shall not terminate pursuant to this paragraph if plans for the work of Improvement have not previously been submitted to and approved by the ACC. If, as a result of such inspection, the ACC finds that such Improvement was done without obtaining approval of the plans therefore or was not done in substantial compliance with the plans approved by the ACC, it shall notify the Owner in writing of failure to comply with this Article VIII within sixty (60) days from the inspection, specifying the particulars of noncompliance. The ACC shall have the authority to require the Owner to take such action as may be necessary to remedy the noncompliance.

b. If upon the expiration of sixty (60) days from the date of such notification; the Owner has failed to remedy such noncompliance, the ACC shall notify the Board in writing of such failure. Upon Notice and Hearing as provided in the Bylaws, the Board shall determine whether there is a 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 from 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 Board, at its option, may Record a Notice of Noncompliance and commence a lawsuit for damages or injunctive relief, as appropriate, to remedy the noncompliance. In addition, the Board may peacefully remedy the noncompliance, and the Owner shall reimburse the Association, upon demand, for all expenses (including reasonable attorneys' fees) incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy a Special Assessment against the Owner for reimbursement as provided in this Declaration. The right of the Association to remove a non-complying Improvement or otherwise remedy the noncompliance shall be in addition to all other rights and remedies which the Association may have at law, in equity or in this Declaration.

c. If for any reason the ACC fails to notify the Owner of any noncompliance with previously submitted and approved plans within sixty (60) days after receipt of written notice of completion for the Owner, the Improvement shall be deemed to be in accordance with the approved plans.

8.7 SCOPE OF REVIEW

The ACC shall review and approve, conditionally approve or disapprove all plans submitted to it for any proposed Improvement, alteration or addition, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and the Properties generally. The ACC shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features. The ACC's approval or disapproval shall be based solely on the considerations set forth in this Article VIII, and the ACC shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes. Each Owner shall be responsible for obtaining all necessary permits and for complying with all City and County requirements with respect to the implementation of such plans.

8.8 VARIANCE

The ACC may authorize variances from compliance with any of the architectural provisions of this Declaration, including without limitation, restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances must be evidenced in writing, must be signed by a majority of the ACC, and shall become effective upon Recordation. After Declarant has lost the right to appoint a majority of the members of the ACC, the Board must approve any variance recommended by the ACC before any- such variance shall become effective. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the use of his Dwelling Unit.

8.9 LIABILITY

Approval by the ACC of materials submitted to it shall not be interpreted or deemed to be an endorsement or

verification of the safety, structural integrity or durability of said materials nor any representation that the proposed plans or specifications are in compliance with applicable laws or building ordinances of the City of Cameron Park and/or the County of El Dorado. In all respects the Owner and/or the Owner's agents shall be solely responsible therefore. Further, the ACC shall have no liability for any lack of safety, structural integrity or compliance with any applicable building code or law thereof. Neither the ACC nor any member thereof shall be liable to the Association, any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings, or specifications, whether or not defective, (b) the construction or performance of any work upon the Properties, (c) the execution and tiling of any estoppel certificate, whether or not the facts therein are correct, or (d) any other act, action or conduct of the ACC or any of the members thereof; so long as that with respect to the liability of a member of the ACC, such member has acted in good faith on the basis of such information as may be possessed by him.

8.10 DECLARANT'S EXEMPTION.

No provision of this Article VIII shall in any way apply to or bind Declarant or any Units owned and/or constructed by it.

Article IX. **Maintenance and Repair Obligations**

9.1 MAINTENANCE OBLIGATIONS OF OWNERS

It shall be the duty of each Owner, at his sole cost and expense, subject to the provisions of this Declaration requiring Board approval, to maintain, repair, replace and restore the Unit, that portion of any perimeter wall which is located on such Owner's Unit, front and side yard areas and all Improvements located on said Unit, in a neat, sanitary and attractive condition, except for areas to be maintained by the Association under this Declaration. If any Owner shall permit the Unit, that portion of any perimeter wall which is located on such Owner's Unit, front and side yard areas and any Improvements on said Unit, the maintenance of which is the responsibility of such Owner, to fall into disrepair or to become unsafe, unsightly or unattractive, or to otherwise violate this Declaration, the Board shall have the right to seek any remedies at law or in equity which it may have. In addition, the Board shall have the right, but not the duty, after Notice and Hearing as provided in the Bylaws, to enter upon such Owner's Lot to make such repairs or to perform such maintenance and to charge the cost thereof to the Owner. Said cost shall be a Special Assessment enforceable as set forth in this Declaration. Specifically, Each Owner shall:

Maintain, repair, and replace his or her Unit, including without limitation the finished surfaces of the interior walls, ceilings, and floors of the Unit, keeping the same in a clean, sanitary, workable and attractive condition.

Clean, maintain, repair and replace all doors, windows, window panes and all screens, serving his or her Unit, including door and window frames.

Maintain, repair and replace the internal installations, appliances, equipment, and other features servicing his or her Unit, even though located wholly or partly outside of such Unit, including without limitation (i) light fixtures and light bulbs, (ii) heating, ventilation and air conditioning units, condensers and equipment, (iii) sewer, water, electrical and other utility lines from the point that they serve only such Unit, (iv) and (v) telephone facilities.

Except as otherwise provided in this Declaration, an Owner is responsible for the cost of repair of those items described in this section, even if the cause of the damage originates from a source maintained by the Association, unless the cause is the gross negligence of the Association or its agents. As an example, water damage to the interior of a Unit that is caused by a leak in the roof is the responsibility of the Owner even though the repair of the roof is the responsibility of the Association.

9.2 MAINTENANCE OBLIGATIONS OF ASSOCIATION

No improvement, excavation or work which in any way alters the Common Area shall be made or done by any person other than the Association or its authorized agents after the completion of the construction or installation of the Improvements thereto by Declarant. Subject to the provisions of this Declaration, upon commencement of Annual Assessments in the Properties the Association shall provide for the maintenance, repair, and replacement of the Common Area and all Improvements thereon, in a safe, sanitary and attractive condition, and in good order and repair, and shall likewise provide for the utilities serving the Common Area. The Association shall ensure that the landscaping on the Common Area is maintained free of weeds and disease. The Association shall not be responsible for the maintenance of any portions of the Common Area which have been dedicated to and accepted for maintenance by a state, local or municipal governmental agency or entity. All of the foregoing obligations of the Association shall be discharged when and in such manner as the Board of Directors of the Association shall determine in its judgment to be appropriate. The Association hereby reserves a maintenance easement for fences within the Common Area (side facing public streets only) and Common Area landscape.

Except as otherwise specified, the Association shall maintain, repair and replace the Common Area and all facilities, Improvements, and landscaping thereon, including without limitation (i) the parking lots, (ii) the walks and paths, and (iii) all other real and personal property that may be acquired or controlled by the Association, keeping such property in good condition and repair. The Association shall be responsible for providing lighting, landscaping, gardening, and janitorial services for the Common Area and shall cause any and all other acts to be done which may be necessary to assure the maintenance of the Common Area in good condition and repair, including painting of the exterior surfaces of the buildings and such other portions of the Common Area as the Board, in its discretion, determines to be necessary. The Board of Directors shall have the discretion to determine the nature, extent and level of care to be performed by the Association in discharging its obligations under this article. The Association's responsibility pursuant to this section shall include, without limitation, the maintenance, repair and replacement of the following Common Area elements: The exterior surfaces, framing and structural components of the Condominium common areas, the roof coverings, roof structures, gutters, downspouts, the landscaping, and the sewer, water, electrical and other utility lines located within the Common Area.

The Association or its agents may enter any Unit or any portion of Exclusive Use Common Area whenever such entry is necessary, in the Board's sole discretion, in connection with the performance of any maintenance, repair, construction, or replacement for which the Board is responsible or which it is authorized to perform. Although under no obligation to do so, the Board, in its complete and sole discretion, may enter or may authorize the Association's agents to enter any Unit or any portion of Exclusive Use Common Area to effect emergency repairs where such repairs are necessary for safety reasons or to prevent or discontinue damage to the entered Unit or Exclusive Use Common Area, any other Unit or the Common Area. The cost of performing any such emergency repairs shall be charged to the Owner as a Reimbursement Assessment. Such entry shall be made with as little inconvenience to the Occupants as practicable and only upon reasonable advance written notice of not less than 24 hours, except in emergency situations.

Except as specifically provided in this article, the Association shall not be responsible or liable for any maintenance, repair, or replacement of a Unit or Exclusive Use Common Area or any Improvement thereon, except to the extent that the need for such maintenance, repair, or replacement results from the negligence or fault of the Association, its employees, contractors, or agents.

9.3 DAMAGE TO COMMON AREA BY OWNERS

The cost of any maintenance, repairs or replacements by the Association within the Common Area arising out

of or caused by the willful or negligent act of an Owner, his tenants, or their families, guests or invitees shall, after Notice and Hearing, be levied by the Board as a Special Assessment against such Owner as provided in Section 6.6 without limitation of any dollar amount as provided in said section.

9.4 DAMAGE AND DESTRUCTION AFFECTING UNITS -- DUTY TO REBUILD

If all or any portion of any Unit is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of such Unit to rebuild, repair or reconstruct the same in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty or as otherwise approved by the Board. The Owner of any damaged Unit and the Board shall be obligated to proceed with all due diligence hereunder, and such Owner shall cause reconstruction to commence within three (3) months after the damage occurs and to be completed within twelve (12) months after damage occurs, unless prevented by causes beyond his reasonable control. A transferee of title to the Unit that is damaged shall commence and complete reconstruction in the respective periods which would have remained for the performance of such obligations if the Owner of the Unit at the time of the damage still held title to the Unit. However, in no event shall such transferee of title be required to commence or complete such reconstruction in less than ninety (90) days from the date such transferee acquired title to the Unit.

9.5 WALL MAINTENANCE AND REPAIR

All exterior and interior walls on each Owner's Unit shall be maintained in good condition and repair by the Owners of the individual Unit or of the adjoining Units in the event of a shared interior co-wall. In the event any wall is wholly damaged or destroyed it shall be removed and replaced in its entirety. In the event a wall is partially damaged, it shall be repaired and returned to its original condition. Repairs and/or replacement of walls shall be in accordance with Sections 9.5(a) and 9.5(b) hereof

a. In the event that any wall adjoining one (1) or more Unit is damaged or destroyed by the act or acts of one (1) of the adjoining Unit Owners or such adjoining Owner's family, agents, guests or tenants, the Unit Owner responsible for said damage shall be liable for the full cost of such damage and restoration. In all other cases, the cost of such damage and restoration shall be borne equally by the Owners of the Units adjoining the damaged or destroyed portion of such wall. In all instances the wall shall be rebuilt and repaired within one (1) month of the damage. If the adjoining Unit Owners cannot agree upon who is responsible for the damages, the adjoining Lot Owners shall initially equally bear the cost of the same and cause immediate repair and restoration of the wall to occur. After completion of said repair and restoration, the adjoining Unit Owners may pursue any available judicial remedies to ascertain the cause of the damage and responsibility for repair costs.

b. Removal and replacement of a wall shall require the prior written approval of the ACC unless replacement is with the identical design, location and materials as those removed.

Article X. **Use Restrictions**

10.1 COMMERCIAL USE UNITS

Each Unit shall be used for a business/commercial purpose and for no other purpose. Except as otherwise provided in this Declaration, the Common Area shall be used for any purposes directly related to the Unit business/commercial use authorized hereunder.

10.2 RESIDENTIAL OR DWELLING ACTIVITY

No part of the Properties shall ever be used or caused to be used or allowed or authorized to be used in any way, directly or indirectly, for any residential or dwelling purposes;

10.3 NUISANCES

No noxious or offensive activities (including but not limited to the repair of motor vehicles outside the garage of a Dwelling Unit or within the garage of a Dwelling Unit if viewable from any street) shall be carried on upon the Properties. No horns, whistle, bells or other sound devices, except security devices used exclusively to protect the security of a Dwelling Unit and its contents, shall be placed or used on the Properties or on any public street abutting the Properties. Noisy or smoky vehicles, commercial-type power equipment/power tools (excluding lawn mowers and other equipment utilized in connection with ordinary landscape maintenance), off-road motor vehicles or items which may unreasonably interfere with television or radio reception of any Owner in the Properties, and objects which create or emit loud noises or noxious odors, firearms, fireworks, explosives, or flammable solvents, shall not be located, used or placed on any portion of the Properties, or on any public street abutting the Properties, or exposed to the view of other Owners without the prior written approval of the Board. The Board of Directors of the Association shall have the right to determine if any noise, odor, or activity producing such noise, odor, or risk of explosion constitutes a nuisance. No owner shall permit or cause anything to be done or kept on the Properties, or on any public street abutting the Properties, which may increase the rate of insurance in the Properties, or result in the cancellation of such insurance, or which will obstruct or interfere with the rights of other Owners, nor commit or permit any nuisance thereon or violate any law. Each Owner shall comply with all of the requirements of the local or state health authorities and with all other governmental authorities with respect to the occupancy and use of a Dwelling Unit. Each Owner shall be accountable to the Association and other Owners for the conduct and behavior of children and other family members or persons residing in or visiting his Lot; and any damage to the Common Area, personal property of the Association or property of another Owner, caused by such children or other family members, shall be repaired at the sole expense of the Owner of the Lot where such children or other family members or persons are residing or visiting.

10.4 SIGNS

No sign, poster, display, billboard or other advertising device of any kind shall be displayed to the public view on any portion of the Properties, or on any public street abutting the Properties, without the prior express written consent of the Board, except (a) one (1) sign for each Unit, not larger than eighteen (18) inches by twenty-four (24) inches, advertising the Unit for sale or rent, (b) traffic and other signs installed by Declarant as part of the original construction of the Properties, or (c) signs, regardless of size, used by Declarant, its successors or assigns to advertise the Properties or other projects-in the vicinity of the Properties during the construction and sales period. All signs or billboards and the conditions promulgated for the regulation thereof shall conform to the regulations of all applicable governmental ordinances.

10.5 PARKING AND VEHICULAR RESTRICTIONS

No person shall park, store or keep anywhere on the Properties, any inoperable or non-registered vehicle, any large commercial-type vehicle including, but not limited to, any dump truck, cement mixer truck, oil or gas truck or delivery truck, any recreational vehicle, camper unit, house car or motor home, any bus, trailer, trailer coach, camp trailer, boat, aircraft, mobile home, or any other similar vehicle or any vehicular equipment, mobile or otherwise deemed to be a nuisance by the Board, except wholly within the Owner's Unit and only with the Unit door closed. No Person shall conduct repairs or restorations of any motor vehicle, boat, trailer, aircraft or other vehicle in his Unit or on his parking area, or upon any portion of the Properties or on any street abutting the Properties if said activities are viewable from any street or adjoining Unit. However, such repair and restoration shall be permitted within an Owner's Unit when the Unit door is closed, provided that such activity may be prohibited entirely if the Board determines in its sole discretion, that such activity constitutes a nuisance. Vehicles owned, operated or within the control of any Owner shall be parked in the designated parking area of such Owner's Unit to the extent of the space available therein. Notwithstanding the

foregoing, these restrictions shall not be interpreted in such a manner so as to permit any activity, which would be contrary to any ordinance of the City or County in which the Properties are located. Nothing herein shall prevent on site loading and off loading by commercial vehicles relating to any Unit owner's business. Such loading or off loading shall occur with the designated parking space for each applicable Unit, or as otherwise designated by the Members in the Rules and Regulations.

10.6 ANIMAL, RESTRICTIONS

No animals, reptiles, rodents, livestock, birds, lions, tigers, wolves, boa constrictors, orangutans, coyotes, poultry, fish, fowl or insects of any kind ("animals") shall be raised, bred or kept in any Unit, except that a reasonable number of non dangerous dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose, nor in unreasonable quantities nor in violation of any applicable local ordinance or any other provision of these Restrictions, and such limitations as may be set forth in the Rules and Regulations. For the purpose of this provision, the term "household pet" means any animal, which is fully domesticated and is recognized by society as a fully domesticated animal and not trained or utilized as a "guard" dog or animal, thereby excluding any of the animals listed above. As used in this Declaration "unreasonable quantities" shall mean more than one (1) of the same species per Unit; provided, however, that the Board of Directors may determine that a reasonable number in any instance may be more or less. The Association, acting through the Board of Directors, shall have the right to prohibit maintenance of any animal maintained in any Unit which constitutes, in the opinion of the Board, a nuisance or risk of injury to other Owners of Units in the Properties. Animals belonging to Owners, occupants or their licensees, tenants or invitees within the Properties must be either kept within the Unit, an enclosure, an enclosed yard or on a leash or other restraint being held by a person capable of controlling the animal. Furthermore, to the extent permitted by law, any Owner shall be liable to each and all remaining Owners, their families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Properties by an Owner or by members of his family, his tenants or his guests: and it shall be the absolute duty and responsibility of each such Owner to immediately clean up after such animals which have used any portion of the Common Area or streets abutting the Properties. Further, animal wastes on a Lot must be promptly cleaned up by the animal's owner and cannot be allowed to accumulate, mulch, decompose or create a noxious odor or nuisance. The Board of Directors reserves the right to ban all animals without cause.

10.7 TRASH

No rubbish, trash or garbage or other waste material including but not limited to discarded lumber, tires, nails, concrete, sand or gravel, cardboard, packing material, paper waste, pallets, soil, wire, auto or equipment parts, furniture, file cabinets, electronic devices, roofing, fencing, batteries, chemicals, grass, shrub or tree clippings, plant waste, metals, bulk material, or scrap shall be kept or permitted upon any Unit, the Common Area or any public street abutting or visible from the Properties, except in sanitary containers located in appropriate areas screened and concealed from view, and no odor shall be permitted to arise there from so as to render the Properties, or any portion thereof, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. Such container shall be exposed to the view of neighboring Units only when set out for a reasonable period of time (not to exceed twelve (12) hours before and after scheduled trash collection hours). There shall be no exterior fires whatsoever. No clothing or household fabrics shall be hung, dried, or aired on or over any Unit in such a way as to be visible from any other Lot. No plants or seeds infected with noxious insects or plant diseases shall be brought upon, grown or maintained upon the Properties.

10.8 VIEW OBSTRUCTIONS

Each Owner by accepting a deed to a Unit thereby acknowledges that any construction or installation by Declarant or another Owner may impair the view of such Owner and hereby consents to such impairment.

However, no improvement, storage shed, out building, assemblage, patio cover, vegetation or obstruction (collectively, "Obstruction") shall be constructed, planted or maintained by an Owner upon any Unit if such height is greater than three (3) feet higher than the height of fences on or adjoining such Unit or if such Obstruction is visible from the front of the Unit irrespective of height. If there is a dispute between Owners concerning an Obstruction of a view from a Unit, the dispute shall be submitted to the Board, whose decision in such matters shall be binding. Any Obstruction maintained upon any Unit that is in violation of this provision, shall be removed or otherwise altered to the satisfaction of the Board. The Board shall ensure that the vegetation on the Common Area is cut at such intervals so that the view of any Owner is not unreasonably obstructed. Notwithstanding the foregoing, the Board may issue a variance of and concerning an Obstruction upon an Owner submittal of documents specified by the Board in support of same. Said variances are on a case by case basis and are not encouraged or guaranteed by this provision.

10.9 TEMPORARY BUILDINGS

No outbuilding, basement, tent, shack, shed (whether canvas, polypropylene, metal or wood), garage, barn, lean-to, canopy, or other temporary building or improvement of any kind shall be placed upon any portion of the Properties either temporarily or permanently, except as may be approved by the ACC during the initial construction of a Dwelling Unit. No garage, carport, trailer, camper, motor home, recreational vehicle or other vehicle shall be used as a residence in the Properties, either temporarily or permanently.

10.10 COMMON AREA FACILITIES

Nothing shall be altered or constructed in or removed from the Common Area without the prior express written consent of the Board of Directors.

10.11 OUTSIDE INSTALLATIONS

No television, radio or other electronic antenna, satellite dish, citizen's band antenna, basketball backboard or other fixed sports apparatus, or device of any type shall be erected, constructed, placed or permitted to remain on the ground surface of any of the Units, or upon any of the Units or other improvements on such Units unless the same be contained within a Unit or other building or said apparatus and/or devices do not rise above the top of the fences on the Lot. Owners must submit proposed plans for installation of television, radio, electronic antenna, satellite dishes, citizen's band antenna, shed, out-building, basketball backboard or other fixed sports apparatus and/or other devices to the ACC for approval prior to installation. Owners may be required to install ACC approved screening materials as a condition of approval of proposed installations. Failure to follow the aforementioned approval requirements may result in immediate removal of said equipment at Owner's expense.

10.12 NATURAL RESOURCE DEVELOPMENT

No oil drilling, oil, gas or mineral development operations, oil refining, geothermal exploration or development, quarrying or mining operations of any kind shall be permitted upon or in any Unit or the Common Area, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted upon the surface of any Unit or below the surface of the Properties. No derrick or other structure designed for use in boring for water, oil, geothermal heat or natural gas shall be erected, maintained or permitted upon any Unit.

10.13 FURTHER SUBDIVISION

No Owner shall further partition or subdivide his Unit, including without limitation any division of his Unit into time-share estates or time-share uses except as allowed herein; provided, however, that this provision shall not be construed to limit the right of an Owner (1) to rent or lease his entire Unit by means of a written lease or rental agreement subject to the restrictions of this Declaration, so long as the Lot is not leased for transient or hotel purposes; (2) to sell his Unit; or (3) to transfer or sell any Unit to more than one person to be

held by them as tenants-in-common, joint tenants, tenants by entirety or as community property. The terms of any such lease or sub-lease or rental agreement shall be made expressly subject to this Declaration and the Bylaws of the Association. Any failure by the lessee or sub-lessee of such Unit to comply with the terms of this Declaration, the Bylaws of the Association or the Rules and Regulations shall constitute, a default under the lease or rental agreement and a violation of the Association Rules and Regulations

10.14 DRAINAGE

There shall be no interference with or alteration of the established drainage pattern over any exterior Unit within the Properties, unless an adequate alternative provision is made for proper drainage. For the purposes hereof, "established drainage pattern" is defined as the drainage that exists at the time that such Unit is conveyed to a purchaser from Declarant and shall include drainage from the other Units in the Property onto the Common Area.

10.15 WATER SUPPLY SYSTEMS

No individual water supply, sewage disposal system, or water softener system shall be permitted on any Unit in the Properties unless such system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of any water district serving the Properties, the Health Department for the county in which the Properties are located, the Board, and all other applicable governmental authorities.

10.16 LANDSCAPING

The Board may adopt Rules and Regulations proposed by the ACC to regulate landscaping permitted or required on the Properties. If an Owner fails to install and maintain landscaping in conformance with such Rules and Regulations within the time limit set forth above, or shall allow his landscaping to deteriorate to a dangerous, unsafe, unsightly, or unattractive condition, the Board, upon thirty (30) days written notice to such Owner shall have the right to either seek an immediate remedy at law or in equity which it may have to correct such condition and, after Notice and Hearing, to enter upon such Owner's Unit for the purpose of doing so, and such Owner shall promptly reimburse the Association for the cost thereof. Such cost shall be a Special Assessment enforceable in the manner as set forth in this Declaration.

Article XI.

Damage to or Condemnation of Common Area

11.1 DAMAGE TO OR CONDEMNATION OF COMMON AREA

Damage to or destruction of all or any portion of the Common Area, and condemnation of all or any portion of the Common Area shall be handled in the following manner:

If the Common Area is damaged or destroyed, the Association shall cause the Common Area to be repaired and reconstructed substantially as it previously existed. Removal and replacement of a fence shall require the prior written approval of the ACC unless replacement is with the identical design, location and materials as those removed. If the cost of effecting total restoration of the Common Area exceeds the amount of insurance proceeds, the Association shall cause the Common Area to be repaired and reconstructed substantially as it previously existed, and the difference between the insurance proceeds and the actual cost shall be levied as a reconstruction Assessment against each Lot and its respective Owner.

To the extent of funds available for restoration, any restoration or repair of the Common Area shall be performed substantially in accordance with the original plans and specifications unless other action is approved by Beneficiaries of fifty-one percent (51%) of the first Mortgages on Lots in the Properties.

Each Member shall be liable to the Association for any damage to the Common Area not fully reimbursed to the Association by insurance proceeds which may be sustained by reason of the negligence or willful misconduct of said Member or the Persons deriving their right and easement of use and enjoyment of the Common Area from said Member, or of his respective family and guests, both minor and adult. The Association reserves the right, acting through the Board, after Notice and Hearing, to (1) determine whether any claim shall be made upon the insurance maintained by the Association and (2) levy against such Member a Special Assessment equal to any deductible paid and the increase, if any, in the insurance premium directly attributable to the damage caused by such Member or the Persons for whom such Member may be liable as described herein. In the case of joint ownership of a Lot, the liability of the owners thereof shall be joint and several, except to the extent that the Association has previously contracted in writing with such joint owners to the contrary. After Notice and Hearing, the cost of correcting such damage, to the extent not reimbursed to the Association by insurance, shall be a Special Assessment against such Member.

If at any time all or any portion of the Common Area, or any interest therein, is taken for any public or quasi-public use, under any statute, by right of eminent domain or by purchase in lieu of eminent domain, the award in condemnation shall be paid to the Association. Any such award payable to the Association shall be deposited in the Operating Fund. No Member shall be entitled to participate as a party, or otherwise, in any proceedings relating to such condemnation. The Association shall have the exclusive right to participate in such proceedings and shall, in its name alone, represent the interests of all Members.

Article XII. **Insurance**

12.1 CASUALTY INSURANCE

The Board shall cause to be obtained and maintained fire and casualty insurance with extended coverage for loss or damage to all insurable Improvements and fixtures originally installed by Declarant or installed by the Association on the Common Area for the full insurance replacement cost thereof without deduction for depreciation or coinsurance, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and the proceeds thereof shall be payable to the Association. Subject to article insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are Common Expenses included in the Annual Assessments levied by the Association.

12.2 INSURANCE OBLIGATIONS OF OWNERS

Each Owner shall insure the Improvements on his Unit against loss or damage by fire or by any other casualty. All such insurance shall be in an amount as near as practicable to the full replacement value of the Unit and appurtenant Improvements, without deduction for depreciation or coinsurance. All such policies shall contain a provision that the same shall not be canceled or terminated except upon at least thirty (30) days' written notice to the Association. Each Owner shall notify the Association of the existence or nonexistence of an assignment of such insurance maintained by said Owner upon the sale of his Unit. The Association may, but is not obligated to, cure an Owner's failure to comply with this section by purchasing the insurance on behalf of the Owner, who shall then be required to reimburse the Association for its cost of obtaining the insurance. Such cost shall constitute a Special Assessment against the Owner.

It is the responsibility of each Owner to provide insurance on his personal property and upon all

other property and improvements within his Unit for which the Association has not purchased insurance in accordance with Section 12.1 hereof. It shall also be the responsibility of each Owner to carry comprehensive public liability insurance in an amount not less than \$2,000,000 general liability coverage per incident to cover his individual liability for damage to person or property occurring inside his Unit or elsewhere upon his area of use. Such policies shall name the Association as an additional named insured and shall not adversely affect or diminish any liability under any insurance obtained by or on behalf of the Association, and duplicate copies of such other policies shall be deposited with the Board upon the Board's request. If any loss intended to be covered by insurance carried by or on behalf of the Association shall occur the proceeds payable there under shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by him to the Association, to the extent of such reduction, for application by the Board to the same purposes as the reduced proceeds are to be applied.

12.3 WAIVER OF SUBROGATION

All policies of physical damage insurance maintained by the Association shall provide, if reasonably possible, for waiver of: (1) any defense based on coinsurance; (2) any right of setoff, counterclaim, apportionment, prorating or contribution by reason of other insurance not carried by the Association; (3) any invalidity, other adverse effect or defense on account of any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act, neglect, or omission of any named insured or the respective agents, contractors and employees of any insured; (4) any rights of the insurer to repair, rebuild or replace, and, in the event any 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; or (5) notice of the assignment of any Owner of its interest in the insurance by virtue of a conveyance of any Lot. As to each policy of insurance maintained by the Association which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Owners, the Manager, Declarant, and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by such persons, but only to the extent that insurance proceeds are received in compensation for such loss.

12.4 LIABILITY AND OTHER INSURANCE

The Association shall have the power and duty to and shall obtain comprehensive public liability insurance, including medical payments and malicious mischief, in such limits as it shall deem desirable (but in no event less than 5 million covering all claims for personal injury and property damage arising out of a single occurrence), insuring against liability for bodily injury, death and property damage arising from the activities of the Association or with respect to property maintained or required to be maintained by the Association including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured. The Association may also obtain, through the Board, Worker's Compensation insurance and other liability insurance as it may deem desirable, insuring each Unit Owner and the Association, Board of Directors and Manager, from liability in connection with the Common Area, the premiums for which are a Common Expense included in the Annual Assessment levied against the Owners. All insurance policies shall be reviewed at least annually by the Board of Directors and the limits increased in its discretion. The Board may also obtain such errors and omissions insurance, indemnity bonds, fidelity bonds and other insurance as it deems advisable, insuring the Board, the officers of the Association and the Manager against any liability for any act or omission in carrying out their obligations hereunder, or resulting from their membership on the Board or on any committee thereof. However, fidelity bond coverage which names the Association as an obligee must be obtained by or on behalf of the Association for any person or entity handling funds of the Association, including but not limited to, officers, directors, trustees, employees and agents of the Association and employees of the Manager of the Association, whether or not such Persons are compensated for their services, in an amount not less than that estimated maximum of funds, including reserve funds, in the custody of the Association or the Manager, as the case may be, at a given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than the sum equal

to one-fourth (1/4) of the Annual Assessments on all Lots in the Properties, plus reserve funds. In addition, the Association shall continuously maintain in effect such casualty, flood and liability insurance and fidelity bond coverage meeting the requirements for planned unit developments if otherwise required by federal or private lending institutions unless such coverage is not available or has been waived in writing.

12.5 NOTICE OF EXPIRATION REQUIREMENTS

If available, each of the policies of insurance maintained by the Association shall contain a provision that said policy shall not be canceled, terminated, materially modified or allowed to expire by its terms, without ten (10) days' prior written notice to the Board and Declarant and to each Owner and Beneficiary, 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.

Article XIII. **Mortgagee Protection Clause**

13.1 MORTGAGEE PROTECTION CLAUSE

In order to induce governmental agency or other entity to participate in the financing of the sale of Units within the Properties, the following provisions are added hereto (and to the extent these added provisions conflict with any other provisions of the Declaration, these added provisions shall control):

- a. Each Beneficiary, insurer and guarantor of a first Mortgage encumbering any Unit, at its written request, is entitled to written notification from the Association of any default by the Mortgagor of such Unit in the performance of such Mortgagor's obligations under this Declaration, the Articles of Incorporation or the Bylaws, which default is not cured within thirty (30) days after the Association learns of such default. For purposes of this Declaration, "first Mortgage" shall mean a Mortgage with first priority over other Mortgages or Deeds of Trust on a lot, and "first Mortgagee" shall mean the Beneficiary of a first Mortgage.
- b. Each Owner, including every first Mortgagee of a Mortgage encumbering any Unit which obtains title to such Unit pursuant to the remedies provided in such Mortgage, or by foreclosure of such Mortgage, or by deed or assignment in lieu of foreclosure, shall be exempt from any "right of first refusal" created or purported to be created by this Declaration, the Articles, the Bylaws, or the Rules and Regulations.
- c. Each Beneficiary of a first Mortgage encumbering any Lot which obtains title to such Lot or by foreclosure of such Mortgage, shall take title to such Lot free and clear of any claims of unpaid assessments or charges against such Lot which accrued prior to the acquisition of title to such Lot by the Mortgagee.
- d. Unless at least fifty-one percent (51%) of first Mortgagees (based upon one (1) vote for each first Mortgage owned) or fifty-one percent (51%) of the Owners (other than Declarant) have given their prior written approval, neither the Association nor the Owners shall:
 - (i) subject to California nonprofit corporation law to the contrary, by act or omission seek to abandon, partition, alienate, subdivide, release, hypothecate, encumber, sell or transfer the Common Area and the Improvements thereon which are owned by the Association; The granting of easements for public utilities or for other public purposes consistent with the intended use of such property by the Association as provided in this Declaration shall not be deemed a transfer within the meaning of this clause.
 - (ii) change the method of determining the obligations, assessments, dues or other charges which may be levied against a Unit Owner, or the method of allocating distributions of hazard insurance proceeds or condemnation awards;

(iii) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design of the exterior appearance of the Units and other Improvements on the Units, the maintenance of the exterior walls or common fences and driveways, or the upkeep of lawns and plantings in the Properties;

(iv) fail to maintain Fire and Extended Coverage on insurable Common Area on a current replacement cost basis in an amount as near as possible to one hundred percent (100%) of the insurance value (based on current replacement cost);

(v) use hazard insurance proceeds for losses to any Common Area property for other than the repair, replacement or reconstruction of such property; or

(vi) amend those provisions of this Declaration or the Articles of Incorporation or Bylaws of the Association which provide for rights or remedies of first Mortgagees.

e. All Beneficiaries, insurers and guarantors of first Mortgages, upon written request, shall have the right to (1) examine the books and records of the Association during normal business hours, (2) require from the Association the submission of an annual audited financial statement (without expense to the Beneficiary, insurer or guarantor requesting such statement) and other financial data, (3) receive written notice of all meetings of the Members, and (4) designate in writing a representative to attend all such meetings.

f. All Beneficiaries, insurers and guarantors of first Mortgages, who have filed a written request For such notice with the Board shall be given thirty (30) days' written notice prior to (1) any abandonment or termination of the Association, (2) the effective date of any proposed, material amendment to this Declaration or the Articles of Incorporation or Bylaws of the Association, and (3) the effective date of any termination of any agreement for professional management of the Properties following a decision of the Owners to assume self-management of the Properties. Such first Mortgagees shall be given immediate notice (1) following any damage to the Common Area whenever the cost of reconstruction exceeds Ten Thousand Dollars (\$10,000.00) and (2) when the Board learns of any threatened condemnation proceeding or proposed acquisition of any portion of the Properties.

g. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area property and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for Common Area property, and First Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

h. The Reserve Fund described in Article VI of this Declaration must be funded by regular scheduled monthly, quarterly, semiannual or annual payments rather than by large extraordinary Assessments.

i. The Board shall secure and cause to be maintained in force at all times a fidelity bond for any Person handling funds of the Association, including, but not limited to, employees of any-professional Manager.

j. When professional management has been previously required by a Beneficiary, insurer or guarantor of a first Mortgage, any decision to establish self-management by the Association shall require the approval of fifty-one percent (51%) of the voting power of the Association and the Beneficiaries of fifty-one percent (51%) of the first Mortgagees of Lots in the Properties.

k. In addition to the foregoing, the Board of Directors may enter into such contracts to agreements on behalf of the Association as are required in order to satisfy the guidelines of private or governmental entity, so as to allow for the purchase, insurance or guaranty, as the case may be, by such entities of first

Mortgages encumbering Units. Each Owner hereby agrees that it will benefit the Association and the Members of the Association, as a class of potential Mortgage borrowers and potential sellers of their Units, if such agencies approve the Properties as a qualifying development under their respective policies, rules and regulations, as adopted from time to time. Mortgagees are hereby authorized to furnish information to the Board concerning the status of any Mortgage encumbering a Lot.

Article XIV.
Declarant Exemption [Development Rights]
and Other Special Declarant Rights

14.1 EXEMPTION

Declarant or its successors or assigns intend, but shall not be obligated to undertake the work of developing all of the Units included within the Properties. The completion of that work and sale, resale, rental and other disposal of Units is essential to the establishment and welfare of the Properties as a quality commercial community. As used in this Article and its subparagraphs, the words "its successors or assigns" specifically do not include members of the buying public. In order that such work may be completed and the Properties be established as a fully occupied commercial community as rapidly as possible, no Owner nor the Association shall do anything to interfere with, and nothing in this Declaration shall be understood or construed to:

- a. Prevent Declarant, its successors or assigns, or its or their contractors or subcontractors, from doing on any Unit owned by them whatever they determine to be necessary or advisable in connection with the completion of such work, including without limitation the alteration of construction plans and designs as Declarant deems advisable in the course of development; or
- b. Prevent Declarant, its successors or assigns, or its or their representatives, from erecting, constructing and maintaining on any portion of the Properties owned or controlled by Declarant, or its successors or assigns or its or their contractors or subcontractors, such structures as may be reasonably necessary for the conduct of its or their business of completing such work and establishing the Properties as a commercial development and disposing of the same by sale, resale, lease or otherwise; or
- c. Prevent Declarant, its successors or assigns, or its or their contractors or subcontractors, from conducting on any Unit, or any portion thereof, owned or controlled by Declarant, or its successors or assigns, its or their business of developing, subdividing, grading and constructing Improvements in the Properties as a commercial development and of disposing of Units by sale, lease or otherwise; or
- d. Prevent Declarant, its successors or assigns or its or their contractors or subcontractors, from maintaining such sign or signs on any portion of the Properties owned or controlled by any of them as may be necessary in connection with the sale, lease or other marketing of Units in the Properties; or
- e. Prevent Declarant, at any time prior to acquisition of title to a Unit by a purchaser from Declarant, to establish on that Unit additional licenses, reservations and rights-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Properties; or
- f. Prevent Declarant, its successors or assigns, to be relieved from the payment of annual assessments as provided for in § 6.11.

14.2. SPECIAL DECLARANT RIGHTS

Declarant reserves the following the right, to the maximum extent permitted by law, to maintain sales offices, models in Units and signs advertising the Project and individual units upon the Common

Areas.

Article XV.
General Provisions

15.1 ENFORCEMENT

This Declaration, the Articles, the Bylaws, or the Association Rules and Regulations may be enforced by the Association as follows:

- a. Breach of any of the provisions contained in the Declaration, the Bylaws, or the Association Rules and Regulations and the continuation of any such breach may be enjoined, abated or remedied by appropriate legal proceedings instituted by any Owner, including Declarant so long as Declarant owns a unit, by the Association or the successors-in-interest of the Association. Any judgment rendered in any action or proceeding pursuant hereto shall include a sum for attorneys' fees in an amount as the court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs. Each Owner shall have a right of action against the Association for any failure by the Association to comply with the provisions of this Declaration, or of the Bylaws or Articles.
- b. The result of every act or omission whereby any of the provisions contained in this Declaration or the Bylaws are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance either public or private shall be applicable against every such result and may be exercised by any Owner by the Association or its successors-in-interest.
- c. The remedies herein provided for breach of the provisions contained in this Declaration or in the Bylaws shall be deemed cumulative, and none of such remedies shall be deemed exclusive.
- d. The failure of the Association to enforce any of the provisions contained in this Declaration or in the Bylaws shall not constitute a waiver of the right to enforce the same thereafter.
- e. Any breach or amendments of the provisions contained in this Declaration, the Articles or the Bylaws shall not affect or impair the lien or charge of any first Mortgage or Deed of Trust made in good faith and for value on any Lot or the Improvements thereon, provided that any subsequent Owner of such property shall be bound by such provisions of the Declaration, Articles and Bylaws, whether such Owner's title was acquired by foreclosure in a trustee's sale or otherwise.
- f. If any Owner, his family, guest, licensee, lessee or invitee violates any such provisions, the Board may impose a reasonable Special Assessment upon such Owner for each violation and may suspend the voting privileges of such Owner as further provided in the Bylaws. Such Special Assessment shall be collectible in the manner provided hereunder, but the Board shall give such Owner Notice and Hearing before invoking any such Special Assessment or suspension.

15.2 SEVERABILITY

Invalidation of any provision of this Declaration by judgment or court order shall in no way affect any other provisions that shall remain in full force and effect.

15.3 TERM

Unless earlier terminated pursuant to Section 15.5 below, the covenants and restrictions of this Declaration

shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Association or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successive Owners and assigns, for a term of one hundred (100) years from the date this Declaration is Recorded, after which the term shall be automatically extended for successive periods of ten (10) years unless within six (6) months prior to the commencement of an extension period, a declaration of termination meeting the requirements of an amendment to the Declaration as set forth in Section 15.5 is Recorded.

15.4 INTERPRETATION

The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a planned common interest commercial development and for the maintenance of the Common Area. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter.

15.5 TERMINATION AND AMENDMENT

Notice of the subject matter of a proposed amendment to, or termination of, this Declaration in reasonably detailed form shall be included in the notice of any meeting of the Association at which a proposed amendment or termination is to be considered. A resolution adopting a proposed amendment or termination may be proposed by an Owner at a meeting of Members of the Association. With regard to an amendment of this Declaration, the resolution shall be adopted by the vote, in person or by proxy, or written consent of Members representing not less than fifty-one percent (51%) of the voting power of the Association. In addition, Article XIV hereof may not be amended without the prior written consent of Declarant, so long as Declarant is an Owner. With regard to termination of the common-interest development covered by this Declaration, the resolution shall be adopted by the vote, in person or by proxy, or written consent of Members representing not less than eighty percent (80%) of the voting power of the Association. Notwithstanding the foregoing, termination of this Declaration to be effective, must be approved in writing by the Beneficiaries of seventy-five percent (75%) of the first Mortgages on all of the Lots in the Properties at the time of such termination.

No amendment material to a Mortgagee may be made to this Declaration without the prior written consent of Mortgagees whose security interests encumber fifty one percent (51%) or more of the Lots within the Properties. For these purposes, any amendments to provisions of this Declaration governing any of the following subjects, shall be deemed "material to a Mortgagee":

- a. Any amendment which affects or purports to affect the validity or priority of Mortgages or the rights or protection granted to Beneficiaries, insurers and guarantors of first Mortgages;
- b. Any amendment which would necessitate a Mortgagee after it has acquired a Unit through foreclosure to pay more than its proportionate share of any unpaid assessment or assessments accruing after such foreclosure;
- c. Any amendment which would or could result in a Mortgage being canceled by forfeiture, or in a Lot not being separately assessed for tax purposes;
- d. Any amendment relating to the insurance provisions as set out in Article XII hereof, or to the application of insurance proceeds as set out in Article XII hereof, or to the disposition of any money received in any taking under condemnation proceedings;
- e. Any amendment which would or could result in termination or abandonment of the Properties or subdivision of a Unit or the lot upon which the development sits, in any manner inconsistent with the

provisions of this Declaration;

f. Any amendment which would subject any Owner to a right of first refusal or other such restriction if such Lot is proposed to be sold, transferred or otherwise conveyed;

g. Any amendment concerning:

- (i) Voting Rights;
- (ii) Rights to use the Common Area;
- (iii) Reserves and responsibility for maintenance, repair and replacement of the Common Area;
- (iv) Leasing of Units;
- (v) Establishment of self-management by the Association where professional management has been required by any Beneficiary, insurer or guarantor of a first Mortgage; Annexation of property to the Properties; and Assessments, assessment liens, or the subordination of such liens.

Notwithstanding the foregoing, if a first Mortgagee who receives a written request from the Board to approve a proposed termination, amendment or amendments to the Declaration does not deliver a negative response to the Board within thirty (30) days of the mailing of such request by the Board, such first Mortgagee shall be deemed to have approved the proposed termination, amendment or amendments.

A copy of each amendment shall be certified by at least two (2) officers of the Association, and the amendment shall be effective when a Certificate of Amendment is Recorded. The Certificate, signed and sworn to by at least two (2) officers of the Association that the requisite number of Owners have either voted for or consented in writing to any termination or amendment adopted as provided above, when Recorded, shall be conclusive evidence of that fact. The Association shall maintain in its files the record of all such votes or written consents for a period of at least ten (10) years. The certificate reflecting any termination or amendment which requires the written consent of any of the Beneficiaries of first Mortgages shall include a certification that the requisite approval of such first Mortgagees has been obtained.

Until the first Close of Escrow for the sale of a Unit in the Properties, Declarant shall have the right to terminate or modify this Declaration by recordation of a supplement hereto setting forth such termination or modification.

15.6 NO PUBLIC RIGHT OR DEDICATION

Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Properties to the public, or for any public use.

15.7 CONSTRUCTIVE NOTICE AND ACCEPTANCE

Every person who owns, occupies or acquires any right, title, estate or interest in or to any Unit or other portion of the Properties does hereby consent and agree, and shall be conclusively deemed to have consented and agreed, to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in the Properties. or any portion thereof.

15.8 NOTICES

Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered three (3) business days after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association.

15.09 NO REPRESENTATIONS OR WARRANTIES

No representations or warranties of any kind, express or implied, have been given or made by Declarant or its agents or employees in connection with the Properties or any portion of the Properties, or any Improvement thereon, its physical condition, zoning, compliance with applicable laws, or fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof as a planned development, except as specifically and expressly set forth in this Declaration and except as may be filed by Declarant from time to time with any governmental authority.

15.10 PRIORITIES AND INCONSISTENCIES

If there are conflicts or inconsistencies between this Declaration and either the Articles of Incorporation or the Bylaws of the Association, the terms and provisions of this Declaration shall prevail.

IN WITNESS WHEREOF, Declarant has executed this Declaration the date first set forth above.

DECLARANT
DUROCK ROAD, LLC,
A California Limited Liability Company

By: _____
NIELLO OLIVO
Managing Member

By: _____
MICHAEL J. SOUTHARD
Managing Member